DUANE GOMER EDUCATION

Duane Gomer Education Presents

PROFESSIONAL MLO EDUCATION FOR

MLO'S

2023 TEXTBOOK: 1ST Edition

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CA DRE/DFPI SAFE COMPREHENSIVE 8 HOURS OF CONTINUING EDUCATION

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8 Hour CA-DFPI SAFE Comprehensive:
<u>Professional MLO Education 2023 Edition</u>

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Attachments:

1. NMLS Rules of Conduct for Students

DUANE GOMER EDUCATION

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Dear DRE and DFPI Students,

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

1. In a recent survey of our students a high percentage voted for a final project instead of an exam so that will be the procedure to end the class today.

2. Students expressed a strong desire to keep breaks to a minimum and finish faster so we will follow that request.

3. Last year we started a system whereby students downloaded their Certificates from our website. This has made the final checkout go even smoother. As you know, the Certificate is only for your records. We have the official record.

4. Your hours will be banked and the $12 fee will be paid. We are allowed seven days by regulation to complete the process, but your hours are banked much faster. You can't renew your endorsement (pay dues online with the NMLS) until November 1st. The deadline for paying dues and filing is normally December 21st.

5. NMLS Regulations state that an hour is 50 minutes so an 8 hour course has 400 minutes of instruction, including the final project.

6. The Student Information Sheet in the back of the book must be completed, dated and signed and given to the instructor at the end of the class. This is important.

7. You have been told that you can't take the same class two years in a row. This class is a new class for 2023 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/2023.pdf

Thank you,

Duane Gomer

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 MLO's 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

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 these rules are in addition to whatever applicable rules the course provider may have set.

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

As an individual completing either pre-licensure education (PE) or continuing education (CE) I attest the course format I am being credit banked for has been entirely completed by myself and have met required below:

Classroom (live)

- Completed sign-in by providing my signature prior to the start of the course
  - Provided government issued ID at time of sign-in of the course to verify who I say I am
- Engaged with other students and instructor(s)
- Returned from breaks and lunches on time as required
- Participated and was engaged throughout the entire course
  - Properly completed the entire seat-time the SAFE Act required for the approved NMLS course in order to receive an end-of-course completion certificate

Classroom Equivalent (webinar)

- Provided at the time of entering the webinar platform:
- Government issued ID
- Knowledge-Based Authentication
- Returned from breaks and lunches on time as required
- Properly completed the entire seat-time the SAFE Act required for the approved NMLS course in order to receive an end-of-course completion certificate by the following means:
- Use of camera for the entire duration of the course and visible from the shoulders up
- Understand that if I fail to maintain camera presence for a period of greater than 10 minutes I will be removed from the class and not receive credit
- Engaged and completed all course quizzes and case studies
- Engaged and completed all polls
- Understand at various times during the CEQ/webinar course, I will be required to authenticate my identity and engagement.
- Engaged with other students and facilitators/instructor(s)

Online Instructor-Led (online with instructor)

- Provided at the time of entering the Learning Management System (LMS):
- Met the personal identification requirements set forth by the provider
- Will not divulge my login ID or password or login credentials to another individual for any online course
- Used my own personal login information to complete the NMLS approved online course
- Properly completed the entire seat-time the SAFE Act required for the approved NMLS course in order to receive an end-of-course completion certificate by the following means:
- Engaged and completed all course quizzes and case studies
- Engaged with other students and facilitators/instructor(s)

Online Self-Study (online without instructor)

- Provided at the time of entering the Learning Management System (LMS):
- Met the personal identification requirements set forth by the provider
- Used and authenticated my own personal login for BioSig to enter and complete the NMLS approved online course
- Will not divulge my login ID or password or login credentials to another individual for any online course
- Understand at various times during the online course, I will be required to authenticate my identity through a biometric system.

- Properly completed the entire seat-time the SAFE Act required for the approved NMLS course in order to receive an end-of-course completion certificate by the following means:
- Engaged with all the course content and completed all course quizzes and case studies

Additionally, I

1. Attest that I am the person who I say I am and that all my course registration information is accurate.

2. Acknowledge that I am required to show a current government issued form of identification prior to class entry and that the name on the identification matches the name as it appears on this course registration.

3. 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. Will not give or attempt to give assistance to any other person who is registered to take an NMLS approved pre-licensure or continuing education course

5. Understand that the course provider has the right to dismiss anyone from class that creates a disturbance or interferes with the administration of the course or other students' learning, including, but not limited to cell phone/smart watch usage.

6. Acknowledge that any outside activities are prohibited while attending class and grounds for immediate removal from class.

7. 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.

8. Will not engage in any conduct that is dishonest, fraudulent, or would adversely impact the integrity of the course(s) I am completing or the conditions for which I am seeking licensure or renewal of licensure.

9. Understand and acknowledge my responsibility to report any violations or misconduct involving any of the above Rules of Conduct to the Mortgage Testing and Education Board (MTEB).

10. 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

By signing below, I understand the Rules of Conduct listed above, and that any violations to these rules will be subject to an investigation by the state(s) in which I am seeking licensure in or maintaining licenses in. The results of any investigation may subject me to disciplinary actions by the state(s) or the State Regulatory Registry (SRR), including but not limited to:

- Revocation, suspension, or denial of license
- Disqualification from receiving class credit
- Retraction of class credit
- Fines
- Additional education

Print Name:________________________________ Course Number(s): _____________

Signature: _________________________________ Date (mm/dd/yyyy):_____________

Email: ____________________________________ NMLS ID# ____________________

CHAPTER 1

2-HOUR SAFE ACT

NON-TRADITIONAL MORTGAGE

SECTION 1

SELLER FINANCING

Introduction

Seller financing, also known as seller carryback financing, is a means of providing financing to real estate buyers outside of conventional or government-backed programs. With seller financing, the seller finances all or a portion of the purchase price through taking a promissory note from the buyer. In essence, with the closing of the purchase transaction, the seller becomes the buyer's lender.

