Duane Gomer Education Presents

PROFESSIONAL MLO EDUCATION FOR

MLO'S

2021 TEXTBOOK: 1ST Edition

BY MICHELLE RODRIGUEZ, DUANE GOMER & JOHN SHORE

CA DFPI SAFE COMPREHENSIVE 8 HOURS OF CONTINUING EDUCATION

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8 Hour CA-DFPI SAFE Comprehensive:
Professional MLO Education 2021 Edition

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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

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

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Dear 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 if this class is in person. 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 2021 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/2021.pdf

Thank you,

Duane Gomer

Chapter 1

NONTRADITIONAL MORTGAGES

Section 1

Who Requires the CE Topics?

This course is designed for DFPI licensees but DRE licensees can take the course and receive their required 8 Hours of Continuing Education for NMLS renewal.

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 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[1]

[1] MMC Mortgage Examination Manual

Section 2

Negative Amortization

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 doesn't 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.

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 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.

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.[2]

Time to Think 1.1

1) According to Dodd Frank, Negative Amortization loans are

______________________.

2) Negative Amortization loans carry ___________ interest rates.

3) Have you ever completed a Neg Am loan? ______Yes/No_______

Section 3

Adjustable Rate Mortgages

Background

As discussed in Section 2, CFPB lists ARM's as an important subject for the two hours of Nontraditional Mortgage Education. The categorization of mortgages as either Traditional or Nontraditional was formulated by the SAFE Act. This was included in an official notice by the Federal Government.

The SECURE AND FAIR ENFORCEMENT ACT OF 2008[3] states: "A nontraditional mortgage product is any product other than a 30-year fixed-rate mortgage". (Title V, Sec. 1503 (6). That is simple as stated before, but in the "Guidance on Nontraditional Mortgage Product Risks"[4] the

[2] *12 CFR Subpart E §1026.43*
[3] SAFE Act
[4] Nontraditional Mortgage Products: Guidance on Nontraditional Mortgage Product Risks

definition of NTM states that it includes "interest-only" and "payment options" terms such adjustable-rate mortgages (ARM's) where a borrower has flexible payment options with the potential for negative amortization.

In many publications the loans are called "exotic" and "toxic". But the loans have many uses and could be great loans for many individuals. So it is important for MLO students to understand their features. As in all loans it is important to Disclose, Disclose and Disclose again. But it would be professional to know what to disclose. Hence this section.

For a point of order: There are two government definitions, so for test purposes and discussions we will use the SAFE ACT term. The SAFE ACT was effective in 2008 and the Guidance was effective 2006 so the SAFE ACT is more recent. Also, you will notice many different spellings of Nontraditional but both the SAFE ACT and the Guidance spell it with no hyphen so we will use that writing.

Home ownership has always been part of the American Dream. Around 1900 the ownership percentage of households was around 50%. This might be understood as most Banks or Lenders only loaned to 50% of value and for short terms like 3 to 5 years with balloon payments. Imagine in today's market if prospects had to have a down payment of that size and imagine how hard it would be to get someone qualified and approved. Benchmarks of 31% and 43% would be very difficult to meet.

A big positive was the creation in 1934 of the Federal Housing Administration. With establishment of the FHA, home buyers were able to secure loans with longer terms and level payments. The loans were fully amortized with fixed rates. Over the next two decades ownership swelled to over 60% in some areas. The U.S. peak was 69.2% just before the 2007-2010 chaos. It dropped during that period and in the third quarter of 2020 it was listed as 67.4% and trending upwards.

Wellenkamp, Garn, et. al.

Let's go back in time to 1978 in California. A period where the current interest rates were much higher than previous years. Someone would have a low interest loan on a property and he/she could get a much higher price if the loan could be assumed or the buyer could take title subject to the existing loan. The lenders wanted to call their due-on-sale or alienation clause, and the buyer would have to get new financing.

Along came Cynthia Wellenkamp, a single home owner in Riverside, California. She bought a home from a buyer who had an existing loan at 8%. The current rate was around 9.25% so she bought the property in 1975 with the existing loan remaining. The case does not list a sales price but the loan had been only $19,100.00 in 1973 so it was not a large transaction.

Bank of America told Mrs. Wellenkamp that she could "assume" the loan but the rate would go to 9.25%. She vehemently disagreed with this offer. She enlisted the services of an attorney in Riverside, Fred Crane, and the case started through California courts. (Some of you may know Mr. Crane because today he is the founder and owner of First Tuesday, a very successful Real Estate Education company in California).

There were some decisions along the way but in 1978 the case came for a final decision to the Supreme Court of the State of California. Due to the nature of the loan it could not go to a Federal Court.

The plaintiffs claimed that since Mrs. Wellenkamp had good credit, the defendant's security had not been impaired, and that the right to foreclose on this transaction was an unreasonable restraint on commerce.

The Court voted 6 to 1 that the lender could not foreclose or take other actions if the buyer had "comparable credit" with no definition of "comparable". The decision was a big win for the underdogs.

So began the period of Creative Financing in California lending. Loans were sold with the buyer taking title subject to the existing loan with another loan to the buyer. Other brokers used an All-Inclusive Deed of Trust or Wrap-Around Mortgage. In this technique a new loan would be written which would include the amount of the existing loan and the amount of seller's equity left after the down payment.

A new negotiated interest rate would be established for the Wrap Mortgage. The seller could create extra profit with the increase rate on the existing loan being paid by the buyer and the old lower interest rate being paid to the lender.

These loans were not perfect by any means. Many problems, with a major one being the seller did not make any payments on the existing loan. The lenders established extremely high rates for new loans, 14% to 16%. Costly to buyers and again hard to qualify. Old timers--MLO's from the 80's--will tell you about interest rates as high as 18%.

Other borrower-oriented states passed similar bills and the lenders had nationwide problems. They immediately started a case up through the Federal Court Pipeline but this takes time. Therefore, the lenders went to Congress and promoted a bill. The Garn-St. Germain Depository Institutions Act[5]. One feature of the Act was to allow banks to enforce their Due-On-Sale clause, with the exception of someone placing their own real estate in a trust without triggering the clause. So the Wellenkamp Decision was eliminated.

There were other features to assist the lenders in providing more loans. The official title of the Act was, "An Act to revitalize the housing industry by strengthening the financial stability of home mortgage lending institutions and ensuring the availability of home mortgage loans".

Another California aspect of the Act was that the president was a Californian named Ronald Reagan. The bill had broad support in Congress and passed by a margin of 272-91 in the house and by a similar margin in the Senate.

It also stated that Title VIII of the Act allowed banks to provide adjustable-rate mortgage loans for the first time. The nickname is Alternative Mortgage Transaction Parity Act of 1982[6].

In the last 38 years many MLO's have recommended these loans to clients and many clients got loans when they may not have been able to obtain a fixed rate loan or when an Alternative loan made more financial sense.

It is disputed whether the act was a mitigating or contributing factor to the savings and loan crisis of the late 1980's. Some of you might remember the name Charles Keating and Lincoln Savings from that era. In a sense it is compared to the Gramm-Leach-Bliley Act--Financial Services Modernization Act of 1999-- that repealed the more restrictive 1930's era Act of Glass-Steagall.

Now we could make Federal type loans with Adjustable Rates, Interest-Only and in some cases loans with Negative Amortization. A huge change started by a homeowner in Riverside.

[5] Garn-St Germain Depository Institutions Act of 1982
[6] § 1004.1-4

Discussion Points of ARMs

ARM's are not for every borrower or trustor.

ARM's might be just right for some borrowers and trustors.

ARM's are much more difficult to explain than the old 30-year fixed rate, fully amortized loan.

ARM's are misunderstood by borrowers (trustors), and some inexperienced MLO's do not explain them well.

ARM's have been known to cause problems for borrowers (trustors), beneficiaries, MLO Company Owners, Servicers, and MLO's.

I would like to include a quote from Joffrey Long who is a hard working MLO and a Speaker of the Year for Duane Gomer Education and finds time to work as an Expert Witness on Foreclosures and other issues.

He said, and I quote, "It does bring to mind the whole "Wyatt" concept. The case, "Wyatt vs. Union Home Mortgage," although specific to California, is quoted in about 50% of the lawsuits filed against loan brokers. It was, in a sense, the "Easton vs. Strassberger" for the mortgage loan brokers, in that it had similarities. The big bottom line in "Wyatt" was that the loan broker had a duty to inform the borrower about the loan terms and assist them in understanding the terms and conditions of what they were negotiating on behalf of the borrower. You've probably read it, but if you haven't, "Wyatt vs. Union Home Mortgage" is all over the internet and it is an easy read." Not understanding this concept could lead to problems.

Interest Rates

The interest rate is based on two factors, Index and Margin. The index rate reflects the current market and is normally selected by the lender and then technically approved by the applicant. The new CHARM book says that indices can include the U.S. prime rate and the Constant Maturity Treasury (CMT). Nothing is said about LIBOR.

The margin is the extra percentage that the lender adds to the loan, their gross operating income. A future borrower can shop for a preferred index and a lower margin. The Loan Estimate shows the index and the margin being offered to the applicant.

The original interest rate is a combination of the index and the margin, the fully indexed rate. This rate will not remain long. In a 5/1 ARM the 5 indicates the length of time the initial rate lasts and the 1 tells you how often the rate changes after that.

Paying Points

Lenders may offer a lower interest rate if an applicant pays "points". One point is 1% of the loan amount. Borrowers should check to make certain how long the lower interest rate applies. Also, this is an option and is not mandatory. A before and after comparison should be completed before agreeing to pay any extra fees.

Conversion Option

This feature would allow the borrower to convert the loan to a fixed loan in the future. Information on the option should be received before any documents are signed and should include when it can be done, the fixed rate that will be used in the future, and if there are any conversion fees at the signing or at time of conversion.

Teaser Rates

This feature is fully described by its title. They could be called start or discounted rates and end very quickly in many cases.

Interest-Only ARMs

You pay only interest for a period of time. This will make the beginning payment much lower. Many borrowers look only to how much is their payment. Then, when the initial period ends, a fully amortizing payment will start and this will be much higher.

Borrowers must be warned that some of these choices could lead to Negative Amortization. All government publications describe this as exotic, toxic, dangerous and many other terms. If fully explained to the proper category of borrowers, this could be a good loan. I am a believer in paying as little as I can now so I can use the money that would go to my monthly payment for another more important object. BUT, Negative Amortization must be understood by borrowers. My mother would call this, "Robbing Peter to pay Paul."

Many of you have worked with ARM's for many years and since you have all passed the National Exam, you have studied the Basics of ARM's. Therefore, I believe that we can cover the Basics quickly and spend our time on the more important part of ARM's and that is Disclosure. Most of the problems that arise on these loans are because the borrowers do not understand them. So Disclose, Disclose, and then Disclose again. To Disclose you have to know what to Disclose.

Every ARM applicant must be given a copy of a required booklet[7] due to Federal Law. The name of this important booklet is Consumer Handbook on Adjustable Rate Mortgages (CHARM).

The applicants might have questions, and it would be to your advantage to anticipate their questions and have professional answers. You might say that you have never done an ARM and will never do one. But circumstances change and the market can change so you should be ready for change. Let's see what borrowers are being told.

CHARM Booklet

There has been a recent correction to the Charm Booklet given to applicants. It was completed by the Consumer Financial Protection Bureau on June 4, 2020. The original booklet published by the Federal Reserve Board was outdated. The new edition has brought the material up-to-date according to new regulations and eliminated about 20 pages.

[7] CHARM Booklet

How to use the booklet

When an applicant and their mortgage lender discuss adjustable-rate mortgages (ARMs), the applicant receives a copy of this booklet. When someone applies for an ARM loan, they receive a Loan Estimate. A borrower may receive multiple Loan Estimates from competing lenders when trying to get the best loan.

You may want to have your Loan Estimate handy for any loan you are considering as you work through this booklet. We reference a sample Loan Estimate throughout the booklet to help you apply the information to your situation.

About the CFPB's Mission

The Consumer Financial Protection Bureau regulates the offering and provision of consumer financial products and services under the federal consumer financial laws and educates and empowers consumers to make better informed financial decisions.

How can this booklet help you, the applicant?

This booklet can help you decide whether an adjustable-rate mortgage (ARM) is the right choice for you and to help you take control of the home buying process.

Your lender may have already provided you with a copy of Your Home Loan Toolkit. You can also download the Toolkit from the CFPB's Buying a House Guide at cfpb.gov/buy-a-house/.

An ARM is a mortgage with an interest rate that changes, or "adjusts", throughout the loan. With an ARM, the interest rate and monthly payment may start out low.

However, both the rate and the payment can increase very quickly. Consider an ARM only if you can afford increases in your monthly payment—even to the maximum amount.

After you finish this booklet:

1. You'll understand how an ARM works and whether it's the right choice for you.
2. You'll know how to review important documents when you apply for an ARM.
3. You'll understand the risks that come with different types of ARMs.

The Updates to the CHARM Booklet Made In 2020

1. It was aligned with the Bureau's education efforts to be more concise and to improve readability and usability.
2. Added a comparison table for comparing adjustable to adjustable and adjustable to fixed rate loans.
3. Added a tutorial on how to review an ARM Estimate and a lender's ARM program disclosure.
4. Another table allowing the borrower to review loan offers they have received.
5. A description of the risks that come with the different types of ARM's.
6. Eliminated references to LIBOR due to their forecasted cessation.
7. A significant portion is devoted to telling borrowers to review the Loan Estimate normally received at the same time as this booklet.
8. A new form follows.

Is an ARM right for you?

ARMs come with the risk of higher payments in the future that you might not be able to predict. But in some situations, an ARM might make sense for you. If you are considering an ARM, be sure to understand the tradeoffs.

TIP

Don't count on being able to refinance before your interest rate and monthly payments increase. You might not qualify for refinancing if the value of your home goes down or if something unexpected damages your financial situation, like a job loss or medical costs.

COMPARE	FIXED-RATE MORTGAGE	ADJUSTABLE-RATE MORTGAGE
Consider this option if	▪ You prefer predictable payments, or ▪ You plan to keep your home for a long period of time	▪ You are confident you can afford increases in your monthly payment—even to the maximum amount, or ▪ You plan to sell your home within a short period of time
Interest rate	▪ Set when you take out the loan ▪ Stays the same for the entire loan term	▪ Based on an index that changes ▪ May start out lower than a fixed rate mortgage but you bear the risk of increases throughout your loan
Monthly payment	▪ Principal and interest payment stays the same over the life of your loan ▪ You know the total you will pay in principal and interest over the life of the loan	▪ Initial principal and interest payment amount remains in effect for a limited period ▪ You can't know in advance how much total interest you will pay because your interest rate changes ▪ If you can't afford the increased payments, you may lose your home to foreclosure

2 ADJUSTABLE-RATE MORTGAGES

IS AN ADJUSTABLE-RATE MORTGAGE RIGHT FOR YOU? 3

Comparison Time

Another form to be used is a form that lists the information on three loans and one should be a fixed rate offer. The applicant is advised to ask the lender to give them all the information so that a proper comparison can be made.

COMPARE YOUR ARM OFFERS
Shop for at least three loan offers, and fill in the blanks below using the information on your Loan Estimates:

	ARM OFFER 1	ARM OFFER 2	FIXED-RATE OFFER
Lender name			
Loan amount	$	$	$
Initial interest rate	%	%	%
Initial principal and interest payment	$	$	$
Index			
Margin			
How long will the initial interest rate and initial payment apply?			
How high can my interest rate go?	%	%	%
How high can my principal and interest payment go?	$	$	$

My best loan offer is: ____________

Time to Calculate Rates

Consider the following information: A borrower gets a 1 year ARM loan for $500,000.00 for 30 years. Terms are 5/2/6. The current index rate is 4.5%, the margin is 3% and the discounted start rate is 4%.

1. What is the interest rate for the first year?
2. What is the rate for the second year assuming a new index of 6.5%?
3. What is the rate for the third year assuming an index of 4%?
4. What is the rate for the fourth year assuming an index of 7%?
5. What is the rate for the fifth year assuming an index of 8%?

Answers:

1. The fully indexed rate for the first year would be 7.5%. However, the discounted rate is 4% which is the borrower's rate.
2. The fully indexed rate for the second year would be 9.5%. (6.5% index rate plus 3% margin). However, the prior year's interest was 4% and the initial rate adjustment cap is listed as 5% so the correct rate for the second year is 9%, the lower of the two rates.
3. The fully indexed rate for the third year would be 7% (4% plus 3%). The prior year's interest was 9% plus a 2% adjustment after the initial adjustment so the interest rate for the borrower would be 7%.
4. The fully indexed rate for the fourth year would be 10% (7% plus 3%) and the adjusted rate would be the prior year's rate of 7% plus the 2% adjustment or 9% so the borrower's rate would be 9%.
5. The fully indexed rate for the fifth year would be 11% (8% plus 3%) and the adjusted rate would be the prior year's rate of 9% plus the two percent adjustment for a total of 11%. BUT the 6 in 5/2/ limits the total as 6% plus the start of 4% or 10% for the final answer.

Time to Think 1.2

1) The FDIC recommends to not enter into any new contracts using LIBOR after ________________.

2) What two factors determine interest rates on an ARM?

   ____

3) Have you ever completed an ARM loan? ________________

Section 4

LIBOR; We Thought We Knew You So Well

Background

The scandal at LIBOR has been widely publicized. The London Interbank Offered Rate was the most used benchmark rate for decades. The rate came into existence in the 1970's and was firmly established in 1984 when several large institutions used the rate exclusively.

In 2012 a committee at Barclays became suspicious, and it was discovered that the rates were being formed with incorrect data. It appeared that the rate was being gerrymandered by some banks. To understand this situation it is important to know the official definition of LIBOR. "*The rate at which an individual Panel Bank could borrow funds if it were to do so by asking for and then accepting an inter-bank offer in reasonable market size just prior to 11:00 London Time*". This "estimate" was grouped with other banks to set the rates.

Several banks got together and decided to manipulate the rate by falsifying the data to their benefit. The list of banks included Deutsche Bank, Barclays, Citigroup, JPMorgan Chase, and Royal Bank of Scotland. The scandal was discovered in 2012, yet many lenders kept using the rate. The LIBOR rate was discontinued with certain final dates.

The DFPI (formerly DBO and prior DOC) issued a statement concerning LIBOR. Since this is the California Agency that controls Mortgage Loan Originators, it might be pertinent to understand their directives. The statement reads:

> *The London Interbank Offered Rate (LIBOR) is a benchmark interest rate at which major global banks lend to one another in the international interbank market for short-term loans.*

On Nov. 30, 2020 the Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) issued a statement encouraging banks to cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and in any event by Dec. 31, 2021, in order to facilitate an orderly—and safe and sound— LIBOR transition.

On July 1, 2020, the Federal Financial Institutions Examination Council (FFIEC) issued a "Joint Statement on Managing the LIBOR Transition" noting that the LIBOR transition is a significant event that banks should closely manage. The FFIEC statement further explained that new financial contracts should either utilize a reference rate other than LIBOR or have robust fallback language that includes a clearly defined alternative reference rate after LIBOR's discontinuation.[8]

There is another statement on the Transition from the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency on November 30, 2020. They stated that they were issuing the statement to encourage banks to transit away from U.S. dollar (USD) LIBOR as soon as practicable. A footnote states that banks means depository institutions under the Federal Deposit Insurance, U.S. branches and agencies of foreign banks, Edge and agreement corporations, bank holding companies, and savings and loan holding companies. Rather complete.

[8] DFPI LIBOR Transition Guidance

Some interesting phrases from the statement:

1. Failure to prepare for disruptions to USD LIBOR and insufficiently robust fallback language could undermine financial stability and banks' safety and soundness.
2. Given consumer protection, litigation, and reputation risk, the agencies believe entering into new contracts that use USD LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks and will examine bank practices accordingly.

Therefore, the agencies encourage banks to cease entering into new contracts that use USD LIBOR as soon as practicable and in any event by December 31, 2021. What happens to all the loans consummated that have LIBOR as a rate to be used for adjustment years into the future? Time will tell.

Time to Think 1.3

1) Interest only loans are fully amortizing. _________________

2) A portfolio loan is: ______________________

3) Have you ever done a VA loan?? __________________

Section 5

NT Loan Updates Using the Vocabulary Technique

Using vocabulary questions has always been an excellent method of education. The information can be concise and different topics can be quickly 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. Reading the material in this fashion will ensure retention. Good reading.

Question	Answer
What are two advantages of 15 year loans?	**You will normally get a lower interest rate when compared to 30 year loans and your mortgage burning celebration date will be accelerated.**
What are two disadvantages to 15 year loans?	**Higher monthly payments and more difficult to qualify with the higher costs.**
In normal circumstances, would older or younger clients be the best candidates for a 15 year loan?	**Older as they are getting closer to retirement and have more assets.**
What is the outcome when payments do not cover interest charges?	**Negative Amortization**
Have you personally ever had a Neg. Amort. loan? If so why?	**Your answer**
How many pages to the Loan Estimate?	**Three**
How many pages to the Closing Disclosure?	**Five**
How many pages to the new 1003?	**Nine**
Is a 15 year loan a Traditional Loan?	**NO**
A client must accept the Index used by your lender?	**False, it would be considered the same as an interest rate, a condition of the loan.**

Which Federal Act established the rules about QM's?	**Dodd/Frank**
Which agency was established by the Dodd-Frank Act?	**CFPB (Consumer Financial Protection Bureau)**
Who is the current Director of this agency?	**TBD**
What does the acronym NMLS stand for?	**Nationwide Mortgage Licensing System and Registry**
What does QM and ATR stand for?	**Qualified Mortgages and Ability to Repay**
Which Regulation lists minimum standards for ATR?	**Reg Z**
In which CFR are these Regs listed?	**12 CFR 1026.43 (as amended)**
What does CFR stand for?	**Code of Federal Regulations; lots of information, billions of pages if not trillions.**
What is the number of the FHA Rehabilitation loan?	**203K**
Which type of loan is a 203B loan?	**Your regular FHA loans**
What is the most popular 203K loan?	**Limited (streamlined)**
Why are they popular?	**Quicker to receive, more lenders offer them, not as many hurdles to jump.**
What is the dollar limit of most 203K Streamlines?	**$35,000 (probably a little lower because of soft costs involved).**

Can a borrower do the work on their 203K loan?	**Yes, under certain restrictions and if extremely qualified.**
Can a flipper get a 203K loan?	**No**
What are the Fannie Mae and Freddie Mac rehab loans called?	**Homestyle Renovation and HomeReady**
Can you build, for example, a swimming pool with a 203K loan?	**No luxury items but may be okay in Fannie and Freddie's.**
Can 203K loans be larger than 203B loans?	**No, same rules for each**
What is the 2020 Rehab loan bill passed by the State of California?	**AB 68 now in Government Code Section 65852.2**
Where can you find this information?	**leginfo.legislative.ca.gov**
Which CA handbook gives information about AB 68?	**California Department of Housing and Community Development, Accessory Dwelling Unit Handbook of 9/20.**
What is churning when discussing VA Loans?	**Loan originators were influencing VA borrowers to refinance their loans many times.**
Fee for VA loans must be recouped within ________ months.	**36**
What effect does forbearance have on seasoning requirements?	**Does not count towards seasoning limits.**

CHAPTER 1
REVIEW QUIZ

1. On an ARM loan in California the borrower is probably called ______________________.

2. On the East Coast the borrower is probably called _______________.

3. Which type of Loans have the lowest default rate? _______________.

4. A legal offer would be a __________________ offer.

5. An alienation clause is ______________________.

6. In a 4/1/5 ARM which number is the lifetime interest cap? _______.

7. The FHA was created in ______________________.

8. According to lending regulations Martin Luther King Day is a business day. __________True / False________

9. The Intent to Proceed can be oral. ________True / False_________

10. Consummation in California is when ________________________.

11. IRRRL stands for Interest Rate Reduction Refinance Loan __True / False____.

12. An ordinary FHA loan is called ___________________.

13. The Dodd Frank Act said that Negative Amortization Loans are:

    __________(toxic)_______________

14. Name types of borrowers that might want a Neg Am Loan:

    ______(Med student, investor, growing income, help to qualify,_

    __________no money, actors, writers, MLO's)_______________

Chapter 2

ETHICS

Section 1

HUD Housing Counseling

Introduction

The Housing and Urban Development Act of 1968 first enabled HUD to authorize public and private organizations to provide housing counseling. Congress believed that counseling was an essential complement to new mortgage insurance programs for lower-income families. The act's committee report comments, "While many families who would be eligible for mortgage insurance. . . have strong aspirations to become homeowners, their experience in handling large financial responsibilities may be meager. Through counseling, these families can be helped to use their resources efficiently in meeting homeownership responsibilities."[9]

HUD began certifying Homeownership Education and Counseling (HEC) in 1971 and began directly funding it in 1974.[10] Since then, funding for HEC has steadily increased, and the program has broadened in scope.

In the late 1980s and early 1990s, the focus of HEC shifted from home retention to prepurchase counseling as lenders tried to minimize the risks of lending to lower-income prospective homebuyers. In 2007, at the start of the housing crisis, Congress authorized hundreds of millions of dollars for HEC through the new National Foreclosure Mitigation Counseling (NFMC) program.

In 2010, as a directive from the Dodd-Frank Act, Congress created a centralized Office of Housing Counseling within HUD to oversee the Housing Counseling Program's agencies, counselors, and counseling

[9] U. S. House of Representatives. 1968. House Report 1585, 90th Congress, Second Session, 11-2.
[10] Ibid

services. The Office of Housing Counseling certifies counseling agencies and has proposed regulations to certify individual counselors, as the 2010 legislation requires; only HUD-approved agencies can apply for Housing Counseling Program grants. HUD standards address the content and process of HEC, outline requirements for the training and expertise of counselors, and prohibit steering and conflicts of interest.[11]

The number of people participating in homeownership education and counseling has multiplied over the past 40 years. In Fiscal Year 2019, HUD-approved housing counseling agencies served 1,015,911 households. Approximately 52 percent of those households were minorities.[12]

Housing Counselor Competency (Certification)

A HUD-approved housing counselor is specially trained and certified by HUD to help clients assess their financial situation, evaluate options if they are having trouble paying their mortgage loan, and make a plan to get them help with their mortgage.

In order for a counselor to become HUD certified, the counselor must pass a Federal Exam showing they are proficient in six areas or competencies. Due to the COVID-19 national emergency, which has caused the shutdown of the testing centers, HUD has extended the date by which all current housing counselors must be certified by passing the Federal exam until August of 2021.[13]

Once a counselor has passed the exam, they become HUD certified as long as they work for a HUD-approved housing counseling agency. The Federal exam tests the counselor's knowledge in six different subject areas:

1. Financial Management
2. Property Maintenance
3. Responsibilities of Homeownership and Tenancy
4. Fair Housing
5. Housing Affordability

[11] 24 CFR §214
[12] HUD No. 20-280 HUD Public Affairs
[13] 85 FR 47300, 24 CFR 214

6. Avoidance of rental and mortgage delinquency and avoidance of eviction and mortgage default

HECM (Reverse Mortgage) Origination Counseling

The most important consumer protection built into the reverse mortgage program is the requirement that a prospective borrower must first meet with an exam-qualified, independent third-party counselor approved by the U.S. Department of Housing and Urban Development (HUD) before signing a loan application or incurring any fees.[14] HUD-has approved roughly 800 individuals to be on its Approved Counselor Roster. These counselors have received special training from NeighborWorks America[15] and passed a Federal Exam.

This HECM Certification is in addition to the Housing Counseling Certification exam.

Requirements of HUD Counseling Agencies

The HUD Housing Counseling Handbook is known as the 7610.1 REV-5. This handbook outlines the qualification for a local housing counseling agency (LHCA) to be approved by HUD. This approval means that the agency has met the qualifications and conditions prescribed by HUD.[16]

To be considered for approval, all entities must show that they are:

1. Non-profit and Tax-Exempt Status
2. One year of housing counseling experience
3. Compliance with Fair Housing and Civil Rights Laws
4. Record keeping and reporting in compliance
5. Use a HUD-approved Client Management System (CMS).
6. Have a properly identified office with signage
7. Have knowledge of HUD programs and local housing market.

All LHCA's must submit a Housing Counseling Work Plan, which outlines how their program will work and their anticipated outcomes. Once HUD has approved an agency, they will then be listed on the HUD website or can be reached by calling (800) 569-4287.[17]

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[14] National Reverse Mortgage Lenders' Association
[15] NeighborWorks America
[16] HUD 7610.1 REV-5, 2-1
[17] HUD Approved Housing Counseling Agencies

Approved Housing Counseling and Education Topics

The following are examples of approved housing counseling, education and outreach topics that participating agencies may provide to and discuss with clients:

1. Pre-purchase/Home Buying
2. Resolving or Preventing Mortgage Delinquency or Default
3. Non-Delinquency Post-Purchase including home maintenance
4. Locating, securing or maintaining residence in rental housing
5. Homeless Assistance
6. Fair Housing/Fair lending
7. Financial Management/Budgeting
8. HECM mandatory counseling and education

Time to Think 2.1

1) Approximately how many HUD approved Counselors are there?

____

2) When was the first time that HUD certified HEC? ______________

3) Have you personally ever completed a Reverse Mortgage

Counseling Session? Yes/No

HUD's Anti-Steering Statement

Helping clients resolve their housing problems may include discussing for-profit entities such as lenders or real estate professionals. If a client requests information or asks questions about a particular for-profit entity, or if the counselor feels that having information about a specific for-profit entity is in the best interest of the client, the agency may discuss the entity but must also identify and discuss a minimum of three reasonable alternatives for-profit entities, if available.[18]

[18] 7610.1 REV-5, 3-13

Fee Schedule

Participating agencies must inform counseling and education clients of any fee schedule/structure in advance of providing services including intake. Additionally, an agency's fee schedule must be posted in a prominent place that is easily viewed by clients; however, participating agencies should also verbally communicate the fee schedule directly to the clients. Agencies must not refuse to provide counseling services if a client cannot afford to pay fees.[19]

Performance Reviews

HUD may conduct periodic on-site or desk performance reviews of all participating agencies. HUD reserves the right to monitor a participating agency's performance, whether on-site, remotely or a combination of both, as part of the re-approval process or based on perceived risk. The performance review will consist of a review of the participating agency's compliance with program requirements, including applicable civil rights requirements, and the agency's ability to deliver quality counseling services.[20]

Housing Counseling Works

1. Counseled over 1 million households
2. 200,000+ households for Prevented foreclosure
3. 541,000+ households improved their finances
4. 1.1 million households created sustainable budgets

HUD requires that for every client or household that an agency works with shall receive at a minimum:

1. Information on fair housing and fair lending laws
2. Development of a sustainable budget for the household
3. Present the household with an Action Plan that suggests what their next steps should be and what the counselor's next steps will be
5. Provide referrals for services not offered by agency
6. Provide disclosures as required by HUD21

[19] 7610.1 REV-5, 6-1, Par. I
[20] 7610.1 REV-5, 6-3
[21] Ibid

The most common topics for education were pre-purchase homebuyer education (64%) and financial literacy, including home affordability, budgeting, and understanding the use of credit (17%).[22] Nearly-half of HUD-certified housing counseling covered mortgage delinquency or default resolution or prevention (46%); other common topics included pre-purchase or home buying counseling (24%), rental topics (12%), and reverse mortgages (10%).

About 2,000 HEC agencies are part of HUD's network as of 2019. The most recent comprehensive review of the housing counseling industry, published by HUD, found that HUD-certified nonprofit organizations were "by far" the most common HEC providers; others include state and local governments as well as entities not eligible for HUD approval, such as lenders, real estate agents, and mortgage companies. HUD's review also found that most agencies were relatively small, with 15 or fewer employees and serving fewer than 500 clients per year.

Housing counseling agencies use a wide array of curricula, and several other sets of HEC standards complement HUD's. The voluntary and self-certified National Industry Standards for Homeownership Education and Counseling, for example, have been widely adopted. These standards impose a code of ethics; describe minimum operating standards, such as training and certification expectations for homeownership counselors; and create minimum content standards, such as key topics for homeownership education.[23]

New Director of the Office of Housing Counseling

David Berenbaum has been selected, effective December 7, 2020, as the new Deputy Assistant Secretary for Housing Counseling at HUD. He replaces Sarah Gerecke, who served in that capacity since November 2011.

[22] The state of the Housing Counseling, U S Department of HUD
[23] National Industry Standards for Homeownership Education and Counseling

Housing Counseling Federal Advisory Committee

The Housing Counseling Federal Advisory Committee (HCFAC) was established to advise HUD's Office of Housing Counseling (OHC) to meet its mission to provide individuals and families with the knowledge they need to obtain, sustain, and improve their housing through a strong national network of HUD-approved housing counseling agencies and HUD certified counselors.

The HCFAC consists of eight individuals. The membership represents the mortgage and real estate industry, consumers and HUD-approved housing counseling agencies.[24] The formation of this committee was a requirement of the Dodd-Frank Act.

Required Agency Reporting to HUD

All Housing Counseling Agencies (HCA) are required to report their activity to HUD every quarter of each fiscal year. The report is completed by each agency on HUD form 9902. The report is generated by the Client Management System (CMS) that each agency is required by HUD to use. It is transmitted electronically to the HUD website, Housing Counseling System (HCS).

The report helps HUD track the number of households each agency is seeing and what services they are providing. It breaks down the households that received counseling by ethnicity, race, income levels and whether or not they live in a rural area. It also separates households that received one-on-one counseling, group education and/or both.

The income levels that HUD uses to track clients are based on a percentage of the Area Median Income (AMI). The AMI is determined and released every year by HUD. The AMI is the midpoint of a region's income distribution – half of families in a region earn more than the median and half earn less than the median.