Reasons for Seller Financing

The types of sellers who offer or will consider seller financing are varied, as are their reasons for doing so. The primary reason for providing seller financing is that it makes the property more attractive to a wider range of buyers, thereby improving the ability to sell the property, and often commanding a higher sales price.

For buyers, many have the means of affording a home, but cannot qualify under traditional underwriting requirements. For these buyers, the concept of the seller financing all or a portion of the purchase is enticing. Advantages for buyers include:

1. Ease of the application process
2. Ability to purchase a home for which they might not otherwise qualify
3. Less stringent underwriting or qualification
4. Elimination of Private Mortgage Insurance if the senior loan is lowered
5. Down payment assistance
6. Competitive interest rates
7. Debt is not reported to credit reporting agencies

Builders/Developers

Builders, from subdivision developers to single home builders, will sometimes offer to finance the purchase of properties they build. Many feel they can attract more buyers to their properties, making it easier to sell more homes, and for higher prices. Large builders often have affiliated financing companies which provide purchase financing to their buyer clients. The financing is usually provided through an in-house lending arm. The loans are then sold on the secondary market. These larger developers build sales and finance teams within their organizations to facilitate the buyer’s purchase. Providing financing can represent an additional profit center to the builder.

Home Rehab/Flippers

Home rehab builders have similar reasons as ground-up construction contractors for offering seller financing. Doing so makes their properties more marketable to a wider buyer group. Seller financing is especially helpful in a tighter real estate market.

REO Lenders

REO lenders will also at times offer to provide seller financing to potential buyers. If the property is difficult to sell, in an unappealing location, is non-standard, or is in need of repair, offering to finance a portion of the purchase price can help to sell a property that might not otherwise receive an offer.

Individual Homeowners

Individual homeowners may be open to financing all or a portion of the purchase price to help their property sell. Often this comes in the form of assisting the buyer with down payment funds. A conventional lender may finance 80% of the purchase price, the seller finances 10% in second position, and the buyers put in 10% as a down payment. This is known as an 80/10/10 loan.

In addition to making their property more attractive to buyers with this financing option, some sellers find their properties difficult to sell. Similar to REO lenders, some sellers' homes are in need of repairs, are sub-standard for the market, are in a poor location, or have other flaws that make it difficult to attract a buyer. Offering seller financing can help to coax purchase offers from otherwise reluctant buyers.

Only sellers who do not need to receive 100% of the sales proceeds will be able to consider seller financing. Sellers who are buying another property may need or want to use all of the sales proceeds as a down payment for their new purchase. Therefore, seller financing is not an option for all sellers. Only sellers with significant equity in their properties are strong candidates. A retiree who is buying down, or moving in with family, is one example of a seller who may have substantial equity in their home, and who may not have immediate need of all of their sales proceeds.

Some homeowners or rental property owners might want to "take back a second" to delay income tax on any capital gains. Rental property owners have no tax exclusion so an "installment sale" could be prudent tax planning.

Economic Factors

Several economic factors can favor seller financing.

1. A buyer's market: Although the terms are individually negotiated between the buyer and seller, the interest rate offered on seller carryback loans is often less than that offered by conventional lenders, making these loans very attractive to potential buyers.
2. High interest rate environment: As interest rates increase, fewer and fewer buyers are able to afford to purchase a home. In such times of high interest rates, a seller who can offer seller financing has a distinct advantage in the market.
3. Difficult economic times: Such as times of high inflation or uncertainty in the job market
4. Tax advantages
5. Consistent income to the seller
6. Security of the investment
7. The loan is secured by real estate

Although every investment comes with its own risks, a loan secured by real estate, with an interest rate likely above what banks offer on savings accounts and CD's, can be an attractive investment opportunity for the seller. Homeowners financing the sale of their personal residence, and who are therefore intimately familiar with the real estate collateral, may be particularly comfortable with the idea.

Tax Consequences

For the seller, there can be tax advantages with carrying a seller carryback note, rather than receiving all the sales proceeds at one time. If the seller has a gain on the sale of the home, capital gains taxes may need to be paid. Federal law currently exempts gains on the sale of a personal residence of up to $250,000 per individual and $500,000 per married couple.[1] Gains above these limits must be reported as taxable income in the year they are received, and the homeowner will be subject to capital gains taxes on them.

[1] IRS Publication 523, Selling Your Home (2022)

For seller carryback notes, the interest received on the loan is reported as interest income in the year it was received on Schedule B of IRS Form 1040. Any principal received that is above the federal limitations and is therefore reportable as a capital gain, is also reported in the year it was received.

When only a portion of the gain is received at the time the property is sold, with the remainder being received over time in the form of principal payments on a note, this is referred to as an Installment Sale. In other words, an installment sale is a sale of property where one or more payments are received after the close of the tax year in which the sale occurs. IRS Form 6252 is used to report this income.[2]

For individuals interested in minimizing their taxes in the year they sell their home, providing seller financing, with all or a portion of the gain deferred over time, can be very advantageous.

Nonrecourse Loans

Under the California Civil Code of Procedures, a consumer loan to purchase a one-to-four residential property to be owner-occupied is nonrecourse.[3] Such loans are considered to be 'Purchase Money Loans.' Under the law, "…no deficiency shall be owed or collected, and no deficiency judgment shall lie…under a deed of trust or mortgage on a dwelling for not more than four families given to a lender to secure repayment of a loan that was used to pay all or part of the purchase price of that dwelling, occupied entirely or in part by the purchaser."

This means that, in the event of a default, the seller can only look to the property to recover the debt. The seller cannot obtain a deficiency judgment from the borrower for any amounts owing on the note after the nonjudicial foreclosure. If the amount of the debt is $400,000, and the property foreclosed for $350,000, the $50,000 deficiency becomes uncollectible. This applies, even if the loan is a refinance, as long as the original debt being refinanced was a purchase money loan used to purchase the property.[4]

[2] IRS Form 6252, Installment Sale Income (2022)
[3] CA CCP § 580B(a)(3)
[4] CA CCP § 580B(b)

Seller Financing: Risks for the Seller

Although there are many advantages to sellers in providing seller carryback financing, there are risks as well. As lenders, these sellers should understand the risks and have a plan of action to deal with any issues that may arise. MLO's and real estate agents who work with seller financers should make sure they have disclosed all potential risks to the seller.

1. Buyers who miss loan payments or stop paying on the loan altogether
2. Buyers who do not pay off the loan in full when it is due
3. Borrower bankruptcy
4. Nonpayment of property taxes
5. Cancellation of fire or flood insurance coverage
6. Damage to the home due to unforeseen circumstances, such as fire, flood or wind damage
7. The value of the real property, and therefore the collateral for the seller's note, decreases due to market conditions.

Junior Liens: Special Considerations

Often the financing provided by the seller is in the form of a junior lien. The borrower may qualify for a conventional first mortgage, but may need help with the down payment, such as the 80/10/10 loan referred to earlier.

Junior loans carry an additional risk if the senior loan becomes delinquent or goes into default. If the senior lender forecloses on its note, the junior lender could lose the collateral for its loan. Proceeds from the foreclosure sale will go first to the senior lender, and then, if any proceeds remain, to the junior lender.[5] In most foreclosures, the sale proceeds are not sufficient to provide any payment to the junior lender. This is known as a 'sold-out junior lender.'

The junior lender's note is still valid, but there will be no collateral for it. If this occurs, the junior lender will attempt to collect the debt from the borrower, but it will be made more difficult without the help of underlying collateral for the loan.

[5] CA Civil Code § 2924(k)

To avoid the potential loss of the collateral for their loan, junior lenders often use their own funds to make payments on the senior loan to bring it or to keep it current. They may also need to advance funds to pay the property taxes or insurance premiums. If things become difficult, the seller may need to consult attorneys or engage a foreclosure trustee. Under the terms of the loan documents, the junior lender is allowed to add any amounts they spend to protect their collateral (called 'protective payments') onto the principal of their loan and collect it from the borrower.

Seller Financing: Risks for the Borrower

Although perhaps the seller's risks can be more substantial, having to do with financial losses, there can also be risks on the borrower's side of the equation. These chiefly arise from an unsophisticated or careless seller who's servicing the loan themselves. Some of the issues that occur with seller financing because of poor or unprofessional loan servicing are:

1. Lack of proper accounting of loan payments
2. Incorrect or untimely payoff demand, thereby delaying the closing of refinance or sales transactions
3. Difficulty reaching the seller when needed
4. Deed of Reconveyance not recorded when the loan has been paid in full
5. Annual IRS Form 1098 Mortgage Interest Statement not provided
6. Lost documents, such as the original promissory note
7. Noncompliance in loan collection practices, and possible illegal harassment of the borrower, due to lack of knowledge
8. Death or incapacity of the seller, leading to confusion in the servicing of the loan

To protect themselves, buyers should do the following:

1. Obtain an amortization schedule for their loan prior to closing the transaction.
2. Keep meticulous records of all loan payments made.
3. Obtain the seller's contact information, including address, phone number and email address.
4. When paying off the seller-financing loan, request that the Deed of Reconveyance be deposited into escrow and recorded through the

authority of the escrow officer before authorizing the closing of the transaction.

Time to Think – 1.1

1. If a lender can only look to the property to cover a debt, the loan is_______?
   a. Recourse b. Nonrecourse

2. A loan recorded after a senior loan is called a __________?
   a. Junior Loan b. Qualified

Negotiating the Loan Terms: Usury Concerns

The parties to the contract, either with or without the help of real estate agents, will negotiate the terms of the seller financing. Any length of loan terms can be agreed to, but a term between five and seven years is very common. For seller financing by individual homeowners, a simple fixed interest rate, with interest-only payments, and a balloon payment of the full principal amount due at maturity is what is often negotiated. However, longer or shorter loan terms, and amortizing payments are not uncommon. It really is dependent upon what suits both the buyer and the seller.

Organizational entities, such as REO lenders or builder/developers, often have their own personnel or departments to negotiate the loan terms. State and federal licensing laws and regulations need to be followed by these organizations.

Additional terms that should be considered are:

1. Late charges
2. Maturity date and balloon payment
3. Prepayment premium
4. Due-on-Sale clause

California requires that a Financial Disclosure Statement be attached to the purchase contract outlining the terms of the loan, special provisions, title policy requirements, balloon payment requirements (if applicable), senior encumbrances (if any), and specific disclosures, including financial, legal and risk-of-loss.[6] The California Assn. of Realtors provides this disclosure as C.A.R. Form Seller Financing Addendum (SFA) 6/22.