Knowing the AMI of a client is important, as many HUD programs and many loan programs are only available to households in lower income level. The percentages used for the 9902 reporting determine the household levels into these percentages:

[24] HUD Housing Counseling

a. < 50% of AMI
b. 50 – 79% of AMI
c. 80 – 100% of AMI
d. 100% of AMI[25]

The 9902 report lets HUD know if a household was helped under funding from HUD or if the HCA received funding from another source. HUD does not want to be the HCAs only source of funding. Therefore, HCAs depend on funding from State and local governments as well as from major banks. HUD also allows HCAs to charge fees for some of their services. The last section of the 9902 report tells HUD what the result or outcomes were for the households who received counseling.

Working with a HCA

As part of HUD's Strategic Plan, one of their goals can be paraphrased as:

"Homeownership is the platform for a better quality of life"[26]

The role of an HCA is to educate households who want to become homeowners. To the homeowner who might be struggling with their mortgage, the role is to offer help so that the client better understands what options are available to them.

Both Real Estate Agents and MLOs should seek out HCAs in their geographic area and learn more about the services the HCA has to offer. Many times, HCAs look to Mortgage Professionals to speak at homebuyer workshops. HCA are always seeking knowledgeable professionals to volunteer to help at outreach events.

It is a known fact that clients who have been educated in the home buying process, become much better clients to work with – both from the perspective of the real estate agent and the MLO.[27] Truly a Win-Win situation.

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[25] HUD-9902 Desk Guide
[26] 2010 – 2015 HUD Strategic Plan
[27] Why housing counseling?

Section 2

Ethics

Webster's defines ethics as the discipline dealing with what is good and bad and with moral duty and obligation. As a licensed MLO, one also needs to think in terms of having a fiduciary responsibility to our clients. Regardless of your licensing, MLOs must embrace the high standards of fiduciary responsibility. In other words, doing what is in the best interest of your client, your borrowers and others in the industry of lending.

While the new website of the DFPI has a very thorough glossary of financial terms on their website, the words 'fiduciary responsibility' are not included. However, what is included is the term, 'financial fraud'. Its definition is "The crime of gaining money or financial benefits by deception or lying".[28]

Going about your profession with an attitude of fiduciary responsibility, will pay you dividends the of repeat and referral business. Clients tend to gravitate to MLOs who take the time to explain different mortgage options. This practice might also keep you busy with clients when other MLOs are slow. After all, it is about doing what is in the best interest of your clients.

Penalties for "Bad Actors"

When an MLO behaves in an unethical manner or otherwise breaches his/her professional obligations, there are several possible consequences:[29]

1. Action by the state licensing and regulatory authority.
2. Civil lawsuits filed by injured parties.
3. Disciplinary action by professional associations.
4. Filing of criminal charges, in very serious cases.

[28] Glossary of Financial Terms/
[29] Hondros, Mortgage Lending Principles & Practices

Regulation N[30]

Consumers in need of mortgage financing, seek out mortgage lenders in many ways. Some depend upon a recommendation from their real estate agent. Many will contact the lender they have used in the past, assuming it was a 'good' experience. The airwaves, social media and print publications are sources that many consumers use to gather their information by reading or listening to advertisements.

According to Regulation Z, an advertisement is a commercial message in any medium that promotes, directly or indirectly, a credit transaction.31 The Federal Trade Commission prohibits unfair or deceptive practices of any kind, which includes advertising in all mediums. Advertising must be designed to tell the truth and not mislead consumers.

In 2009 as part of the Credit Card Accountability Responsibility and Disclosure Act, the FTC implemented and the CFPB adopted additional rules under Regulation N. These advertising rules, known as the MAP Rules, are designed to prohibit misrepresentations in a commercial communication regarding mortgage products.[32]

Regulation N is one of the many regulations found in the Code of Federal Regulations that govern mortgage lending. The regulation offers a definition of advertising that includes any and all forms of written or oral illustration, or depiction, whether in English or any other language, which is designed to effect a sale or create interest in purchasing goods or services.[33]

The regulation applies to any type of dwelling used for residential use, one to four units, whether or not the structure is attached to real property. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home or trailer.

This regulation ***expressly prohibits any material misrepresentation*** in any advertisement, regarding any mortgage terms including misrepresentations about:

[30] 12 CFR Part 1014 - Mortgage Acts and Practices - Advertising (Regulation N)
[31] Truth in Lending Act 12 CFR §1026.2(a)(2)
[32] Regulation N, 12 CFR §1014.3
[33] Ibid

1. The interest rate being charged for the loan including misrepresentations concerning:
   a. The amount of interest one owes each month that is included in the payments, loan amount, or total amount due, or
   b. Whether the difference between the interest owed and the interest paid is added to the total remaining balance due.
2. The APR and any other interest rate
3. The actual cost associated with the loan, including misrepresentations that no fees are charged.
4. The existence and cost of any other product that may be sold in conjunction with the mortgage, such as credit insurance or credit disability insurance.
5. If the monthly payment includes PITI, or other mortgage credit product including misrepresentations about:
   a. Whether separate payment of taxes and insurance is required, or
   b. The length of time that impounds are required.
6. If there is a penalty for prepayment associated with the mortgage and how much is the penalty.
7. The variability of interest, payments, or other terms of the mortgage, including misrepresentations using the word "fixed"
8. Any comparison between:
   a. Any rate that will be available for a period less than the full length of the mortgage
   b. Any actual or hypothetical rate or payment
9. The type of mortgage credit product, including misrepresentations that the product is fully amortizing
10. The amount of the obligation or amount of cash or credit available with the mortgage, including misrepresentations that the consumer will receive a certain amount of cash or credit as part of the mortgage transaction
11. The existence and amount of any minimum or required payment, including misrepresentations about no payments are required in a reverse mortgage or other credit product.
12. The potential for default that the consumer could default for nonpayment of taxes, insurance, maintenance or failure to meet other obligations.
13. The effectiveness of the loan in helping the consumer resolve difficulties in paying debts including misrepresentations that the

loan can reduce, eliminate or result in forgiveness of the consumer's existing debt.

14. The association that the loan or the lender of such product with any other person or program, including misrepresentations that:
    a. The lender is affiliated with a government entity or
    b. The loan relates to a government benefit, or is endorsed or sponsored by government program, including the use of formats, symbols or logos that resemble another entity
15. The source of any communication including misrepresentations that an advertisement is made by the consumer's current mortgage lender or servicer.
16. The right of the consumer to reside in the subject property, including misrepresentations concerning how long and under what conditions a consumer with a reverse mortgage can stay in the dwelling.
17. The consumer's ability to obtain any loan or term including misrepresentations about the consumers' preapproval or guaranteed for any such product or term.
18. The consumer's ability or likelihood to obtain any mortgage product or term, including misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term.
19. The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage or term, including the qualifications of those offering the services or advice.

Regulation N also makes it a violation for any person to obtain a waiver from any protection provided by any right of the consumer.

The regulation also requires the lender to retain for a minimum of 24 months, any marketing materials, documents describing any mortgage products that were being offered as well as additional products such as mortgage insurance or credit disability insurance.[34]

[34] 12 **CFR** Part 1014

The New 1003

The latest revision of the Uniform Residential Loan Application (URLA), better known as the "1003", has now been required since March 1, 2021.[35]

What are your thoughts about the new URLA which took years to develop? The 'advertised' highlights of the updated URLA are:

1. Redesigned format to be more consumer-friendly and support accurate data collection and better efficiency,
2. Professionally designed; consumer and industry tested
3. Supports collection of loan application details that are relevant and useful in making an underwriting decision
4. Spanish informational version provided

Fannie Mae went on to list several benefits of the new revision:

1. Greater efficiency, transparency and certainty.
2. Loan application process does not change for lender or borrower
3. Cleaner overall look and feel – more white space, easier to navigate
4. Consistent and simplified organization of fields and labels
5. Clearer upfront instructions to enable borrower self-service
6. Defined separation of borrower and lender information
7. New and updated fields reflect today's mortgage lending business, with obsolete fields removed
8. Updated government monitoring information in accordance with the new Home Mortgage Disclosure Act (HMDA) requirements

[35] Redesigned Uniform Residential Loan Application

Mortgage Fraud

Mortgage fraud is a crime characterized by some type of material misstatement, misrepresentation, or omission in relation to a mortgage loan which is then relied upon by a lender. A lie that influences a bank's decision about whether to approve a loan, accept a reduced payoff amount, or agree to certain repayment terms is mortgage fraud.

The FBI and other entities charged with investigating mortgage fraud, particularly in the wake of the housing market collapse, have broadened the definition to include frauds targeting distressed homeowners.

There are two distinct areas of mortgage fraud—fraud for profit and fraud for housing.

1. **Fraud for profit:** Those who commit this type of mortgage fraud are often industry insiders using their specialized knowledge or authority to commit or facilitate the fraud. Current investigations and widespread reporting indicate a high percentage of mortgage fraud involves collusion by industry insiders, such as bank officers, appraisers, mortgage brokers, attorneys, loan originators, and other professionals engaged in the industry. Fraud for profit aims not to secure housing, but rather to misuse the mortgage lending process to steal cash and equity from lenders or homeowners. The FBI prioritizes fraud for profit cases.
2. **Fraud for housing:** This type of fraud is typically represented by illegal actions taken by a borrower motivated to acquire or maintain ownership of a house. The borrower may misrepresent income and asset information on a loan application or entice an appraiser to manipulate a property's appraised value.

The FBI seeks to maximize its impact on the mortgage fraud and financial institution fraud as a whole, thorough collaboration with other federal, state and local law enforcement entities.[36]

While cases of mortgage fraud in the United States have actually been on the decline, many lenders believe that this is possibly because of the high number of refinances as a result of historic low rates. However, mortgage fraud is still very prevalent.

[36] Financial Institution/Mortgage Fraud

During the second quarter of 2020, an estimated 0.61 percent of all mortgage applications contained fraud, about 1 in 164 applications. By comparison, in the second quarter of 2019, an estimate was 0.81 percent, or about 1 in 123 applications.

In both purchase and refinance populations, the highest-risk applications were for investment properties, while the lowest-risk applications were VA-backed programs. Investment purchase applications are showing the highest risk, with 1 in 28 applications estimated to have indicated fraud.

Time to Think 2.2

1) What does Regulation N regulate? ____________________.

2) Money Laundering regulations pertain only to Cash.

   ___True / False___.

3) What type of grade would you give the Do Not Call Regulations,

   A through F? _____________________.

With these Statistics and the damage that mortgage fraud causes in the mortgage industry, we offer some recent examples of mortgage fraud as case studies.

Mortgage Fraud - Case Study #1

Fraudster Sentenced in Fraudulent Mortgage Debt Reduction Scheme[37]

October 23, 2020

Anthony T. Williams, 49, Pineville, Louisiana was sentenced today in federal court to twenty years imprisonment for wire fraud and mail fraud in connection with a fraudulent mortgage relief scheme.

Williams marketed a fraudulent mortgage debt reduction scheme to distressed homeowners, who were mostly non-native English speakers in the Filipino immigrant community in Hawaii. Williams created two companies, **Mortgage Enterprise Investments (MEI)** and **Common Law Office of America (CLOA)**, neither of which was licensed to service or modify mortgages. Through MEI, Williams made conflicting promises to clients that he could eliminate their existing mortgage obligations to their lenders, or reduce their mortgage obligations by half. Through CLOA, Williams promised legal representation in mortgage-related litigation and foreclosure proceedings. To give himself the appearance of credibility, Williams told prospective clients he was a "private attorney general" and brandished an official-looking law enforcement badge and credentials, despite not having a law license or any affiliation with law enforcement.

Williams falsely promised victims that he could eliminate their existing home mortgage obligations by filing bogus documents with the Hawaii Bureau of Conveyances. These documents included new MEI mortgages and notes obligating homeowners to make monthly payments to MEI. Williams then advised homeowners to stop making their mortgage payments to their lenders and to pay him instead.

Between 2012 and 2015, Williams enlisted 112 victims in Hawaii into his MEI program and fraudulently obtained over $230,000 from his victims, without providing any legitimate services. Several victims testified at trial that they had relied upon Williams's representations and went into foreclosure or bankruptcy. Two victims testified that they lost their homes as a result of Williams's scheme.

[37] Fraudster Sentenced to 20 Years' Imprisonment

"*For several years, Anthony Williams actively preyed upon distressed homeowners within the Filipino community here in the State of Hawaii. His scheme financially devastated his victims, forcing some into bankruptcy and homelessness. As a result of this prosecution, Williams's scheme has come to an end and Williams will be incarcerated for 20 years. My office will continue to protect the most vulnerable members of our community*," said U.S. Attorney Price.

"*Williams knowingly targeted and preyed upon citizens of our Filipino community,*" said Eli Miranda, Special Agent in Charge of the FBI's Honolulu Division. "*He took advantage of this vulnerable and in need population, delivering empty promises. He drained their finances leaving many penniless. The FBI cannot, and will not stand by. We will continue to maximize our efforts with partner agencies to bring these perpetrators to justice and hold them accountable for their crimes.*"

A federal jury convicted Williams on March 3, 2020 of 32 counts of wire fraud and mail fraud after a four-week trial.

The Court's sentence of imprisonment is to run consecutively to a fifteen-year sentence of imprisonment that another court had handed down earlier to Williams for similar fraudulent conduct in the State of Florida.

Discussion questions for Case Study #1

After reading this case study, what are your thoughts on this type of mortgage relief scam?

A. Since the SAFE Act requires all mortgage originators to obtain a **unique identifier** to facilitate the electronic tracking of originators and the employment history, should the government also have this same requirement for those (including attorneys) who offer any mortgage relief services?
B. Do you feel the 20-year sentence is excessive?
C. Was this also an example of a violation of the fair housing/fair lending laws?
D. Are you aware of any mortgage relief services offered in your area that are suspect or accused of not being legitimate?
E. Are you aware that Federal law prohibits anyone from charging upfront fees for mortgage default relief services?

Section 3

Mortgage Assistance Relief Services

Many people who have trouble paying their mortgages seek legal assistance to save their homes or avoid foreclosure. Services that consumers ask lawyers to perform run the gamut: representing clients who are in legal proceedings related to foreclosure; advising them on the legal and tax implications of foreclosure, short sales, or bankruptcy; or negotiating a modification of a client's loan. The following information comes directly from the website of the Federal Trade Commission:[38]

Lawyers who offer mortgage assistance relief services need to know that the Federal Trade Commission (FTC), the nation's consumer protection agency, has issued a regulation affecting how these services can be marketed and provided: the Mortgage Assistance Relief Services (MARS) Rule. Because attorneys are subject to state requirements that duplicate much of what the Rule requires, the Rule has provisions that specifically address the practices of attorneys who provide these services.

Are Attorneys Covered By The MARS Rule?

In general, attorneys are not covered by the MARS Rule if:

1. They provide mortgage assistance relief services as part of the practice of law;
2. They are licensed to practice law in the state where their client or their client's home is located; and
3. They comply with all relevant state laws and regulations concerning attorney conduct.

Attorneys who don't comply with these requirements are subject to the Rule's provisions. Examples of activities that likely could cause attorneys to lose their exemption include:

1. Allowing their name to be used in solicitations to clients without actively providing legal services in connection with mortgage assistance relief services;

[38] Mortgage Assistance Relief Services Rule: A Compliance Guide For Lawyers

2. Misrepresenting any material aspect of their legal services, including the likelihood that they'll get a favorable result, an affiliation with a government agency, or the cost of their services;
3. Sharing legal fees for MARS-related services with non-attorneys;
4. Helping non-attorneys engage in the unauthorized practice of law;
5. Failing to keep clients reasonably informed about their matters, including the potential for adverse outcomes;
6. Failing to work diligently and competently on behalf of their clients – that is, not making reasonable efforts to get mortgage assistance relief; and
7. Engaging in a widespread telemarketing operation staffed by non-attorneys.

What About Collecting Legal Fees?

Lawyers can charge clients fees in advance if:

1. They are providing mortgage assistance relief services as part of practice of law
2. They are licensed in the state in which their client or their client's home is located
3. They are complying with state laws and regulations concerning attorney conduct:
   - Before they perform any services, they place the fees in a client trust account that complies with state laws and regulations
   - Part of a law practice, licensed in state and follow regulations
   - Earn fees before withdrawing

Non-attorneys who offer mortgage assistance relief services cannot collect fees until their customer has accepted a written offer of mortgage relief from their lender or servicer.

Under the Rule, attorneys cannot withdraw fees in the client trust account before earning the fee or incurring the expense. To maintain their exemption from the Rule's ban on upfront fees, attorneys must comply with all state requirements related to use of client trust accounts. Laws and regulations for attorneys vary by state, but examples of activities that likely could cause attorneys to lose their exemption include:

1. Withdrawing money from a client trust account before the attorney earns fees or incurs expenses;
2. "Front-loading" fees for mortgage relief assistance services to expedite the withdrawal of funds from a client trust account;
3. Failing to keep complete records of transactions associated with a client trust account;
4. Failing to notify a client of a withdrawal so that he or she has an opportunity to review the transaction and, if necessary, contest it; or
5. If a client contests a withdrawal, failing to keep those funds separate from other clients' and attorneys' funds.

The Rule does not restrict the type of fees attorneys may charge their clients. Attorneys may charge any kind of fee, including flat fees, contingency fees, hourly fees, or some combination. However, before performing promised services, attorneys must deposit any fee in a client trust account. Regardless of the type of fee an attorney charges, he or she can't withdraw money from the account until fees are earned or expenses incurred.