In California, absent an exemption, the maximum available interest for consumer loans is 10% per year.[7] Under California law, seller financing is expressly exempt from usury restrictions. The law considers seller financing to be a transaction under the time-price differential doctrine, meaning that the financing is not a loan at all, but simply an extension of the purchase price.[8]

The Loan Application

Different sellers may vary in the information they request from the buyer/borrower. At the very least, the seller should request a fully completed loan application and a borrower credit report. Seller carrybacks should not be entered into without the seller understanding the borrower's financial situation. The borrower should also expect to provide their contact information and tax ID number to the seller.

Loan Documentation

Although they can be prepared by legal counsel, the loan documents are often prepared by the escrow officer using simple forms commonly available in the industry. In addition to the purchase contract and Financial Disclosure Statement which outline the loan terms and are prepared by the real estate agents, the following documents are also needed:

1. **Promissory Note:**
   The promissory note is a financial instrument that is the evidence of the loan and contains the terms of the financing and the borrower's promise to pay.
2. **Deed of Trust:**
   The deed of trust is recorded with the county recorder where the property is located. It conveys title to the property to a trustee as security for the loan until it is repaid. The deed of trust contains clauses

[6] Cal. Civil Code § 2956 et. seq.
[7] CA Const. Art. XV, §1(2)
[8] Southwest Concrete Products v. Gosh Construction Corp. 51 Cal. 3d 701, 798, P2d 1247 (1990)

outlining the borrower's obligations on the loan, including financial obligations and continuing maintenance of the property. It also provides for the power of sale to the trustee, which allows for the foreclosure of the loan under specified circumstances.

3. **Request for Copy of Notice of Default:**
   This document is used for junior loans and is also recorded with the county recorder where the property is located. It provides constructive notice to the senior lender that there is a junior loan. A copy of any Notice of Default of the senior loan must be timely delivered to the junior lender.[9]
4. **Request for Notice of Delinquency:**
   This form is also used for junior loans. Delivered directly to the senior lender by the junior lender, it requests that the senior lender advise the junior lender of any delinquency on their loan when it occurs. Senior lenders are not required to comply with this request.

Title Policy and Additional Considerations

To protect the seller's interest in the property the following should be obtained:

1. Lender's title policy insuring the loan and its lien position.
2. A Tax Service: This service can be ordered for a nominal cost. The service provider will alert the seller if the borrowers do not pay their property taxes.
3. Loss Payable Endorsement on borrower's hazard insurance policies, including fire, and if applicable, flood and earthquake. Insurance providers are required to notify loss payees of any policy cancellation. The seller should keep track of the insurance expiration date and obtain an evidence of the policy renewal every year.

Servicing the Loan

Larger organizations, such as REO lenders and Builder/Developers will usually have their own resources to service their loans, either in-house or by outsourcing it to a professional loan servicer. Individual homeowners may be tempted to service their loan themselves. This can be a fairly easy process for

[9] CA Civil Code § 2924B(a)& (b)(1)

many, particularly if the borrower pays on time and keeps their insurance and property tax payments current. As noted above, however, problems can arise. Professional loan servicing companies do exist that work with individual lenders. They may be helpful to novice seller financers or when issues do come up.

One important thing to keep in mind is that the seller will need to provide the borrower with an IRS Form 1098 at the end of each calendar year reporting the amount of interest paid on the loan by the borrower during that year. A copy of this form will also need to be sent in to the IRS.[10]

[10] IRS Instructions for Form 1098 (01/2022)

SECTION 2

FEDERAL LAW & SELLER FINANCING

Loan Originator Compensation

In 2013 the Consumer Financial Protection Bureau (CFPB) introduced rules relating to the application of federal consumer laws and regulations to seller financing transactions.[11] These rules became effective on January 1, 2014. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act a "Loan Originator" must comply with federal consumer protection regulations relating to loan disclosures and the Loan Originator Compensation Rules.

Sellers who finance all or a portion of the sale of their property may fall under the definition of Loan Originator under the Truth-in-Lending Act (TILA), if they receive direct compensation in the form of loan points or origination fees from the borrower.[12]

A seller who finances the purchase of residential property containing one to four units may be considered to be a Loan Originator under TILA, unless expressly exempt under the 2014 rules. Without an exemption, sellers will have to comply with the Loan Originator Compensation and Ability-to-Repay rules found in TILA.

These rules, and exemptions, only apply to consumer loans secured by one to four residential properties.[13] There are two exemptions allowed by the CFPB.[14]

One-Property Exemption

Most homeowners who finance the purchase of their property will qualify under this exemption. To be exempt under the One Property Exemption, the following rules apply:

[11] 12 CFR 1026.36(1)
[12] 12 CFR 1026.36(a)(1)
[13] 12 CFR 1026.36(b)
[14] 12 CFR 1026.36(a)(4) & (5)

1. Seller is a natural person, estate or trust.
2. Seller may only provide financing for the sale of one property in a 12-month period, which is owned by the natural person, estate or trust.
3. Seller has not constructed, or acted as a contractor for the construction of a residence on the subject property.
4. Financing provided meets the following requirements:
    a. Repayment schedule does not include negative amortization.
    b. Financing has a fixed rate or an adjustable rate.
    c. If the financing offered has an adjustable rate, the following rules apply:
        - Rate is determined by the addition of a margin to an index rate.
        - A minimum period of five years must elapse before the first rate adjustment.
        - Reasonable periodic and lifetime rate adjustment limitations are provided.
        - The index that the rate adjustment is based on is widely available.

Three-Property Exemption

Some individual sellers and REO lenders may be able to qualify for the Three-Property Exemption. Under this exemption, the following rules apply:

1. Seller can be a natural person, estate or trust, or an organization, such as a corporation, partnership or limited liability company.
2. Seller cannot provide financing for the sale of more than three properties which are owned by the seller in a 12-month period.
3. Seller has not constructed, or acted as a contractor for the construction of a residence on the subject property.
4. Financing provided meets the following requirements:
    a. The financing is fully amortizing.
    b. The seller determines in good faith that the consumer has a reasonable Ability-to-Repay.[15]
    c. Financing has a fixed rate or an adjustable rate.
    d. If the financing offered has an adjustable rate, the following rules in 4. b and c above apply.

[15] 12 CFR 1026.36(a)(4)(iii)(B)

The SAFE Act

Under the Secure and Fair Enforcement (SAFE) Act, a loan originator is defined as an individual who:

1. Takes a residential mortgage loan application; and
2. Offers or negotiates terms of a residential mortgage loan for compensation or gain.[16] **(Interesting)**

Mortgage and real estate professional working with buyers and sellers to negotiate the terms of seller financing should have a National Mortgage License System (NMLS) license or endorsement. Sellers are best advised to negotiate the terms of the financing through a real estate agent licensed under the NMLS.

Ability-to-Repay Rule

If the seller is a Reg. Z Creditor as defined under TILA, they must prove that the borrower has the Ability-to-Repay for consumer loans secured by one to four family residential properties.[17] A Reg. Z Creditor is one who:

1. Extends credit (other than high-cost mortgages) secured by a dwelling six or more times in the preceding calendar year; or
2. Extends more than one high-cost mortgage in any 12-month period.[18]

Most individual homeowners would not be considered to be Reg. Z Creditors, and would therefore be exempt under the Ability-to-Repay rule.

Conclusion

Although MLO's are not often involved in seller financing transactions, they do sometimes occur, and it is important for originators to understand both their advantages and risks. They are a useful tool in helping property owners sell

[16] 12 U.S.C.A 5102(4)
[17] 12 CFR 1026.36(a)(1)
[18] 12 CFR 1026.2(1)(17)

their properties, particularly for less-than-standard properties or during challenging economic times.

Seller carryback loans are an option that MLO's would be wise to keep in mind. Elevating one's professional knowledge helps an MLO stand out from the crowd. When working with buyers, the MLO can:

1. Be a reliable source of information to borrowers considering seller financing.
2. Facilitate the closing of conventional or government purchase loans with seller financing behind them.
3. Have a better understanding of borrower circumstances when refinancing a seller carryback loan.
4. Provide an additional option when representing the borrower who's looking to purchase a home.
5. When properly licensed, earn a commission on the seller carryback loan when negotiating its terms on the behalf of the borrower.

All in all, seller financing is a useful tool that equates to more properties sold. That's good for the economy, and good for the real estate industry, and good for your clients. It can help get more borrowers into homes. And it can help sellers sell their properties, while possibly deferring capital gains taxes on the sale.

Time to Think – 1.2

1. Seller financing is _______ from California Usury Regulations.
   a. Exempt b. Non-exempt

2. The SAFE ACT stands for?
   a. Safe and Fair Enforcement Act b. Secure and Fair Entitlement Act

SECTION 3

VA LOANS

History of VA Loans

The Department of Veterans Affairs (VA) began offering veterans home loans in 1944. It was part of the Servicemen's Readjustment Act of 1944[19], Public Law 78-346. The idea was to offer veterans home loans that would be less expensive than bonuses and would benefit the veterans more. The VA believed that veterans and active service personnel have no opportunity to establish a credit rating, and this program would help them to become homeowners.

Now, loans can be guaranteed for veterans not only of war time service but also of peacetime service and active service personnel. Surviving spouses can also be offered loans. We realize that the Navy, Air Force, Army, Coast Guard and Marines qualify, but you can add more; National Guard Personnel, Public Health Service, Cadets and Female/Male Midshipmen, Merchant Marines from World War 2 (they would be over 96 years of age) and do not forget the Space Force, which was recently added.

Loan Limits Comparisons

Following are some sample FHA[20] and VA loan limits in the California Counties for 2023:

Alpine	$497,950	Orange	$1,089,300
Amador	$472,030	Riverside	$644,000
El Dorado	$763,600	Sacramento	$763,600
Inyo	$508,300	San Bernardino	$644,000
Los Angeles	$1,089,300	San Diego	$977,500
Mendocino	$546,250	San Joaquin	$656,650

[19] Servicemen's Readjustment Act (1944)
[20] FHA Mortgage Limits

Mono	$693,450	San Luis Obispo	$911,950
Monterey	$915,400	Santa Barbara	$805,000
Napa	$1,017,750	Sonoma	$861,350
Nevada	$644,000	Ventura	$948,750

It might be interesting to see some limits from the past. The following list shows the limits for 2000 only 23 years ago:

Alpine	$121,296	Orange	$219,849
Amador	$123,000	Riverside	$179,050
El Dorado	$177,650	Sacramento	$177,650
Inyo	$161,500	San Bernardino	$179,050
Los Angeles	$214,985	San Diego	$219,849
Mendocino	$123,500	San Joaquin	$219,849
Mono	$121,296	San Luis Obispo	$213,750
Monterey	$219,849	Santa Barbara	$219,849
Napa	$209,950	Sonoma	$219,849
Nevada	$152,362	Ventura	$219,849

Some Statistics Based on the 2020 Census

1. Counties with the largest population in the United States:

    a. Los Angeles (1st) 10,014,009
    b. San Diego (5th) 3,298,634

c. Orange (6th) 3,186,989
d. Riverside (10th) 2,414,185

2. County with the largest area in the United States:

   San Bernardino 20,105 square miles

3. Wealthiest city in the United States:

   Atherton, CA $526,856 median income

Some People Are Writing VA Loans

Many Mortgage Loan Originators believe that very few VA Loans are written because of the many different problems and timing, and that they are too difficult to close or appraise. Some companies are selling according to the following list.