California Law SB 94

In 2009, California passed into law Senate Bill 94. The law makes it unlawful for any licensed attorney, real estate agent or mortgage originator "who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower…to claim, demand, charge, collect, or receive any compensation until after the [attorney or agent] has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform."[39]

[39] California Senate Bill 94

Mortgage Fraud – Case Study #2

Business Owner Charged with Mortgage Fraud[40]

October 29, 2020

Casey David Crowther 35, North Fort Myers, Florida has been charged in a superseding indictment with two counts of bank fraud, two counts of making a false statement to a lending institution, and three counts of illegal monetary transactions.

According to the superseding indictment, as part of his scheme, beginning in June of 2020, Crowther submitted false and fraudulent Uniform Residential Loan Applications (URLA) to a mortgage broker and mortgage lender, causing the lender to disburse approximately $640,381 in loan funds. Specifically, Crowther intentionally misrepresented his liquid assets in the URLAs and created false and fraudulent bank statements that purported to show he had more assets than he actually had.

If convicted, Crowther faces a maximum penalty of 30 years in federal prison on each bank fraud and false statement count, and up to 10 years' imprisonment for each illegal monetary transaction count.

The indictment also notifies Crowther that the United States intends to forfeit a recently purchased 40-foot catamaran, real property in St. James City, Florida, and $2,098,700, which are alleged to be proceeds of the offenses; the real property is also subject to forfeiture because it was involved in the illegal monetary transaction.

A federal grand jury had previously indicted Crowther for COVID relief fraud on September 23, 2020. In this indictment, Crowther applied for and received over $2 million from the SBA Payroll Protection Program, which was set up by the federal government to help small businesses keep paying their workers and bills during the pandemic.

Within days of receiving the funds, the businessman allegedly paid $689,417 for a 40-foot catamaran which he registered in his name.

[40] Fort Myers Business Owner Indicted

A superseding indictment is merely a formal charge that a defendant has committed one or more violations of federal criminal law, and every defendant is presumed innocent unless, and until, proven guilty.

Discussion Questions for Case Study #2

After reading this case study, what are your thoughts on this type of mortgage fraud?

A. Have you as an MLO or the company for which you work, ever been the victim of mortgage fraud?
B. If so, what were the repercussions?
C. What do you think is the most often used lie in mortgage application fraud?
D. Do purchase loans have a higher fraud rate than refinances? And why?

Mortgage Fraud – Case Study #3

Man Admits Role in Defrauding Banks in Shotgun Mortgage Fraud Scheme[41]

October 7, 2020

Joseph A. Gonzalez, 46, Henderson, Nevada, pleaded guilty today for his role in a scheme to use bogus information and simultaneous loan applications at multiple banks – known as "shot-gunning" – to attempt to obtain home equity lines of credit (HELOCs). According to documents filed in the case and statements made in court:

From 2010 through 2018 **Jorge Flores** and **Simon Curanaj**, a real estate broker in the Bronx, New York who has previously pleaded guilty and is awaiting sentencing, ran a mortgage fraud scheme in which they applied for more than $9 million in HELOCs from banks on residential properties in New Jersey and New York.

Gonzalez and Flores used a property in **Jersey City**, **New Jersey**, as part of the scheme. Gonzalez had been allowed by the owner of the property to live there in exchange for management services, but neither he nor Flores owned the property. Gonzalez also recruited an individual with good

[41] New York Man Admits Role In Defrauding Banks

credit to act as a straw buyer (Individual 1). Unbeknownst to the owner of the property, a "quitclaim" deed – which contains no warranties of title – was prepared transferring the property to Individual 1. The signatures on the deed were forged.

Gonzalez and Flores then applied for two HELOCs from multiple banks using the Jersey City, New Jersey property as collateral in Individual 1's name. They concealed the fact that the property offered as collateral was either already subject to senior liens that had not yet been recorded, or that the same property was offered as collateral for a line of credit from another lender. The applications also contained false information concerning Individual 1's income, which was stated to be higher than his actual income. At the time the applications were made, the value of the property was less than the amount of the HELOC loans for which Gonzalez and Flores applied.

The victim banks eventually issued loans to Individual 1 in excess of $500,000. After the victim banks funded the HELOCs and deposited money into Individual 1's bank account, Individual 1 disbursed almost all of it to Gonzalez, Flores, and others. Gonzalez used $43,000 of the illicit proceeds to buy a luxury car. Individual 1 eventually defaulted on both HELOC loans.

The conspiracy to commit bank fraud carries a maximum potential penalty of 30 years in prison, a fine of $1 million or twice the gross pecuniary gain to the defendants or twice the gross pecuniary loss to others, whichever is greater. Sentencing is scheduled for February 10, 2021. Gonzalez is the sixth person to plead guilty as part of the scheme.

Discussion Questions for Case Study #3

After reading this case study, what are your thoughts on this type of mortgage fraud?

A. What should the various banks have done to prevent themselves from being the victims of originating HELOCs based upon misrepresentations?
B. Does your company offer HELOCs?
C. What safeguards does your company have in place to prevent this type of mortgage fraud?

D. Do you as an MLO, recommend HELOCs to your past clients, even if your company does not offer this product? And why?

Time to Think 2.3

1) Which agency is responsible for MARS? ____________________.

2) In 16 CFR 681 what does CFR stand for?

   ____.

3) Have you or anyone you know ever complained to the CFPB?

Section 4

Identity Theft

An estimated nine million Americans have their identities stolen each year. Identity thieves may drain accounts, damage credit, and even put medical treatment at risk. The cost to a business — left with unpaid bills racked up by scam artists — can be staggering, too.[42]

It was not until Congress passed the Identity Theft and Assumption Deterrence Act of 1998 that identity theft was officially listed as a federal crime. The act strengthened the criminal laws governing identity theft. Specifically, it amended existing law (Fraud and related activity in connection with identification documents) to make it a federal crime to knowingly transfer or use, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.[43]

The Identity Theft and Assumption Deterrence Act accomplished four things:

[42] Fighting Identity Theft With the Red Flags Rule: A How-To Guide For Business
[43] Identity Theft and Assumption Deterrence Act

1. It made identity theft a separate crime against the individual whose identity was stolen and credit destroyed. Previously, victims had been defined solely by financial loss and often the emphasis was on banks and other financial institutions, rather than on individuals.
2. It established the Federal Trade Commission (FTC) as the Federal Government's one central point of contact for reporting instances of identity theft by creating the Identity Theft Data Clearinghouse.
3. It increased criminal penalties for identity theft and fraud. Specifically, the crime now carries a maximum penalty of 15 years imprisonment and substantial fines.
4. It closed legal loopholes, which previously had made it a crime to produce or possess false identity documents, but *not* to steal another person's personal identifying information.

Gramm-Leach-Bliley Act of 1999

The Gramm-Leach-Bliley (GLB) Act (**The Safeguards Rule**) requires financial institutions – companies that offer consumers financial products or services like loans, financial or investment advice, or insurance – to explain their information-sharing practices to their customers and to safeguard sensitive data.

The GLB includes a Financial Privacy Rule, which requires financial institutions to provide consumers with a privacy notice when the consumer relationship is established and annually thereafter. The privacy notice must explain what information the institution collects about the consumer, where that information is shared, how it is used, and how that information is protected. The notice must also identify the consumer's right to opt out of the information being shared with unaffiliated parties and notify him or her if the privacy policy changes.[44]

While the Safeguards Rule has helped stop some forms of identity theft, it hasn't been enough.

[44] FTC: Identity Theft

Fair Credit Reporting Act (FCRA) and the Fair and Accurate Credit Transactions Act (FACTA) of 2003

FCRA is the law governing the accuracy and privacy of credit reports. FACTA amended the Fair Credit Reporting Act in 2003 to strengthen and add to the protections for victims of identity theft. These laws require consumer reporting agencies (CRAs) and creditors to help victims recover from identity theft, and allow consumers to place alerts on their credit files if they are or believe they may become victims of identity theft (fraud alerts). Consumers have the right to dispute inaccurate information, and CRAs and creditors must investigate the claim and correct information if it is inaccurate. The laws also entitle consumers to a free credit report once per year from each of the three credit reporting agencies. As part of the responsibilities under FACTA, the Federal Trade Commission and the federal financial agencies established "Red Flag Rules" requiring creditors and financial institutions to establish programs designed to address identity theft.[45]
The Red Flags Rule requires many businesses and organizations to implement a written identity theft prevention program designed to detect the "red flags" of identity theft in their day-to-day operations, take steps to prevent the crime, and mitigate its damage. The bottom line is that a program can help businesses spot suspicious patterns and prevent the costly consequences of identity theft.

The Red Flags Rule tells you how to develop, implement, and administer an identity theft prevention program. A program must include four basic elements that create a framework to deal with the threat of identity theft. A program must:

1. Include reasonable policies and procedures to identify the red flags of identity theft that may occur in your day-to-day operations. Red Flags are suspicious patterns or practices, or specific activities that indicate the possibility of identity theft. For example, if a customer has to provide some form of identification to open an account with your company, an ID that does not look genuine is a "red flag" for your business.
2. Be designed to detect the red flags you have identified. If you have identified fake IDs as a red flag, you must have procedures to detect possible fake, forged, or altered identification.

[45] Ibid

3. Spell out appropriate actions that you will take when you detect red flags.
4. Detail how you will keep it current to reflect new threats.

Just getting something down on paper will not reduce the risk of identity theft. That is why the Red Flags Rule has requirements on how to incorporate your program into the daily operations of your business. Fortunately, the Rule also gives you the flexibility to design a program appropriate for your company — considering its size and potential risks of identity theft. While some businesses and organizations may need a comprehensive program to address a high risk of identity theft, a streamlined program may be appropriate for businesses facing a low risk.

Securing the data you collect and maintain about customers is important in reducing identity theft. The Red Flags Rule seeks to prevent identity theft, too, by ensuring that your business or organization is on the lookout for the signs that a crook is using someone else's information, typically to get products or services from you without paying for them. That is why it is important to use a one-two punch in the battle against identity theft:

1. Implement data security practices that make it harder for crooks to get access to the personal information they use to open or access accounts, and
2. Pay attention to the red flags that suggest that fraud may be afoot.

The Red Flags Rules are enforced by the Federal Trade Commission (FTC) with several other agencies. The Red Flags Rule requires "financial institutions" and some "creditors" to conduct a periodic risk assessment to determine if they have "covered accounts." The determination is not based on the industry or sector, but rather on whether a business' activities fall within the relevant definitions. A business must implement a written program **only** if it has covered accounts.

Identity Theft Penalty Enhancement Act of 2004[46]

This act establishes penalties for "aggravated" identity theft, which is using the identity of another person to commit felony crimes, including immigration violations, theft of another's Social Security benefits, and acts of domestic terrorism.

Identity Theft Enforcement and Restitution Act of 2008[47]

This act amends prior restitution law to make it clear that restitution orders for identity theft cases may include an amount equal to the value of the victim's time spent remediating the actual or intended harm of the identity theft or aggravated identity theft. The new law also allows federal courts to prosecute when the criminal and the victim live in the same state. Under previous law, federal courts only had jurisdiction if the thief uses interstate communication to access the victim's personal identifiable information (PII).

Penalty in CA for Committing Identity Theft

530.5 PC of the California Penal Code defines **identity theft**. This section makes it a crime to take someone's **personal identifying information** and use it in any unlawful or fraudulent manner. **Identity theft** is known as a "wobbler" crime, meaning that the charges can be filed as either a **misdemeanor** or a **felony**.

Personal identifying information includes things such as:

1. names,
2. addresses and telephone numbers,
3. account numbers,
4. driver's license numbers and passport information.

PC 530.5 states "every person who willfully obtains personal identifying information…of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense."

[46] Identity Theft Penalty Enhancement Act
[47] Identity Theft Enforcement and Restitution Act

Common examples of identity theft include:

1. Signing someone else's name on a check.
2. Using another student's school I.D. to pay for school lunch.
3. Giving a police officer someone else's driver's license information.
4. Using another's identity to purchase or refinance real estate

If one is convicted of committing identity theft, they can receive either:
A **misdemeanor conviction** punishable by imprisonment in county jail for up to one year or a **felony conviction** is punishable by custody in jail for up to three years.

Avoiding Mortgage Phishing Scams

By now you have probably heard stories of homebuyers being scammed when they thought they were wiring their down payment and/or closing costs to escrow for their closing. The CFPB has a great tool that you might consider using with your loan clients or perhaps by sharing it with a real estate agent with whom you would like to do more business.

The ***Mortgage Closing Checklist*** can be found here:
https://files.consumerfinance.gov/f/documents/cfpb_buying-a-house_mortgage-closing_checklist.pdf

A brief summary of its content warns consumers of six trouble areas of which they need to be aware:

1. Identify two trusted individuals to confirm the closing process and payment.
2. Write down their names and contact information.
3. Before wiring money, always confirm instructions with your trusted representatives.
4. Avoid using phone numbers and links in an email.
5. Do NOT email financial information.
6. Be mindful of phone conversations.

The CFPB website is full of helpful tools and videos that can enhance your business. Next time you are online, *check it out*!

CHAPTER 2
REVIEW QUIZ

1. Jumbo Reverse Mortgages are under the control of HUD.

   _____True / False_____

2. A forward mortgage is always short term. ____True / False____

3. The acronym MARS stands for:

   ____

4. What is tenure________________________________

5. Which Act did Gramm Leach Bliley Act change?

   ____.

6. Who was president when GLB was passed? _________________

7. A felony conviction for identity theft could bring jail time up to

   _______________ years.

8. On which web site would you find the Mortgage Closing Checklist?

   ____

9. The income levels that HUD uses to track clients are based on a %

   of: _____________________________

10. The two areas of fraud are fraud for profit and fraud for:

    ____

11. What is your opinion of the new 1003?

    ____

12. Have you ever filed a SAR?

    ____

Chapter 3

FEDERAL LAW

Section 1

Equal Credit Opportunity Act (ECOA)[48]

Introduction

Imagine approaching a lender for a loan, and they ask if you use birth control. Or they insist that your husband sign the application even though the property is in your name alone, and you qualify without your husband's income. What if they told you that they don't make loans to people receiving permanent disability payments. Today, we would be outraged by this injustice and frankly, impertinence. But this was the type of behavior you may have encountered in the United States prior to 1974.

The Equal Credit Opportunity Act, known as ECOA, is a Federal law that makes it unlawful for a creditor to discriminate against a loan applicant on the basis of:

1. Race
2. Color
3. Religion
4. National origin
5. Sex
6. Marital status
7. Age
8. The fact that all or part of the applicant's income derives from public assistance.
9. The fact that the applicant in good faith has exercised their rights under the Consumer Credit Protection Act.[49]

[48] Equal Credit Opportunity Act (ECOA)
[49] 12 CFR § 1002.2(z)

President Gerald Ford signed the act into law on October 28, 1974. The Federal Reserve Board was in charge of enforcement of ECOA until 2010, when Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act which transferred enforcement authority to the Consumer Financial Protection Bureau. ECOA is located in the United States Code at 15 USCA 1691 et seq. The law is further fleshed out by Regulation B, also known as "Reg B", found in 12 Code of Federal Regulations 1002 et seq. ECOA has 4 main provisions:

1. Prohibition against discrimination,
2. Requirement that creditors issue an adverse action notice after taking an adverse action on a loan application, and the ECOA notice requirement,
3. Requirement that creditor furnish copies of the appraisal to the applicant.
4. Requirement that creditors gather demographic information from consumer loan applicants when the loan will be secured by the applicant's primary dwelling, and the dwelling has 1-4 units.

Regulation B has more provisions, including records retention rules and penalty provisions.

Who is covered under ECOA and Reg. B?

ECOA applies to creditors, who are defined as a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of credit. It includes the creditor's assignee, transferee, or subrogee who also participates in a credit decision. For purposes of the anti-discrimination rules and the adverse action notice rules and ECOA notice rules, a creditor includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select a creditor to whom requests for credit may be made.[50] So, in addition to lenders, ECOA and Regulation B also applies to mortgage brokers.

An extension of credit under ECOA and Regulation B is defined as the granting of credit in any form. The definition is very broad, and includes both purchase-money transactions, open-ended lines of credit, refinances, and includes both consumer and business-purpose loans.

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[50] 12 CFR § 1002.2(l)

Prohibition against Discrimination

ECOA prohibits creditors from discriminating against an applicant on a prohibited basis. Also, a creditor cannot make any statement, either oral or written, in advertising or otherwise that would discourage, on a prohibited basis, an applicant from making a loan application. Creditors must take written applications for mortgage loans.