The latest national information at the time of this writing; the figures please:

	Company	Number of Loans	$ Volume
1.	Freedom Mortgage	155,000	$43.0 Billion
2.	Rocket Mortgage	107,000	$29.7 Billion
3.	Veterans United	100,000	$29.7 Billion
4.	Penny Mac	59,000	$17.5 Billion
5.	United Wholesale Mort	40,000	$15.1 Billion
6.	Navy Fed CU	38,000	$12.7 Billion
7.	Loan Depot	33,000	$12.1 Billion
8.	Caliber Home Loans	30,000	$10.6 Billion
9.	USAA	28,000	$ 7.8 Billion
10.	Lakeview Loan Serv.	24,000	$ 7.0 Billion
11.	Home Point	24,000	$ 7.2 Billion

Why VA Loans

The number of VA Loans being originated pales when compared to conventional home loans, but there is some volume. In the 2023 market it might be prudent to not dismiss any type of loans.

When I have talked to active VA loan originators, they agree on several points. Most VA applicants are excellent clients. The foreclosure rates are low, and delinquency rates are low. Also, when they are asked to turn in paperwork the paperwork is turned in, on time, or early.

The clients are pleasant, respectful, and they listen. A lot of "Yes, Sir" and "Yes, Ma'am". They are nice people and organized.

My friends who work with Reverse Mortgages have told me many times that when they close a loan, they feel really good. They have helped someone. The borrowers are very thankful, and in almost all cases the heirs are thankful.

This seems to be the same with VA Loans. You will feel pleased and patriotic that you have helped someone who is serving our country or did serve the country. Let's get out into the field and do our duty to help the Senior Citizens and the Veterans. Many of you tell strangers, "Thank you for your service". Now find them a loan and really help them.

So Hooyah to the Navy, Oorah to the Marines, Hooah to the Army and Huah to the Air Force, and don't forget the Space Force. See you at the closing.

VA Loan Myths BUSTED[21]

Yes, there are many myths concerning VA Loans. It is our duty to assist the public in finding the loan most suited to them. I believe that in many cases that might be a VA Loan. I know that there were times earlier in my real estate years that a VA Loan might have been very helpful to my family.

I never applied for one because I thought you had to be in the service in wartime. I learned recently that my service as a naval officer on the Rheine River Patrol in the late 50s was considered duty during the "Cold War". I was

[21] The 13 Biggest VA Loan Myths Busted

uneducated and missed out. Let's check some myths so other veterans do not miss out.

MYTH #1 You can only use your benefit one time.
FACT: That is incorrect. You can use it many times and many people do.

MYTH #2 You can only have one VA Loan at a time.
FACT: If you used your VA benefits to purchase a home that is now being rented, and you did not use all of your eligibility, you can apply the remainder to a second VA home loan.

MYTH #3 VA loans can only be used to buy a house.
FACT: VA loans can be used to refinance to 100% of the home's value in most cases.

MYTH #4 VA loans are small and only ideal for starter homes.
FACT: VA loans are available at traditional loan limits and above.

MYTH #5 VA loans take too long to process and close.
FACT: Most VA loans don't take any longer to close than a conventional or FHA loan. The key is working with lenders, appraisers and escrow officers who know the process.

MYTH #6 It's too difficult to qualify for a government program.
FACT: In some ways it's easier to qualify for a VA loan. Typically, a slightly lower credit score and less stringent guidelines apply to VA financing.

MYTH #7 VA loans are too expensive with the upfront Funding Fee.
FACT: When you do the math, a VA loan may cost less than other programs.

MYTH #8 Vets have to be discharged or retired to use their VA loan benefit.
FACT: Active service members get full access to the VA mortgage benefit, too! After 181 days of continuous active duty service.

MYTH #9 Vets who are serving away from home or overseas can't get a loan until they can return to occupy the property.
FACT: Military men and women who are away on active duty can obtain a VA loan if they intend to return home within a year or have a spouse who will occupy the property in the interim.

MYTH #10 Widows or widowers of Vets are not eligible for the VA loans.
FACT: Surviving spouses of fallen veterans who died on active duty or as a result of a service-connected disability may be eligible for a VA loan.

MYTH #11 I have to have my VA Certificate of Eligibility in hand before I can look for a house or apply for a loan.
FACT: Not True.

MYTH #12 VA home loan appraisals and inspections are tougher than those for conventional or FHA financing.
FACT: VA does not appraise or inspect your home. And there are steps available to question an appraiser which we will discuss later.

VA Loan Benefits[22]: A List of 10

1. **No Down Payment on a VA Loan**
   Most home loan programs require you to make a small down payment to buy a home. The VA home loan is an exception.

2. **No Mortgage Insurance for VA Loans**
   Other lenders require you to pay for mortgage insurance if you make a down payment that's less than 20%.

3. **VA Loans Have a Government Guarantee**
   This guarantee encourages and enables private lenders to offer VA loans with exceptionally attractive terms.

4. **You Can Shop for the Best VA Loan Rates**
   VA loans are offered by U.S. banks, savings-and-loans institutions, credit unions, and mortgage lenders, each of which sets its own VA loan rates and fees.

5. **VA Loans Don't Allow a Prepayment Penalty**
   A VA loan won't restrict your right to sell the property partway through your loan term. A good benefit.

[22] VA Loan Benefits

6. **VA Mortgages Come in Many Varieties**
   A VA loan can have a fixed rate or an adjustable rate. Also, you can use a VA loan to buy a house, condo, new-built home, manufactured home, duplex, or other types of properties.

7. **It's Easier to Qualify for VA Loans**
   Compared to other loan programs, VA loan guideline tend to be more flexible. This is made possible because of the VA loan guarantee.

8. **VA Loan Closing Costs are Lower**
   The VA limits the closing costs lenders can charge to VA loan applicants. This is another way that a VA loan can be more affordable than other types of loans.

9. **The VA Offers Funding Fee Flexibility**
   VA loans require a "funding fee", an upfront cost based on your loan amount, your eligible service, your down payment, and other factors. Funding fees don't need to be paid in cash, though. The VA allows the fee to be financed with the loan, so nothing is due at closing.
   And, not all VA borrowers will pay it. VA funding fees are normally waived for veterans who receive VA disability compensation and for unmarried surviving spouses of veterans who died in service or as a result of a service connected disability.

10. **VA Loans are Assumable**
    Most VA loans are "assumable," which means you can transfer your VA loan to a future home buyer if that person is also VA-eligible. Assumable loans can be a huge benefit. If your home loan has today's low rate and market rates rise in the future, assumption becomes even more valuable.

Minimum Property Requirements

One of the most critical VA loan requirements is that the home buyer must have an appraisal completed by an approved VA appraiser before your loan officer can approve your loan.

Like a FHA loan, a VA loan appraisal will look for specific features of a home. The VA refers to these features as Minimum Property Requirements[23], or MPRs. These features include:

1. Functional Heating and Cooling System
2. Adequate Roofing
3. A Structure Free From Termites and Other Pests
4. Proper Water and Sanitation
5. Walls Free From Mold
6. Proper Drainage and No Water Damage
7. Accessible Property Year-Round
8. No Lead-Based Paint
9. Sufficient Living Space
10. Accessible Attic and Crawlspace

VA home purchase transactions can typically go smoothly when a home's price matches its appraised value and the appraisal doesn't note any serious conditions that go against VA's Minimum Property Requirements. Although snags in the process can happen when something needs to be repaired, try to remember that the MPRs the VA requires are designed to help you get a property in a safe, sanitary, and sound living standard.

You always have the option to walk away from a property if it requires more repairs than you are willing to deal with.

CAIVRS Authorization-Business Background[24]

Information That You Need to Know

When someone gets approved for a loan, the lender will get their credit scores. Most buyers have some knowledge about the scores from the three agencies. And you can get a free credit report from the agencies each year, but the agencies do not share their credit scores. Plus the scores vary.

On a VA loan you will learn a new HUD word. CAIVRS: This stands for Credit Alert Verification Reporting System. Your borrower is not home free until he or she or they pass this test.

[23] VA Loan minimum property requirements
[24] Credit Alert Verification Reporting System (CAIVRS)

The Credit Alert Verification Reporting System (CAIVRS) is a Federal interagency database that contains the following:

1. Delinquent Information from the Departments of Housing and Urban Development, Agriculture, Education, Veterans Affairs and the Small Business Administration.
2. Lien Judgment Information from the Department of Justice.

CAIVRS Authorization is used to access CAIVRS and determine if a potential borrower has a Federal debt that is currently in default or foreclosure or has had a claim paid by the reporting agency within the last three years. Federally approved lenders must use CAIVRS to prescreen all applicants for Federally insured loans except for FHA streamline refinance cases. CAIVRS provides up to ten sets of information for each borrower.

VA Escape Clause[25]

Regulatory requirements stipulate that a Loan Guaranty Certificate may not be issued for a loan to finance a contract that was signed prior to the Veteran's receipt of the notice of value (NOV), unless the contract includes, or is amended to include, the following "escape" clause:

> "It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs."

The Escape Clause is demonized by many in the Real Estate Industry. "It destroys too many sales, and sellers don't like it".

In California, The CAR California Residential Purchase Agreement and Joint Escrow Instruction Form is the benchmark in Real Estate sales. The 12/22 Revision is 16 pages, much larger than when I started in Real Estate.

[25] VA Escape Clause

The RPA (Residential Purchase Agreement) also has an Appraisal Contingency Section 8B(1), and it states,

> "This Agreement is, **unless otherwise specified in paragraph 3L(2) or an attached CR form**, contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the amount specified in **paragraph 3L(2),** without requiring repairs or improvements to the Property. Appraisals are often a reliable source to verify square footage of the subject Property. However, the ability to cancel based on the measurements provided in an appraisal falls within the investigation of Property contingency. The appraisal contingency is solely limited to the value determined by the appraisal. For any cancellation based upon this appraisal contingency, Buyer shall deliver copy of the written appraisal to Seller, upon request by Seller."

Tidewater

The VA has a unique set of appraisal protocols, known as the **Tidewater** [26] **Initiative** that a VA appraiser must follow when he or she expects that the appraised value of a property is going to be lower than its contract price.

Tidewater initially began as a test program in the early 2000s and was expanded to all areas of the country in 2003, as a result of VA Circular 26-03-11. This initiative was subsequently reaffirmed in the issuance of VA Circular 26-17-18 in July 2017.

Tidewater gives the lender (or another party to the transaction) the opportunity to provide relevant data to the appraiser to support the sale price before the appraisal report is submitted to the VA. This initiative has significantly reduced the number of formal Reconsideration of Value (ROV) requests received by the VA.

If it appears to a VA appraiser that the appraised value of a property is going to come in below the pending sales price, the appraiser must contact the designated point of contact (POC) party that is specified in the appraisal order.