Certain activities are not considered to be discriminatory:

1. To inquire about marital status for the purpose of ascertaining the lender's rights & remedies,
2. To inquire whether the applicants income comes from public assistance for the purpose of determining the amount & probable continuance of income, credit history, or other element of credit-worthiness,
3. The use of any empirically derived credit system which considers age if the system is demonstrated to be sound, except that the age of an elderly applicant cannot be assigned a negative factor,
4. To inquire or consider the age of an elderly applicant to be used in the applicants favor, or
5. To make an inquiry under the small business loan data collection rules.[51]

This is not discrimination to refuse to extend credit pursuant to certain credit assistance or special purpose programs expressly authorized by law for a certain class of economically disadvantaged persons, or administered by a nonprofit organization for its members.[52]

Requesting Information

A creditor should exercise caution when asking for certain information from a loan applicant. Asking for information about a spouse or former spouse is not permitted unless:

1. The spouse will be permitted to use the account,
2. The spouse will be contractually liable on the account,
3. The applicant is relying on the spouse's income in qualifying for the loan,

[51] 12 CFR 1691(b)
[52] 12 CFR 1691(c)

4. The applicant lives in a community property state, or is relying on property that is located in a community property state to qualify for the loan, or
5. The applicant is relying on alimony, child support, or separate maintenance payment from a spouse or former spouse to qualify for the loan.[53]

Likewise the creditor cannot ask about the marital status of the applicant unless the applicant lives in a community property state, or is relying on property that is located in a community property state to qualify for the loan.[54] The creditor can't ask whether income is derived from alimony, child support, or separate maintenance payment from a spouse of former spouse, unless the creditor discloses to the applicant that the income doesn't need to be revealed if the applicant doesn't want the creditor to consider it when qualifying the applicant for the loan. Also, a creditor cannot ask about birth control practices, intentions of the applicant regarding the bearing or rearing of children, or the capacity to bear children. The creditor can ask about the number and ages of the applicant's dependents, or about dependent-related expenses or financial obligations, provided the questions are without regard to a prohibited basis.[55] A creditor is allowed to ask about the permanent residency or immigration status of an applicant or other person in connection with a credit application.[56]

Underwriting

A creditor cannot underwrite a loan by considering a prohibited basis. Specifically, the prohibitions against using marital status, child-bearing, public assistance, or age as a factor in underwriting is prohibited.[57] A creditor cannot take into account whether or not the applicant has a telephone listing in their name, but can take into account whether or not the applicant has a telephone in their house.

[53] 12 CFR § 1002.5(c)
[54] 12 CFR § 1002.5(d)
[55] Ibid
[56] 12 CFR § 1002.5(e)
[57] 12 CFR § 1002.6

Extension of Credit

A creditor cannot refuse to extend credit to a creditworthy applicant on a prohibited basis.[58] A creditor can't refuse to allow an applicant to open or maintain an account using their birth-given first name and the applicant's birth-given surname, their spouse's surname, or a combined surname.[59]

Unless another person, such as the applicant's spouse, is required to qualify the applicant, the creditor cannot require another person's signature on the loan documents. The creditor can't assume that just because the applicant submitted a joint financial statement, they are applying for joint credit.[60]

Time to Think 3.1

1) ECOA was passed on: _________________________.

2) Name the prohibited bases under ECOA: _________________.

    a. Race
    b. Color
    c. Religion
    d. National origin
    e. Sex
    f. Marital status
    g. Age
    h. The fact that all or part of the applicant's income derives from public assistance, or
    i. The fact that the applicant in good faith has exercised their rights under the Consumer Credit Protection Act.[61]

3) A creditor ______can / cannot______ ask about the permanent residency or immigration status of an applicant.

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[58] 12 CFR § 1002.7(a)
[59] 12 CFR § 1002.7(B)
[60] 12 CFR § 1002.7(d)
[61] 12 CFR § 1002.2(z)

Adverse Action Rules

The adverse action rules are some of the key requirements of ECOA and Regulation B. There are three kinds of notices under the adverse action rules: the adverse action notice, the notice of incomplete application, and the counteroffer notice.

The notice of adverse action, or adverse action notice, must be sent to the applicant within 30 days after receiving a complete application concerning the creditors approval of, counteroffer to, or adverse action on the application, or with 30 days of taking an adverse action on an existing account (usually applicable to open-ended lines of credit).[62] If there are multiple applicants, the notification need only be given to one applicant, but it must be given to the primary applicant, if that can be ascertained.[63]

An application is defined as an oral or written request for an extension of credit that is made in accordance with procedures used by the creditor for the type of credit requested. A complete application is an application in which the creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested.[64] This gives the creditors flexibility in determining what an "application" and a "completed application" are for purposes of their loans. Note: this definition is different from the Real Estate Settlement Procedure Act and the TILA-RESPA integrated disclosure (TRID) rules.

What is an Adverse Action?

An adverse action is a refusal to grant credit substantially in the amount or on the terms requested in the application unless the creditor makes a counteroffer which the applicant accepts. Here are some examples of an adverse action:

1. Lender denies a loan application. An Adverse Action Notice, also known as a notification of action taken, must be provided to the applicant if an application is denied.

[62] 12 CFR § 1002.9(a)
[63] 12 CFR § 1002.9(f)
[64] Ibid

2. Lender tells an applicant that the borrower does not qualify for the loan amount initially requested because their income is insufficient.

For open-ended lines of credit, an adverse action also includes a termination of an account, or unfavorable change in the terms of the account that does not affect all of a class of the creditor's accounts, or a refusal to increase the amount of credit available to an applicant who applied for an increase.[65] The following are not considered to be an adverse action:

1. A change in terms of an account expressly agreed to by an applicant;
2. Any action taken in relation to default, delinquency or inactivity of an account;
3. A refusal to extend credit because applicable law prohibits the extension of credit; or
4. A refusal to extend credit because the creditor does not offer the type of credit requested.[66]

Adverse Action Notice

The notice itself has to state the following:

1. The name and address of the creditor
2. A statement of the provisions of section 701(a) of ECOA
3. The name and address of the Federal agency that administers ECOA compliance for the creditor, and either:
   a. A statement of specific reasons for the adverse action taken, or
   b. A disclosure of the applicant's right to request the specific reasons within 30 days, if the request is received within 60 days of the creditor's notice. The disclosure has to include the name, address, and telephone number of the person or office from which the statement may be obtained.[67]

Stating that the adverse action was based on the creditor's internal standards or policies is insufficient. Also, insufficient is a statement that the applicant or other party failed to achieve a qualifying score on the creditor's scoring system.[68]

[65] 12 CFR § 1002.2(c)
[66] 12 CFR § 1002.2(c)(2)
[67] 12 CFR § 1002.9(a)(2)
[68] 12 CFR § 1002.9(b)(2)

For business credit applicants, the requirement depends on the size of the business. For a business that had gross revenues of $1 million or less in the preceding fiscal year, the rules are same as for non-business applicants except that:

1. The statement may be given orally or in writing when the adverse action is taken;
2. Disclosure of the applicant's right to a statement of reasons may be given at the time the application is taken, instead of when the adverse action is taken, provided the creditor also gives the ECOA notice, and
3. For a telephone application, the creditor can give an oral statement of the action taken and the applicant's right to a statement of the reasons for the adverse action.[69]

For business credit applicants with gross revenues greater than $1 million in the preceding fiscal year, the creditor must notify the applicant of the adverse action taken either orally or in writing within a reasonable time, and provide a written statement of the reasons for the adverse action along with the ECOA notice if the applicant makes a written request for the reasons for the adverse action within 60 days of the notification.[70]

Failure to accurately complete the Notice

When an adverse action is taken on a consumer loan application based on information from an outside source other than a consumer reporting agency, such as a credit bureau, the creditor must include that information in the adverse action notice, or disclose to the applicant their right to request such information.

If the creditor obtained information from an affiliate other than in a credit report, or information concerning the affiliates own experience or transactions with the applicant, the Adverse Action Notice must include that information. To facilitate the creditor to provide the correct notice, the rule provides model forms for the different notices. Model Form C-1 contains the proper notices in the case that the adverse action is based on information from an affiliate.[71]

[69] 12 CFR § 1002.9(a)(3)(i)
[70] 12 CFR § 1002.9(a)(3)(ii)
[71] Appendix C to Part 1002 (1)

Notice of Incompleteness

Within 30 days of receiving an application that is incomplete, the creditor must notify the applicant either of 1) an adverse action taken, using the Adverse Action Notice, or 2) the incompleteness using a Notice of Incompleteness. The Notice of Incompleteness is a written notice sent to applicant that sets forth the following:

1. The information needed to complete the application;
2. Designating a reasonable time for the applicant to provide the information; and
3. Informing the applicant that failure to provide the information requested will result in no further consideration being given to the application.[72]

If the applicant fails to respond in the time given, the creditor doesn't have to send any more ECOA notices. If the lender does not send out the Notice of Incompleteness, and takes an adverse action on an incomplete application, the lender must send the Adverse Action Notice.[73] If the applicant sends in the additional information within the specified time, then the creditor has to take action on the application, and send out the appropriate ECOA notices.

At its option, the creditor can orally notify the applicant of the incompleteness, and if the application remains incomplete, the creditor has to send out the Notice of Incompleteness.[74]

ECOA Notice

The ECOA Notice is the following:

> "The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that

[72] 12 CFR § 1002.9(c)(2)
[73] 12 CFR § 1002.9(a)(1)(ii)
[74] 12 CFR § 1002.9(c)(3)

> administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency or agencies listed.

The ECOA notice is usually given soon after receiving the loan application.

Requirement on Providing Appraisals

When a lender takes an application for a loan that will be secured by a first lien loan on the borrower's 1-4 unit dwelling, the creditor has to give the applicant a disclosure that they have the right to receive a copy of all written appraisals or valuations developed in connection with the application. The disclosure must be given not later than the third business day after receiving the loan application.

Also, the creditor must give the applicant a copy of all appraisals or valuations developed in the connection with the application.[75]

The creditor must provide the copy of the appraisal promptly when the appraisal is completed, or three business days prior to consummation for closed-end loans or account opening for open-end credit, whichever is earlier. In California, consummation occurs when the promissory note and deed of trust are signed.

The applicant is allowed to waive the timing requirement as long as they receive a copy of the appraisal at or before consummation or account opening. The requirement applies even if the application is withdrawn, denied, or if the application is incomplete.[76] The creditor cannot charge the applicant for the copy of the appraisal, but can charge the borrower for the cost of the appraisal or valuation.[77]

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75 12 CFR § 1002.14(a)(1)
76 12 CFR § 1002.14(a)(4)
77 12 CFR § 1002.14(a)(3)

Records Retention

A creditor needs to retain an original or copy of applications for 25 months for consumer credit, and 12 months for business credit, after the creditor gives the Notice of Incompleteness or Notice of Adverse Action. The creditor must also retain a copy of the Adverse Action Notice or Notice of Incompleteness, if sent in written form, or the notation or memorandum that either were given, if they were given orally. If the applicant submits a written statement alleging violation of ECOA or Regulation B., the creditor must retain a copy for the applicable time period.[78]

The same retention periods apply to Adverse Action Notices and written statement alleging ECOA or Regulation B. violations involving open-ended lines of credit. The creditor must retain information beyond the required periods if the creditor has actual notice that it is under investigation or subject to an enforcement proceeding for a violation ECOA or Regulation B. In that case, the information must be retained until the final disposition of the matter, or an earlier time if allowed by a court order. Other information must be retained for 25 months for consumer credit transactions, or 12 months for business credit transactions including:

1. Written or recorded information about self-tests for ECOA or Regulation B compliance; and
2. Text of any prescreened solicitation, a list of criteria the creditor used to select potential recipients of the solicitations, and any correspondence related to complaints about the solicitation.

There is a special exception for business credit applications. If an applicant had gross revenues in excess of $1 million in its preceding fiscal year, the creditor only has to retain records of an adverse action for 60 days after notifying the applicant of the adverse action. If the applicant requests in writing the reasons for the adverse action within the 60 days, then the creditor shall retain the records for 12 months.

[78] 12 CFR § 1002.14(b)(1)

Information for Monitoring Purposes

Regulation B requires that creditors who receive applications for consumer loans to be secured by the applicant's primary dwelling that contains 1-4 units, collect the following information:

1. Ethnicity and Race
2. Sex
3. Marital status using the categories married, unmarried, and separated, and
4. Age

The creditor must inform the applicants that:
"The information regarding ethnicity, race, sex, marital status, and age is being requested by the Federal Government for the purpose of monitoring compliance with Federal statutes that prohibit creditors from discriminating against applicants on those bases."

The creditor must inform the applicant that if the applicant declines to provide the information, the creditor is required to note the ethnicity, race, and sex based on visual observation or surname.[79]

Penalties

It is never a good idea to violate Federal law, and the penalties for violating ECOA and Regulation B are steep. Violation of ECOA and Regulation B. subjects the lender and/or broker to civil liability for actual damages, punitive damages, and a possible class-action lawsuit. Punitive damages are limited to $10,000 in individual actions, and the lesser of $500,000 or 1% of the lender or broker's net worth in class action. Violators can also be liable for costs and reasonable attorney's fees to the applicant.[80]

[79] 12 CFR § 1002.13
[80] 12 CFR § 1002.16

Time to Think 3.2

1) A(n) ___________________ Notice, also known as a notification of action taken, must be provided to the applicant if an application is denied.

2) A creditor must give an applicant for a first lien loan secured by the borrower's primary dwelling a disclosure that the applicant is entitled to a copy of the appraisal no later than the ______________ business day after taking the application.

3) An Adverse Action Notice must be sent out within ______________ of receiving a completed application concerning the creditors counteroffer to, or adverse action on the application.

Sample Form

Form C-1 - Sample Notice of Action Taken and Statement of Reasons[81]

Statement of Credit Denial, Termination or Change

Date: ____

Applicant's Name:

____

Applicant's Address:

____

Description of Account, Transaction, or Requested Credit:

____

Description of Action Taken:

____

[81] Form C-1 - Sample Notice of Action Taken and Statement of Reasons

Part I - Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit

This section must be completed in all instances.

__Credit application incomplete

__Insufficient number of credit references provided

__Unacceptable type of credit references provided

__Unable to verify credit references

__Temporary or irregular employment

__Unable to verify employment

__Length of employment

__Income insufficient for amount of credit requested

__Excessive obligations in relation to income

__Unable to verify income

__Length of residence

__Temporary residence

__Unable to verify residence

__No credit file

__Limited credit experience

__Poor credit performance with us

__Delinquent past or present credit obligations with others

__Collection action or judgment

__Garnishment or attachment

__Foreclosure or repossession

__Bankruptcy

__Number of recent inquiries on credit bureau report

__Value or type of collateral not sufficient

__Other, specify: ______________________________________

Part II - Disclosure of Use of Information Obtained From an Outside Source

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

__Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name:
____

Address:
____

[Toll-free] Telephone number:
____

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

Your credit score:
____

Date: ____

Scores range from a low of ____ to a high of ____.

Key factors that adversely affected your credit score:

____

____

____

[Number of recent inquiries on consumer report, as a key factor]

[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at:

Address:
____

[[Toll-free] Telephone number: ____]

__Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name:
____

Creditor's address:
____

Creditor's telephone number:
____

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Section 2

Electronic Records and Signatures in Commerce

The Electronic Records and Signatures in Commerce Act was signed by President Bill Clinton on June 20, 2000. It is best known as the E-Sign Act. The purpose of the act is to allow electronic signatures in interstate and foreign commerce. A contract cannot be found unenforceable solely because an electronic signature was used.[82]

Pre-Consent Disclosure

Before asking a borrower to consent to receiving disclosures using electronic media, the person giving the disclosure must give the borrower a pre-consent disclosure. The pre-consent disclosure must be clear and conspicuous, and must do the following:

1. State the right of a consumer to withdraw the consent, and consequences or fees in the event of such withdrawal;
2. Inform consumers whether the consent applies only to the current transaction, or to identified categories of records that may be provided during the course of the parties' relationship;
3. Describe the procedures the consumer must use to withdraw consent and to update information needed to contact the consumer electronically;
4. Inform consumers how, after the consent, consumer may, upon request, obtain a paper copy of an electronic record, and whether any fee will be charged for such copy;
5. Provide a statement of the hardware and software requirements for access to, and retention of the electronic records; and
6. Receive consumer 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 to provide the information that is the subject of the consent.[83]

[82] 15 USC § 7001(a) - General rule of validity
[83] 15 USC § 7001(c)(1)(B) & (C)

The last requirement in the pre-consent notice requires some thought. The method by which the lender or the broker plans on delivering the notice will dictate what means the consumer can use to consent to the electronic delivery in a way that will fulfill the requirement. For instance, if the borrower has to go onto a portal on a website to access the disclosure, the method of consenting to the electronic delivery should involve accessing the portal.

Consent to Electronic Disclosures and Records

Next, the borrower must affirmatively consent to use of electronic records, and not withdraw the consent.[84] Information that is required by law to be provided in writing can be made available to the consumer electronically, so long as the consumer consents to receive the information electronically, after the business has given the proper Pre-Consent Disclosure.

Post-Consent Disclosure

The person sending the electronic records has an on-going obligation to notify consumers of changes in hardware or software needed to access or retain the electronic records. If there is a change, the Post-Consent Disclosure must contain the following:

1. The revised hardware and software requirement for access to, and retention of the electronic records,
2. Right to withdraw consent without the imposition of any fees for such withdrawal and without any consequences not disclosed in the pre-consent disclosure, and
3. Consumer consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the new electronic format that will be used to provide the information that is the subject of the consent.[85]

[84] 15 USC § 7001(c)(1)(A)
[85] 15 USC § 7001(c)(1)(D)

Preemption

Remember that not only is there the Federal E-Sign Act governing electronic signatures, but most states also have legislation covering this area. The E-Sign Act provides that a state law or regulation may limit or supersede the E-Sign act under certain circumstances. One circumstance under which a state law may limit or supersede the E-Sign Act is if the law constitutes an enactment of Uniform Electronic Transactions Act ("UETA"), except that any exception to the scope of any such act shall be preempted to the extent such exception is inconsistent with E-Sign or would give greater legal status to a specific technology or technical specification.

The other circumstance under which the E-Sign Act allows for a state law to limit or supersede it, is if the law specifies alternative procedures or requirements for the use or acceptance of electronic records or signatures to establish the legal effect, validity, or enforceability of contracts or other records if:

1. Such alternative procedures are consistent with E-Sign
2. Such alternative procedures do not require or accord greater legal status or effect to the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or signatures
3. If it was enacted after June 30, 2000, the state law makes specific reference to the Federal E-Sign Act.[86] (California's law was enacted in 1999.)

It is important to note that the state of California has its own version of the UETA governing electronic signatures, located in the California Civil Code Section 1633.1 et seq. This Code Section can answer many of your questions concerning E-Signing. Topics include definitions, requirements, legal effects, change or error, notarization, retaining records, automated rules, notice of right to cancel, and many more.

[86] 15 USC § 7002(a)(2)(A)(ii)

Exceptions

There are exceptions to the E-Sign Act.[87] E-Sign doesn't apply to the following:

1. Contracts or records governed by wills and trust laws or regulations;
2. Contracts or records governed by adoption, divorce or other family law matters;
3. Contracts or records governed by the UCC except 1-107, 1-206 and Article 2 and 2A,
4. Court orders, notices, or official court documents required to be executed in connection with a court proceeding;
5. Notice of default, acceleration, repossession, foreclosure, eviction, or right to cure under a loan or lease for a primary residence of an individual;
6. Notice of cancellation or termination of health or life insurance (excluding annuities);
7. Notice of recall of a product or material failure of a product that risks endangering health or safety;
8. Notice of cancellation or termination of utility services; and
9. Any document required to accompany any transportation or handling of hazardous materials, pesticides or other toxic or dangerous materials.

E-Sign Act Take-Aways

In designing & implementing electronic consumer disclosures, consider the following issues:

1. Whether procedures are needed to deal with electronic disclosures that are returned undelivered;
2. Whether electronic disclosures are provided in a form that can be retained by consumers;
3. Duration of electronic notices or disclosures availability to consumers through the financial institution's systems;
4. Establishing a process to respond appropriately to consumer requests for paper copies of electronic notices and disclosures; and
5. Dealing with changes in hardware or software that may create a risk that consumers will no longer be able to access or retain electronic disclosures.

[87] 15 USC § 7003

6. In addition, ensure that electronic disclosures comply with the timing, format, content, and recordkeeping requirements of the underlying substantive rule (e.g., Regulation Z (Truth in Lending) and Regulation B (Equal Credit Opportunity Act)).

Likewise, when choosing the technology, or an electronic platform on which to deliver contracts or disclosures electronically, consider whether technology used will:

1. Reasonably be expected to reliably deliver disclosures to consumers
2. Maintain the security of sensitive customer information
3. Limit or prevent fraudulent and other illegal activities
4. Provide disclosures in a form that consumers can retain

Time to Think 3.3

1) The E-Sign Act was signed into law by ________________________ on June 20, 2000.

2) Before agreeing to electronic signatures on a document, the consumer must first receive ______________________________.

3) California and other states have laws regarding electronic signatures that may _______________________ the Federal E-sign act under certain circumstances.

Section 3

Home Mortgage Disclosure Act

The Home Mortgage Disclosure Act, also known as HMDA, was enacted by Congress in 1975. The regulations which were promulgated under the authority of HMDA are known as Regulation C or "Reg C". Authority for HMDA was originally vested in the Federal Reserve Board. The rulemaking authority was transferred to the CFPB on July 21, 2011 as a result of the changes made by the Dodd-Frank Wall Street Reform and Consumer Protection Act. HMDA is meant to provide public loan data to allow government, consumer protection groups, attorneys, and other members of the public to do three things:

1. Determine whether financial institutions are serving the housing needs of their communities.
2. Help public officials in distributing public-sector investments so as to attract private investment to areas where it is needed.
3. Identify possible discriminatory lending patterns.

Who is covered by HMDA

HMDA covers for-profit mortgage lending institutions that:

1. On the preceding December 31 had a home or branch office in a metropolitan statistical area (MSA)
2. Meet at least one of the following criteria[88]:
   a) In each of the two preceding calendar years, originated at least 100 closed-end mortgage loans that are not excluded.
   b) In each of the two preceding calendar years, originated at least 200 open-end lines of credit that are not excluded.

A "Mortgage Lending Institution" is defined as a person engaged for profit in the business of mortgage lending. Examples of a Mortgage Lending Institution include mortgage brokers who make the decision to extend credit, mortgage lenders, a mortgage pool or mortgage fund that also acts as the lender in making the decision to extend credit, or a mortgage investor who makes the decision to extend credit.

[88] 12 CFR § 1003.2(g)(2)

Regarding the MSA's, the Federal Financial Institutions Examination Council (FFIEC) created the Metropolitan Statistical Areas to help in the analysis of HMDA data. A non-depository mortgage lender is deemed to have a home or branch office in an MSA if it has originated, purchased, or received completed applications for at least 5 mortgage loans in the MSA in the preceding calendar year. The MSA list is compiled using US Census data, among other things.

Some MSA's in California include: Santa Rosa, San Diego, Bakersfield, and Los Angeles. It is likely that a financial institution that meets the 100-loan limit will have made a loan in an MSA.

Since the CFPB raised the closed-end loan limit from 25 loans in a calendar year to 100 loans in April of 2020, fewer small-volume lenders and brokers are subject to the HMDA requirements.

What Loans Are Covered Under HMDA

HMDA covers loans that the financial institution originates or purchases, or applications received that meet the following criteria[89]:

1. Consumer closed-end loans or open-end lines of credit secured by a lien on a dwelling[90]; and
2. Business purpose closed-end or open-end lines of credit secured by a lien on a dwelling for home improvement, home purchase, or a refinancing, as defined.[91]

For purposes of HMDA, a dwelling means a residential structure, whether or not attached to real property. The term includes, but is not limited to a detached home, an individual condominium or cooperative unit, a manufactured home or other factory-built home, or a multifamily residential structure or community. [92]

Note: This definition is not limited to "owner occupied" properties, and business purpose loans are not always excluded.

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[89] 12 CFR § 1003.1(c)
[90] 12 CFR § 1003.2(d)(e) & (o)
[91] 12 CFR § 1003.2 & § 1003.3(c)(10)
[92] 12 CFR § 1003.2(f)

A Home Improvement loan is defined as a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located. A Home Purchase is defined as a closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of purchasing a dwelling. And Refinancing means a closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower.

To summarize - here are the loans that are covered by HMDA:

1. Loans secured by a single family, 1-4 unit dwelling, and multifamily properties are covered, whether or not the dwelling will be the applicant's primary dwelling.
2. Business purpose loans are also covered if they are for the purpose of home improvement, home purchase, or refinance.
3. Cash out refinance loans may be covered – the financial institution may need to consider what the funds will be used for, to determine whether or not the loan is covered.

Exemptions to HMDA

The following transactions are exempt from HMDA[93]:

1. Business purpose loans, ONLY if they are not a home purchase, home improvement, or refinance as defined.
2. Loans not secured by real estate.
3. Loan secured by unimproved land.
4. Temporary financing, as defined.
5. Purchase of an interest in a pool of mortgages.
6. Purchase solely of the right to service loans.
7. Purchase of loans as a part of a merger or acquisition.
8. Applications for loans less than $500.
9. Purchase of a partial interest in a loan.
10. Loans primarily for agricultural purposes.
11. A closed-end mortgage loan if the institution originated fewer than 100 closed-end mortgage loans in each of the 2 preceding calendar years.

[93] 12 CFR § 1003.3(c)

12. An open-end mortgage loan if the financial institution originated fewer than 200 open-end lines of credit in each of the 2 preceding calendar years.

Temporary financing is defined as a loan that is intended to be replaced by permanent financing at a later time, such as a loan against current property to provide down payment for new purchase, which will be paid off when the current property is sold; or a construction loan which will be replaced by a permanent loan once construction is completed.[94]

Assuming the financial institution meets the definition of a covered financial institution, one example of covered loans includes a fix and flip loan. The loan is secured by a residential dwelling and is being made for the purpose of home improvement or home purchase. Another example of a covered transaction is a loan to finance the purchase of a residential rental property. No matter how many units, the building will contain at least one dwelling, and the loan is for the purpose of home purchase.

One last example of a covered transaction is a loan for the purpose of buying out a partner in a multi-family property where the existing trust deed on the property must be refinanced to accomplish the buy-out. The multi-family property contains residential dwelling units, and because the first trust deed must be paid off, it is a refinancing, and then qualifies as a business purpose loan that is covered under HMDA.

HMDA Requirements

HMDA has three main requirements:

1. Data collection
2. Data reporting
3. Notice requirement

If a financial institution is covered under HMDA, they must collect specified data points, and report the data to the appropriate Federal agency. To be sure who is the appropriate Federal agency for your financial institution, you should look up the HMDA regulations, starting at 12 CFR 1003 et seq.

[94] Official Commentary 1003.3(c)(3)-1

The data points and reporting will be described in the next section. Covered financial institutions must post a notice in lobby of their office, notifying customers that their HMDA data is available, and giving directions of where to find the information online at www.consumerfinance.gov/hmda. The notice must be available to the public for a period of five years.[95]

HMDA Data Points

Once a financial institution is covered under HMDA, there are many data points that must be collected for covered transactions. The data that must be collected depends on the type of transaction. Not all data points need to be collected for every transaction.

Here is a list of the possible data points:

A. Application/loan information	B. Property Information
1. Application date	1. Property location
2. Loan type	2. Property address
3. Loan purpose	3. State and county
4. Preapproval request	4. Census tract
5. Loan amount	5. Property value
6. Action taken and date taken	6. Occupancy type
7. Reason for denial	7. Construction method
8. Application channel	8. Manufactured home secured property type
9. Reverse mortgage	9. Manufactured home land property interest
10. Open-end	10. Total units
11. Business purpose	11. Multifamily affordable units
12. Type of purchasing entity	
13. How application was taken[96]	

[95] 12 CFR § 1003.5
[96] 12 CFR Appendix B to Part 1003 - Form and Instructions for Data Collection

C. Identifier	D. Applicant information
1. Loan originator NMLS number 2. Uniform loan identifier	1. Ethnicity 2. Race 3. Sex 4. Age
E. Underwriting information about the applicant	**F. Loan features**
1. Income 2. Debt-to-income ratio 3. Credit score 4. Credit scoring model used 5. Combined loan-to-value ratio 6. Automated underwriting system used	1. Loan term in months 2. Prepayment penalty term 3. Introductory rate period 4. Non-amortizing features (balloon or interest only payment)
G. Pricing information	
1. Total loan costs 2. Origination charges 3. Discount points 4. Lender credits 5. Interest rate 6. Rate spread between APR and the average prime offer rate 7. HOEPA status 8. Lien status	

One data point upon which the CFPB has expressed concern is the Application Channel. This data point is intended to collect information on whether the applicant submitted the application for the covered loan directly to the financial institution, and whether the loan was, or would have been initially payable to the financial institution. Omitting this information from the HMDA report is a violation of HMDA.

The amount of data collected for each covered loan increased dramatically on January 1, 2018 when the CFPB's HMDA rules went into effect. The rules are complicated. Covered financial institutions should read the HMDA rules carefully to understand the rules on collecting and reporting the data points. The HMDA rules regarding the data points are located in 12 Code of Federal Regulations section 1003.4, and the pertinent definitions in section 1003.2, and also the accompanying official interpretations.

Filing a HMDA Report

Most covered financial institutions must file their HMDA report by March 1 of each year. Some very large financial institutions must file HMDA reports on a quarterly basis. The report covers data collected during the previous calendar year. The data must be formatted into a loan application register or "LAR".

The CFPB only allows the LAR to be submitted electronically on the CFPB's web portal. Typically, a lender uses its loan origination software to collect the necessary data. There is software available to help format and check the HMDA data for obvious errors.

The CFPB has a free LAR formatting tool to help small filers format their LAR properly. The CFPB has extensive information regarding HMDA and HMDA reporting on its website:
https://www.consumerfinance.gov/data-research/hmda/

The CFPB releases the HMDA data to the public. Serious privacy concerns have been raised. In response, the CFPB modifies the data that is released to make it more generalized, and therefore less likely to be a privacy issue, or allow criminals to perpetrate fraud on consumers through use of HMDA data.

Time to Think 3.3

1) Lenders who close more than ________________covered closed-end loans in a calendar must collect and report HMDA data.
2) HMDA has three main requirements: 1. ______________________, 2. ______________________, and 3. ________________________.
3) The _________________ is the Federal agency that collects HMDA data and releases it to the public.

Section 4

RESPA – Section 8 (This is Important)

Prohibition Against Kickbacks and Unearned Fees

The Real Estate Settlement Procedures Act, or RESPA, and its corresponding regulations known as Regulation X contain several disclosure provisions. But one of the critical non-disclosure provisions is Section 8 of RESPA. Section 8 of RESPA is one of the few mortgage statutes the violation of which could land the violators in jail. The penalty for violating section 8 of RESPA is a fine of not more than $10,000 or imprisonment for not more than one year or both, for the person giving the kickback or unearned fee, and also for the person receiving the kickback or unearned fee.[97]

In addition, anyone who violates Section 8 may be liable in a civil action to the person paying the settlement service fee, in the amount of three times the charge for the settlement service. The prevailing party is also entitled to court costs and reasonable attorney fees.

[97] 12 U.S. Code § 2607(d)

I'm starting out with the penalties of Section 8 precisely because they are so heavy, and because it is easy to fall into a trap of violating Section 8 if you aren't careful.

Section 8 of RESPA provides that no person shall give and no person shall accept any fee, kickback or thing of value for a business referral incident to or as part of a real estate settlement service involving a federally related mortgage loan.[98] It also prohibits fee-splitting of a fee or price paid for a settlement service other than for services actually performed.[99]

So, "it is critical to understand that, with certain limited exceptions, the 'referral of a settlement service is not a compensable service'".[100] After looking at the coverage under Section 8 of RESPA, we will break down the rule and give examples to clarify its meaning.

Coverage under Section 8 of RESPA

To be covered under RESPA, the loan must be a "federally related mortgage loan". A federally related mortgage is a loan secured by a first or junior lien on residential real property, upon which there is either a 1-4 unit dwelling, or a manufactured home, or the loan proceeds will be used to construct or place a 1-4 unit dwelling or manufactured home, and for which one of the following applies. Said dwelling is:

1. Made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government
2. Made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:
    a. By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or
    b. Under or in connection with a HUD or other federal government housing program
3. Intended to be sold by the originating lender to the Federal National Mortgage Association (Fannie Mae), the Government National Mortgage Association (Ginnie Mae) , the Federal Home

[98] 12 U.S. Code § 2607(a)
[99] 12 U.S. Code § 2608(b)
[100] Federal Regulation of Real Estate and Mortgage Lender section 2:46 citing 12 CFR § 1024.14(b)

Loan Mortgage Corporation (Freddie Mac) or a financial institution from which the loan is to be purchased by Freddie Mac;
4. Made in whole or in part by a "creditor", as defined in the Truth in Lending Act, that makes or invests in residential real estate loans aggregating more than $1,000,000.00 per year. For purposes of this definition, the term "creditor" does not include any agency or instrumentality of any State, and the term "residential real estate loan" means any loan secured by residential real property, including single-family and multifamily residential property;
5. Originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified above, by a mortgage broker; or
6. The subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in 1-4 above.[101]

The above definition is very broad. Most lenders keep their funds in an account insured by the Federal Deposit Insurance Corporation (FDIC), therefore most lenders don't need to look any further to see if their loans that are secured by a 1-4 unit dwelling are covered under RESPA. For lenders that fund loans directly from an uninsured account such as an investment account, they would need to look at the other parts of the definition to see if they are covered.

Exemptions

The following types of loans are exempt from RESPA:
1. Business purpose loans, commercial loans
2. Agricultural loans
3. Secured by property containing 25 or more acres
4. Secured by vacant land (except that loans secured by vacant land on which a 1-4 unit residential dwelling will be built using the loan proceeds, or upon which a manufactured home will be placed using the loan proceeds are covered)
5. Assumptions without lender approval
6. Conversions, such as converting a loan from adjustable rate to fixed rate, whether or not a fee is charged
7. Secondary market transactions
8. To governments or government agencies

[101] 12 CFR § 1024.2(b)

9. From certain housing assistance loan programs
10. Temporary [102]

Temporary loans are "short term loans to facilitate a person who is selling a property and buying another to cover interim obligations".[103] Construction loans may be covered if they can be converted to permanent financing. Construction also may be covered if they are for a term greater than 2 years, unless the loan is made to a BONA FIDE builder.[104]

Settlement Services

To be covered under Section 8 of RESPA, the fees or payments in question must pertain to settlement services. The definition of "settlement services" is very broad and covers nearly everyone involved in providing services in a real estate loan transaction. "Settlement" means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan.[105] And a "settlement service" is any service provided in connection with a prospective or actual settlement, including but not limited to:

1. Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans)
2. Mortgage broker services (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender)
3. Provision of any services related to the origination, processing or funding of a federally related mortgage loan
4. Title services (including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies)
5. Attorney services
6. Notarization, recordation, and document preparation;
7. Credit reports and appraisals
8. Inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title

[102] Ibid
[103] 59 Federal Register (FR) 6,506 to 6,521, 6,507 (1994).
[104] 12 CFR § 1024.5(b)(3)
[105] 12 CFR § 1024.2(b)

9. The conducting of settlements by a settlement agent and any related services
10. Mortgage insurance services
11. Hazard, flood, or other casualty insurance or homeowner's warranties
12. Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan
13. Provision of services involving real property taxes or any other assessments or charges on the real property
14. Real estate agent or real estate broker services
15. Provision of any other services for which a settlement service provider requires a borrower or seller to pay[106]

Thing of Value

To restate, Section 8 of RESPA states that no person shall give and no person shall accept any fee, kickback or "thing of value" for a business referral incident to or as part of a real estate settlement service involving a federally related mortgage loan. A thing of value is interpreted broadly, and includes, but is not limited to, the following:

1. Monies
2. Things
3. Discounts
4. Salaries
5. Commissions
6. Fees
7. Duplicate payment of a charge
8. Stock
9. Dividends
10. Distribution of partnership profits
11. Franchise royalties
12. Credits representing monies that may be paid at a future date
13. The opportunity to participate in a money-making program
14. Retained or increased earnings
15. Increased equity in a parent or subsidiary entity
16. Special bank deposits or accounts
17. Special or unusual banking terms

[106] 12 CFR § 1024.2(b)

18. Services of all types at special or free rates
19. Sales or rentals at special prices or rates
20. Lease or rental payments based in whole or in part on the amount of business referred
21. Trips and payments of another person's expenses, and
22. Reduction in credit against an existing obligation[107]

RESPA is intended to cover any transfer of value, whether it is given directly or indirectly. Here are some examples of a prohibited payment:

Example 1:
A mortgage broker emails a lender and says, “I have a prospective purchase-money residential loan for you. I only want a commission of 1%. You can handle the entire transaction. I don’t need to be involved at all.” The mortgage lender closes a FNMA loan for the borrowers without the broker having any further contact or involvement with the borrower or the lender, except receiving a 1% commission check. The payment of the commission was not for services rendered, and presumably was for the referral, and therefore was a violation of Section 8 of RESPA.

Example 2:
If a title insurer, gives current or potential referral sources tickets to attend professional sporting events, trips, restaurant meals, or sponsorship of events (or the opportunity to win any of these items in a drawing or contest) in exchange for title orders as part of an agreement or understanding, such conduct violates RESPA Section 8(a).

With the situation in example 2, note that there is no exception to RESPA Section 8 solely based on the value of the gift or promotion. So a small gift would not necessarily be exempt from RESPA Section 8. However, gifts or promotions directed to a referral source are not prohibited if they are a “normal promotional or educational activity” meeting the conditions in Regulation X, and which are set forth below.

[107] Federal Regulation of Real Estate and Mortgage Lending section 2:48.

What is Allowed

Despite the prohibitions in Section 8, the following activities are specifically allowed:

1. Payment to the following:
   - a lawyer for services actually rendered
   - any person of a bona fide salary or any other form of compensation for goods or facilities actually furnished or for services actually performed
2. Payment by the following:
   - a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance
   - by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing or funding of a loan
   - by an employer to its own bona fide employee for any referral activity
3. Payment pursuant to a cooperative brokerage and referral arrangement or agreement between real estate agents and real estate brokers. Note, however, that this refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity. This exemption does not apply to fee arrangements between mortgage brokers and real estate brokers or between mortgage brokers.
4. 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 related incidental business.[108]

This last bullet point is the rule regarding "normal promotional and educational activities" which are allowed under the two conditions specified above, as provided in Regulation X. Whether a promotional item or educational activity is conditioned on the referral depends on a couple of factors.

[108] Mortgage and Consumer Loan and Lease Disclosure Handbook section 8:19.

First, was the promotional item or educational activity targeted to referral sources. If it is narrowly targeted toward current or future referral sources, this could indicate that it is conditioned on referrals of business.

The second factor is the frequency with which the items or activities are given. If a referral source is given the items or activities with more frequency than non-referral sources, this is an indication that the promotional items or educational activities are conditioned on referrals.

In addition to promotional and educational activities not being conditioned on the referral of business, they must not involve the defraying of expenses that would otherwise be incurred by the settlement service provider. One factor is whether the item or activity involves a good or service that the settlement service provider ordinarily would have paid for themselves.

Some examples of things a service provider would ordinarily pay for themselves include mandatory continuing education classes. When a settlement service provider pays for such classes, it is often considered to be defraying the cost for the referral source. Also, paying for office supplies with the referral sources branding is usually considered to be defraying the expense of the referral source.

Here are some examples of promotional and educational activities that meet the conditions in Regulation X, and are allowed:

Example A:
Lender hosts a one-time drawing for a mini basketball set. The lender includes an announcement of the drawing in an email to all previous customers and all mortgage brokers in an area summarizing the lender's services and providing contact info. Entries are automatically made for mortgage brokers with whom they have had prior contact, regardless of whether they have made or will make a referral to the lender. They also include a drawing entry form on their website.

Example B:
A title company holds continuing education classes for local real estate agents, and charges the fair market value of the classes.

Marketing Services Agreements: Important

Marketing Services Agreements (MSAs) are normally agreements where one person agrees to market or promote the services of another and receives compensation in return. In October 2020, the Consumer Financial Protection Bureau issued Frequently Asked Questions to address uncertainty in the industry regarding MSAs. They can be found here: https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/real-estate-settlement-procedures-act/real-estate-settlement-procedures-act-faqs/ .

A permissible marketing service agreement is where the payments for the marketing services are reasonably related to the value of the services actually performed. The marketing services must be actual, necessary and distinct from the primary services performed by the person. The marketing services cannot be nominal, and the payments cannot be duplicative or referrals.[109]

The difference between a referral and a marketing service is that the referral is usually directed to a person with the purpose of influencing them to use a particular settlement service provider by the person paying a fee to the settlement service provider. A marketing service is generally not directed to any specific person, but it is targeting at a wider audience.

Marketing services agreements which involve an understanding to pay a fee for referrals are prohibited. For example, a fee structure in an MSA based on the number of referrals received is prohibited. If the MSA involves splitting fees made or received for settlement services in connection with federally related mortgage loans, other than for work actually performed, it is prohibited. If the split charge is paid even if work is not actually performed, or exceeds the value of the services performed by the person receiving the split, then the MSA violated Section 8 RESPA. An MSA where the compensation reflects the value of the actual goods or facilities actually provided, or services actually performed, is not prohibited.[110]

Here are examples of MSAs that are not permitted under Section 8 of RESPA:

[109] 12 CFR § 1024.14(b), (c), and (g)(3)
[110] 12 CFR § 1024.14(b)(1)(iv)

1. An agreement to pay for referrals.
2. An agreement to pay for marketing services, but the payment is in excess of the reasonable market value for the services performed.
3. An agreement to pay for marketing services, but either as structured or when implemented, the services are not actually performed, the services are nominal, or the payments are duplicative.
4. An agreement designed or implemented in a way to disguise the payment for kickbacks or split charges.

Truth in Lending Act

The Truth in Lending Act (TILA) was initially enacted in 1968 and has been amended many times since. It primarily requires disclosure of the costs and terms of consumer loans. While we don't have time do an in-depth examination of each provision of TILA during this course, the CFPB wants licensees to be reminded of several important provisions which we will cover.

Section 5

TILA-RESPA Integrated Disclosures

Adjustable Rate Mortgage Disclosure

TILA requires that the creditor disclose the terms of an Adjustable Rate Mortgage (ARM) loan, when an ARM loan is applied for by the consumer. The TILA-RESPA Integrated Disclosures, or TRID rules have provisions regarding the proper way to disclose the ARM terms, which include, but are not limited to the Adjustable Interest Rate (AIR) table which is located at the bottom of page two on the Loan Estimate and Closing Disclosure, and includes the starting and maximum interest rates, the margin, and any periodic or lifetime rate adjustment caps, among other things.

Fee Tolerances

The TRID rules require that a Good Faith Estimate of fees be given to the consumer on the Loan Estimate. If the fees increase after the Loan Estimate is given, there are tolerances set for the many of the fees, determining whether the borrower can be charged the higher fee, or not, unless there has been a bona fide change in circumstances. Fees paid by the borrower above the allowed tolerance must be refunded within 60 days after consummation.

Here is a summary of the fee tolerance categories: Zero Tolerance[111]

1. Creditor's or broker's charges for own services
2. Charges for services provided by an affiliate of the creditor or broker
3. Charges for services for which consumer is not permitted to shop (Written List of Providers)
4. Transfer taxes

10% Aggregate Tolerance[112]

The aggregate of the following amounts disclosed on the Loan Estimate cannot increase by more than 10% unless an exception applies:

1. Third-party services selected from the Written List of Providers
2. Recording fees

No Tolerance

The following amounts disclosed on the Loan Estimate must be based on "best information reasonably available at the time" using "reasonable due diligence". Otherwise, there is no limitation on fee increases:

1. Prepaid interest
2. Property insurance premiums
3. Amounts placed into escrow or impound account
4. Charges paid to consumer-selected, third-party service providers not on the Written List of Providers
5. Charges paid for third-party services not required by the creditor, even if paid to an affiliate of the creditor

[111] Comment 1026.19(e)(3)(i)-1
[112] 12 C.F.R. § 1026.19(e)(3)(ii)

Written List of Providers

If the creditor allows the borrower to shop for a settlement service provider, the creditor must provide the borrower with a written list of settlement service providers, containing at least one settlement provider available for each settlement service for which the borrower is permitted to shop. The creditor is required to document the delivery of the Written List of Providers.

Settlement Services the Borrower Did Not Shop For

If the creditor allows the borrower to shop for settlement services and provides a written list of service providers to the borrower, then these items should be disclosed in Section C, "Services You Can Shop For" on the Loan Estimate. But if the borrower, in fact, does not shop for the services, the fees for the services for which the borrower did not shop must be disclosed in Section B, "Services Borrower Did Not Shop For" on the Closing Disclosure.[113]

Change in Circumstances

As mentioned above, the borrower cannot be required to pay for the increase in certain fees if the increase exceeds the applicable tolerance level, unless there has been a bona fide change in circumstances.

Change in circumstances[114] includes:

1. **Affects Creditworthiness.** The value of the security or causes an estimated charge to increase above the required tolerance:
   - An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction
   - Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided
   - New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate

[113] 12 CFR § 1026.38(f)(2)
[114] 12 C.F.R. § 1026.19(e)(3)(iv)

2. **Consumer request**. The consumer requests revisions to terms or the settlement that cause an estimated charge to increase.
3. **Interest rate dependent charges**. Discount points, loan originator charges, and loan originator credits change because the interest rate was not locked when the Loan Estimate was provided.
4. **Expiration**. Consumer does not indicate an intent to proceed with the transaction within 10 business days after the Loan Estimate was provided, or within the time frame given on the Loan Estimate, if greater than 10 business days.
5. **New construction**. Closing more than 60 days after initial Loan Estimate.

The creditor must retain documents showing the original charge and the reason for the increase. The reason must be based on one of the allowable changes in circumstance for the borrower to be charged for the increase in the fee above the applicable tolerance level.

Records Retention Rules

TILA has special records retention requirements for loans secured by real property or a cooperative unit.

Three Years:

1. The general rule is that the creditor shall retain evidence of compliance with the TRID timing and tolerance requirements for a period of three years after the later of the date of consummation or the date disclosures are required to be made.
2. Creditors shall retain copies of loan originator compensation agreements and evidence of all compensation it pays to loan originators for three years after the date of the payment.
3. Mortgage broker organizations (known as loan originator organizations in the regulation) shall maintain records of all compensation payments they receive from creditors, a consumer, or third parties including any compensation agreements for a period of three years after the date of the payment.[115]

Five Years:

[115] 12 CFR § 1026.25(c)(2)(ii)

1. A copy of the CD shall be retained for a period of five years after consummation.
2. These rules cover payments of compensation to “unlicensed loan originators”, which in this context means loan originators who do not have an NMLS endorsement on their license.
3. Since TILA covers all consumer loans, not only consumer loans secured by 1-4 single-family dwellings, it is possible that a creditor may legally pay compensation to a non-NMLS loan originator for a consumer loan secured by something other than a 1-4 single family dwelling.
4. That creditor, and the non-NMLS loan originator, would be subject to the above records retention rules governing retention of compensation records and agreements.

NMLS ID on Loan Documents

TRID requires that for consumer loans secured by a dwelling, a loan originator organization, also known as a mortgage broker organization, must include its name & NMLS number on certain loan documents, as well as the name & NMLS number of the loan originator primarily responsible for the origination.[116] The documents on which this information must appear are:

1. The Loan Application
2. The Loan Estimate and Closing Disclosure
3. The Note or Loan Contract
4. The Deed of Trust or Mortgage

VA Loans- Unallowable Fees[117]

The Veterans Administration (VA) does not allow lenders who charge the full one percent loan origination fee to charge “unallowable fees”. Unallowable fees are those not expressly allowed by the VA. The VA allows the following fees as long as they are reasonable and customary:

1. Fees of Department of Veterans Affairs appraisers and of compliance inspectors designated by the Department of Veterans Affairs except appraisal fees incurred for the predetermination of reasonable value requested by others than the veteran or lender.
2. Recording fees.

[116] 12 CFR § 1026.36(g)
[117] VA Circular

3. Credit report.
4. That portion of taxes, assessments, and other similar items for the current year chargeable to the borrower and an initial impound/escrow deposit
5. Hazard insurance
6. Survey, if required by lender or veteran, with exceptions
7. Title examination and title insurance
8. Flood Certification
9. Such other items as may be authorized in advance by the VA

CHAPTER 3
REVIEW QUIZ

1. ECOA was passed in: ______________________.

2. Which Regulation fleshed out ECOA? _______________________.

3. The three kinds of adverse action rules are adverse action, incomplete application and __________________________.

4. The creditor must send an incomplete notice within _______ days.

5. Original copies of business credit must be retained for ____________________________ time.

6. A Pre-Consent disclosure is required before sending documents for _______________________ signatures.

7. Can the E-Sign signature method be used on contracts governed by wills? ______________

8. Which agency has authority over HMDA? ___________________

9. Who is the head of the CFPB? ___________________

10. Are loans secured by unimproved land subject to HMDA? ________________

11. HMDA has three main requirements which are data collection, data reporting, and ____________________________.

12. LAR stands for ___________________________.

13. The RESPA Section that discusses kickbacks is # ____________.

14. Are agricultural loans covered by RESPA? ________________

15. Could a trip to Las Vegas paid by an Escrow company be a thing of value? _________

16. If you want answers to MSA questions, you would go to

____

17. TILA was enacted in _____________________

18. VA loans have regulations to forbid excessive refinancings, known as ____________________.

Chapter 4

CALIFORNIA DFPI AGENCY SPECIFIC EDUCATION REQUIREMENT – 1 HOUR

Section 1

California Residential Mortgage Lending Act[118]

History

1. The California Residential Mortgage Lending Act (CRMLA) is contained in Division 20 of the California Financial Code, commencing with Section 50000.
2. The regulations are contained in Subchapter 11.5 of Chapter 3 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 Financing 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.
5. Unlike the Real Estate Law and the California Financing 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.
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.

[118] California Residential Mortgage Lending Act – About

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 DFPI[119]

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

On September 28, 2020 there was another change. The Department of Business Oversight was changed to the Department of Financial Protection and Innovation. The intent was to make the State Department more like CFPB.

Net Worth Requirements for DFPI Licenses

Each licensee is required to maintain tangible net worth of at least $250,000 at all times. (California Financial Code Section 50201)

1. 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).
2. 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

[119] DFPI Requirements

the net worth required of an approved lender under the Federal Housing Administration.

3. Tangible net worth shall be computed in accordance with generally accepted accounting principles.

What a DFPI Licensee 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 (reconveyance).
4. Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.
5. 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.
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. Fail to 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.
    - 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.
    - 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.

- 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.

9. 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.
10. 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.
11. Provide brokerage services through independent contractors.
12. Provide brokerage services through an employee not licensed as a mortgage loan originator.
13. 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)).
14. 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.
15. Perform activity subject to Section 10131 of the Business and Professions Code, except activities authorized by this division.
16. Not provide brokerage services as an employee of a licensed residential mortgage lender.

17. Provide brokerage services to a borrower, except as provided in subdivision (c).
18. Any acts in violation of Section 17200 or 17500 of the Business and Professions Code (unfair competition and deceptive advertising).

More Regulations

1. 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.
2. 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.

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 to NMLS each quarter.
5. Audited Financial Statements, due within 105 days after the end of the current 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 a tangible net worth of $250,000. The audited financial statements must be posted on NMLS.

Time to Think 4.1

1. The DBO was born in the year? _________________________.
2. The net worth requirement for DFPI brokers is: ________________.
3. The bond for a DFPI must be at least: _________________________.

Section 2

California Financing Law

The California Financing Law was passed in 1994. It was operative in 1995. The regulation of the law is under the Department of Financial Protection and Innovation (DFPI). Division 9 is the title of the Law. All California Regulations can be researched at www.leginfo.ca.gov.

An important Article of the Law is Article 1 under Chapter 1 General Provisions (Financial Code 22000-22172)[120]. The Law has four chapters with several articles under each chapter. This article covers all the definitions included in the Law.

- 22000. This starts the Law, and shall be cited as "California Financing Law".

- 22001: The Law shall be liberally construed and is to promote underlying purposes and policies which are to:
  1. Ensure an adequate supply of credit to California Borrowers, our clients.
  2. Simplify laws governing loans made by Finance Lenders.
  3. Foster competition
  4. Protect borrowers against unfair practices, but having regards for legitimate and scrupulous lenders.
  5. Encourage fair and economically sound lending practices.
  6. Encourage a sound economic climate

Consumer loans as defined in Sections 22203 and 22204, and commercial loans as defined in Section 22502, are subject to this chapter.

- 22004. "Broker": includes any person engaged in the business of negotiating or performing any act as a broker in connection with CFL lenders.

- 22005. "Commissioner": the appointed Commissioner of the Department of Financial Protection and Innovation[121] is currently

[120] 2011 California Financial Code Division 9. California Finance Lenders Law
[121] DFPI

Manuel P. Alvarez. This Department is under the Secretary of The Business, Consumer Services and Housing Agency (BCSH)[122] Lourdes M. Castro Ramírez, who of course serves under Gavin Newsom.

- 22006. "Security interests, accounts, chattel paper, documents, intangibles, goods and instruments": as are defined in the Uniform Commercial Code.

- 22007: "Licensee": includes lenders and brokers.

- 22008: "Person": includes individuals, corporations, partnerships, LLC's, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, governments, or political subdivisions of governments.

- 22009: "Finance Lender": any persons engaged in the business of making consumer or commercials loans, includes lending and taking contracts involving forfeiture of rights to person property even when property is retained by others, and includes liens, assignments, POA's relative to wages, etc.

- 22010: "Finance Lender or Broker": does not include employees regularly employed at the location, and employees are exempt from laws if their employers are exempt.

- 22011: "Regulatory Ceiling Provision": statement in a section or subdivision that specifies an original bona fide principal loan amount at or above which that section does not apply.

- 22012: Covers several aspects of the Federal Lending Regulations including changes brought on by the SAFE Act and the Dodd-Frank Act.
    1. "Branch Office License": lender or broker can engage in business in a location different than their application address.
    2. "Depository Institution": includes lenders under FDIC and any credit union.

[122] BCSH

3. "Federal Banking Agencies": Board of Governors of the Federal Reserve, Comptroller of the Currency, Office of Thrift Supervision, National Credit Union Administration and FDIC.
4. "Nationwide Mortgage Licensing System and Registry": this is the system developed by Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators for licensing and registration of MLO's. Note it is Nationwide not National.
5. "Residential Mortgage Loan": loans primarily for personal, family, or household use that is secured by some document on a dwelling or on property soon to become a dwelling. A dwelling contains 1 to 4 units whether attached or not and includes condos, coops, mobile homes, or trailers if used as a residence.
6. “SAFE ACT": the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (public law 110-289), requires State Licensed Loan Originators to complete Pre-Licensure and Continuing Education Classes.
7. “Unique Identifier": a number or other identifier assigned by the NMLS Registry.
8. “Nontraditional Mortgage Product": any mortgage other than a 30 year fixed rate mortgage.
9. “Expungement": means an order under the Penal Code which allows someone to withdraw a plea of guilty and enter a plea of not guilty or setting aside a guilty verdict, dismissing an accusation, etc.

- 22013. defines a "Mortgage Loan Originator": an individual who for compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan and
  1. 22013(b5A) "Employee": an individual who means and manners of performance of work are subject to the control of a person and whose income is reported on a Federal W-2 form.
  2. 22013(c) "Registered Mortgage Loan Originator": is someone who meets the definition of MLO, is an employee of a depository (think FDIC), and is registered with NMLS.
  3. 22013(d) "Loan processor or underwriter": an individual who performs clerical or support duties as an employee of a MLO licensed by the State or a registered MLO.

Other Important CFL Facts[123]

1. 22100. (a) No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.

2. 22101.5. (a) The commissioner shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all finance lender and broker license candidates, as defined by subdivision (a) of Section 22101, for purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

3. 22102. (a) A finance lender or broker licensee seeking to engage in business at a new location shall submit an application for a branch office license to the commissioner at least 10 days before engaging in business at a new location and pay the fee required by Section 22103. The commissioner may require an applicant seeking to engage in business at a new location to submit its application, or parts thereof, through the Nationwide Mortgage Licensing System and Registry. (b) The licensee may engage in business at the new location 10 days after the date of submission of a branch office application.

4. 22103. At the time of filing the application for a finance lender, broker, or branch office license, the applicant shall pay to the commissioner the sum of one hundred dollars ($100) as a fee for investigating the application, plus the cost of fingerprint processing and the criminal history record check under Section 22101.5, and two hundred dollars ($200) as an application fee. The investigation fee, including the amount for the criminal history record check, and the application fee are not refundable if an application is denied or withdrawn

[123] Chapter 1 Article 4. Regulations

5. 22104. (a) The applicant shall file with the application for a finance lender or broker license financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars ($25,000). Except as provided in subdivisions (b) and (c), a licensee shall maintain a net worth of at least twenty-five thousand dollars ($25,000) at all times.
   - A licensed finance lender or broker, that employs one or more mortgage loan originators and that makes residential mortgage loans, shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars ($250,000).
   - An applicant for a mortgage loan originator license shall apply by submitting the uniform form prescribed for such purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.

6. 22105.2. (a) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

7. 22105.4. The commissioner shall regularly report violations of this division, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry, to the extent that information is public record. Each finance lender and broker licensee shall pay to the commissioner its pro rata share of all costs and expenses, including the costs and expenses associated with the licensing of mortgage loan originators it employs, reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made.

8. 22109. (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a finance lender or broker license for many reasons.
    - A licensee shall maintain a surety bond in accordance with this subdivision in a minimum amount of twenty-five thousand dollars ($25,000). The bond shall be payable to the commissioner and issued by an insurer 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 execution.
    - For licensees with multiple licensed locations, only one surety bond is required. 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.
    - The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee.

9. 22152. A finance lender or broker licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22101 or 22102.
    - No finance lender, broker, or mortgage loan originator licensee shall transact the business licensed or make any loan provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business.
    - The borrower requests, either orally or in writing, that a loan be initiated or made at a location other than the licensee's licensed location.

Penalties for Violations of CFL

Statutes in the Financial Code 22750[124]

22750. If incorrect charges are willfully charged or any provision of CFL is willfully violated by licensed or unlicensed person; any contract is void and there are no rights to any principal, charges or recompense.

22751. If there are any incorrect charges other than willful, only the principal may be collected, no interest or charges.

This shall not apply on errors in computation if a "preponderance of the evidences", which shows that the error was not intentional and resulted from a bona fide error and there are procedures established to avoid such errors and within 60 days the borrower is notified and adjustments made.

22752. If any provisions of this division are violated (not willfully), the penalties of Section 22751 applies, but within a 30 day notice.

22751. If there are any incorrect charges other than willful, only the principal may be collected, no interest or charges.

22753. Willful violation of any provision: Fine of not more than $10,000, county jail for up to 1 year or both.

22755. Examples of Violations:

1. Employ any scheme, device, or artifice to defraud any person.
2. No unfair or deceptive practices.
3. Obtain property by fraud or misrepresentation.
4. Contract for a fee that will be paid even though no loan is obtained.
5. Advertise terms that are not available.
6. Conduct no business without a valid license and not abet any unlicensed person to conduct business.
7. Fail to make all required disclosures.
8. Fail to comply with any state or federation law.
9. No bait or switch advertisements.

[124] Chapter 4. Revocation and Penalties

10. No willful false statements on any reports to any governmental agency.
11. No payments, threats, or promises to any person in connection with loan or to any appraiser to influence their judgment
12. No prohibited fees to be charged.
13. No requirement for excessive property insurance
14. Failure to truthfully account for all money.

22757. No Commissions to unlicensed individuals unless they are exempt from licensure.

Time to Think 4.2

1. When did the CFL become effective? ______________________.
2. Information on the CFL is in which California Code?

   ______________________.
3. The maximum jail term for a violation of CFL is: ______________.

Section 3

Expansion of Homeowner Bill of Rights

The California Homeowner Bill of Rights[125] was passed effective January 1, 2013 and renewed and remodified on January 1, 2019. It is designed to protect homeowners facing foreclosure. Following are some key provisions.

Notification of Foreclosure-Prevention Options[126]

Within five days of recording a notice of default your servicer must generally give you information about options to avoid foreclosure that may be available. The servicer must try to contact you at least 30 days before starting the process to discuss your financial situation and discuss options to avoid foreclosure. Then a notice of default may be recorded in the county where the home is located and will send you a copy within 10 business days.

Guaranteed Single Point of Contact: the borrowers did not know when to contact

Acknowledgment of Application: After you apply for a loan modification, your servicer must notify you within 5 days of missing information, errors, and deadlines.

Restrictions on Fees: No fee can be charged for a loan modification, and no late charges during this time.

Restrictions on Dual Tracking: The servicer cannot pursue two actions at the same time.

Denial Rights: If your application is denied, the reasons for denial must be stated and list other possible prevention options in writing.

Transfer Rights: Any new servicer must honor the foreclosure-prevention alternative.

Verification of Documents: No more ROBO signings. Accurate, complete, and evidence.

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[125] DOJ California Homeowner Bill of Rights
[126] AB 3088

Tenant Rights: Tenants of foreclosed homes must be given at least 90 days notice before evictions can be started. Before doing any evicting in today's market owners must check all new Pandemic regulations and it is recommended that professional legal advice be sought.

The Expansion: California Assembly Bill 3088[127] of 2020 added some additional regulations that were effective immediately on Sept 29. Emergency legislation. Previously, the protection of the HBOR applied only to first lien mortgages or deeds of trust that were secured by owner-occupied residential property containing no more than four dwelling units.

Under the new law, the HBOR will apply to "small landlords" even if not owner-occupied as long as:

1. The property is the tenant's principal place of residence
2. It is an arm's length lease before March 4, 2020
3. Tenant is unable to pay the rent due to a novel coronavirus reduction in income

Under the new law, the HBOR will apply to "small landlords" even if no owner-occupied as long as:

1. The property is the tenant's principal place of residence.
2. It is an arm's length lease before March 4, 2020.
3. Tenant is able to pay the rent due a novel coronavirus reduction in income.

Who is a “small landlord”?

1. Owns no more than 3 residential properties each of no more than 4 dwelling units.
2. One or more individuals who together own no more than 3 residential properties of no more than 4 dwelling units.

These regulations sunset on January 1, 2023.

[127] AB 3088

California Senate Bill 1079[128]

This is another bill pertaining to foreclosure protection for Non Corporations. Signed on September 28, 2020, it was effective on January 1, 2021. During the Great Recession large corporations bulk-purchased foreclosed homes in large bundles which caused owner-occupied home ownership rates to plummet to the lowest level in decades. The Law:

1. Each property at a foreclosure auction must be bid on separately. No bundling. Trustees beware.
2. An “eligible bidder" can make a bid up to 45 days after the sale that exceeds the highest bid at the sale.

Define “eligible bidder”:

1. A tenant, prospective owner-occupant, or a non-profit in which a tenant or a prospect is a voting member or director.
2. Eligible nonprofit in California involved developing and preserving affordable rental housing.
3. A community land trust or limited-equity housing cooperative.
4. State, UC, county, city, district, public authority or agency, etc.

The provisions sunset on January 1, 2026.

Purchasers at foreclosure sales have to follow eviction regulations in the Civil Code.

Local governments were given more authority to assess fines on blighters who acquired property at foreclosure sales, but must give more detailed notice and give owners more time to correct. Also, the fines can now be as high as $2,000 per day.

[128] SB 1079

CHAPTER 4
REVIEW QUIZ

1. In California are there normally more Judicial or Non-Judicial Foreclosures? ______________

2. When a homeowner does not pay when they have enough funds to pay ______________________________________

3. Tools to curb blight are in Assembly Bill:

   ____

4. The California Homeowners Bill of Rights became law on:

   _____________________.

5. The Civil Code Section for this Act is: _______________.

6. The eviction period for this section exempting Rent Controlled Property is: ______________________.

FINAL PROJECT

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

All students must participate in the project by reading the information, forming their answers/opinions, and be prepared to discuss the questions in a discussion led by the instructor.

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.

Art Wagner is a young attorney, real estate broker and loan originator. He has decided to open a compliance office and help others better serve and protect their clients. These are some problems that he has encountered.

1. A broker wants to discuss an advertisement designed to find Reverse Mortgage clients. She had written several phrases that she wants to include and wants him to read them and tell her which phases that are not suitable for distribution.
    a. You will never lose your home once you have a Reverse Mortgage.
    b. You do not have to get approved like a regular loan, but you must pass a Financial Assessment.
    c. If your spouse is a non-borrowing spouse because he is much younger than you, he can stay in the house if you pass away suddenly.
    d. On a fixed rate loan, you can get the entire benefit paid to you in the first year.
    e. With a RM you can buy a home as a rental property.
    f. If you buy a home with a RM, you can rent out your present home.
    g. If the interest rate over the next years will average 6%, your Equity Line of Credit would double in about 12 years. (The Rule of 72)

2. A company owner has approximately 35 MLOs in 2 offices. They have had problems discussing the calculation of the APR under Regulation Z. The MLOs are given a list of bonafide charges and they decide which are normally included in the APR. Yes or NO:
   a. Time price differential
   b. Seller points
   c. Notary fees
   d. Points and loan fees
   e. Service and conveying charge
   f. Abstracts of title
   g. Preparation of deeds
   h. Assumption fees

3. Your company is doing portfolio loans so Negative Amortization Loans are available. Several prospects have stated that they heard these loans are toxic and should be avoided. You want to talk to them about this. What are some of the characteristics of NA loans that could be desirable to certain types of borrowers? In other words, some good points.

4. Debt collector for a lender on a Naval Base. He shows you a script that he wants to use when talking to delinquent sailors who purchased first time buyer homes in California using a Trust Deed vesting. He would like you to review his script and tell him which phrases would not be acceptable to CFPB.
   a. You can lose your home to a Trustee Sale if you become too far behind in payments.
   b. If you do not pay, we can send a letter to your commanding officer.
   c. You cannot sell your home to anyone while there is a Notice of Default on the property.
   d. If you suddenly retire from the service, your loan can be called immediately.
   e. VA Loans cannot be refinanced.
   f. You can be given a three day notice to start eviction
   g. If you go Bankrupt or have a Foreclosure, you will never qualify for a VA loan in the future.

If you let your property go back to the lender, you can be sued and lose your cars and other personal items.

5. An important subject for DFPI licensees to understand is RESPA. One facet is the type of loans that are exempt: Name some of the loans that are exempt. For example, temporary.

6. The Equal Credit Opportunity Act (Regulation B) has several important rules concerning evaluation of an applicant's income. Discuss topics that a creditor must thoroughly consider:

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.
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To Download a full copy of the textbook that accompanies this workbook go to **http://duanegomer.com/nmls/2021.pdf**

About Duane Gomer Inc.,

DUANE GOMER INC. was founded in 1963 to specialize in Real Estate Commercial Sales, Property Management, Syndication and Receiverships. In 1978 a Real Estate Education Company was established. The Mission Viejo Company has grown to be one of the most prolific and professional education companies in California and the United States. Their materials, procedures, testing and instructors are considered State of the Art. Courses are presented live and on the Internet. Passing rates for DGS students are always the highest.

Duane Gomer has authorized many textbooks and has been a columnist in California newspapers. His academics include UCLA MBA, Indiana University B.S., U.S. Navy Commission, and Certified Property Manager.

OUR "PRODUCT LIST" includes Courses both online and live to:

- Qualify and Quickly Pass the California Real Estate Exams.
- Renew any California Real Estate License with no stress.
- Become an NMLS Approved MLO: 20 Hour Pre-License Course and National Exam Preparation Course.
- MLO CE Courses – Most Live Classes in California
- Obtain or Renew a Notary Public Commission – Test at Site
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