[26] VA Tidewater Appraisal Process

The appraiser is not supposed to discuss the contents of the appraisal with the POC at this point, except to explain they are asking for whatever additional information the POC may be able to provide.

After receiving any additional information, the appraiser must complete the appraisal report indicating this process was utilized in an addendum clearly labeled **"Tidewater."**

When the appraiser reaches out to the point of contact to invoke Tidewater, the appraiser is not at liberty to discuss the value with the POC; he or she is merely permitted to ask for additional information.

Sometimes this conversation can be quite uncomfortable, but it is the appraiser's obligation to make the call and follow the Tidewater procedures.

Sometimes Tidewater, does not increase the evaluation enough to complete the transaction. The buyer can refuse to continue, or a formal Reconsideration of Value request could still be sent to the VA.

CONCLUSION: Investigate VA Loans. Your clients and you might be pleased you did.

YOU BE SAFE OUT THERE

Time to Think -- 1.3

1. The maximum Mortgage Insurance rate on a VA loan is?
   a. 10% b. 0%

2. A special VA appraisal procedure is called?
   a. Tidewater b. Reevaluation

CHAPTER 1

REVIEW QUIZ

1. The down payment on a VA Loan is?
   a. 0%   b. 10%

2. The CAR loan contingency is for ____ days?
   a. 17   b. 30

3. The Usury limit on consumer loans in California is?
   a. 14%   b. 10%

4. The document that shows that a loan has been made is?
   a. Promissory Note   b. Trust Deed

5. The Federal Regulation that discusses Seller Financing is?
   a. DNC   b. REG Z

CHAPTER 2

2-HOUR SAFE ACT

SECTION 1

ETHICS

Introduction

HUD Housing Counseling Updates

The HUD Housing Counseling Program continues to provide much needed help to families who are trying to become mortgage ready. Regardless of the current status of the housing market, homeownership is still a desire to a vast majority of the Country.

HUD approved Counseling Agencies also have been kept busy helping families and individuals who have housing issues as a result of the effects of the recent pandemic. Agencies are still receiving requests for help from:

1. Renters who are having problems keeping up with the rise in rents.
2. Homeowners who had their mortgage payments put on hold as a result of a forbearance program.
3. Renters and homeowners who are fearful of becoming homeless as a result of the rise in interest rates, home prices and rental rates.
4. Homeowners who are having trouble with their loan servicer with requests for mortgage loss mitigation options.

Current Housing Counseling Stats[27]

Clients who have received pre-purchase counseling or education…

1. Are 42% less likely to fall into foreclosure.
2. Reduce their risk of default by approximately 30%.

Clients who have received foreclosure mitigation counseling are…

1. 2.83% times more likely to receive a loan modification.
2. 70% more likely to bring their payments current.
3. 45% more likely to sustain modifications obtained for seriously delinquent mortgages.

S.A.F.E. Mortgage Licensing Act

Regulation G describes the registration requirements for residential mortgage loan originators employed by covered financial institutions.

Taking a loan application ***includes*** receiving information provided in connection with a request for a mortgage, to be used to determine whether the consumer qualifies for the loan, even if the employee:

1. Has received the consumer's information indirectly in order to make an offer or negotiate a mortgage.
2. Is not responsible for verifying information.
3. Is inputting information into an online application or other automated system on behalf of the consumers.
4. Is not engaged in approval of the loan, including determining whether the consumer qualifies for the mortgage.

Taking a loan application ***does not*** include any of the following activities performed solely or in combination:

1. Contacting the consumer to verify the information in the loan application by obtaining documentation.

[27] Housing Counseling Works

2. Receiving a loan application through the mail and forwarding it, without review to loan approval personnel.
3. Assisting a consumer who is filling out an application by clarifying what type of information is necessary or otherwise explaining the qualifications or criteria necessary to obtain a loan product.
4. Describing the steps that a consumer would need to take to provide information to be used to determine whether the consumer qualifies for a loan or otherwise explaining the loan application process.
5. In response to an inquiry regarding a prequalified offer that a consumer has received from a covered financial institution, collecting only basic identifying information about the consumer and forwarding the consumer to an MLO.
6. Receiving information in connection with a modification to the terms of an existing loan to a borrower as part of the covered financial institution's loss mitigation efforts when the borrower is reasonably likely to default.

The following examples are designed to illustrate when an employee offers or negotiates terms of a loan, and conversely, what does not constitute offering or negotiating terms of a loan

Examples of offering or negotiating the terms of a loan **(license required):**

1. Presenting a loan offer to a consumer for acceptance, either verbally or in writing, including providing a disclosure of the loan terms after application under the TILA, even if:
   a. Further verification of information is necessary.
   b. The offer is conditional.
   c. Other individuals must complete the loan process.
   d. Only the rate approved for a specific loan product is communicated without authority to negotiate the rate.
2. Responding to a consumer's request for a lower rate or fees on a pending loan application by presenting to the consumer a revised loan offer that includes a lower rate or fees than the original offer.

Examples of offering or negotiating the terms of a loan **(license NOT required):**

1. Providing general information in response to a consumer inquiry regarding qualification for a specific loan product, such as explaining loan terminology.

2. In response to a consumer request, informing a consumer of the loan rates that are publicly available, such as on the company's website, for specific types of loan products without communicating whether qualifications are met for the product.
3. Collecting information about a consumer in order to provide the consumer with information on loan products for which they may qualify, without presenting a specific loan offer to the consumer for acceptance.
4. Arranging the loan closing or other aspect of the process by communicating with the consumer only those loan terms already offered or negotiated.
5. Providing a consumer with information unrelated to loan terms.
6. Making an underwriting decision about whether the consumer qualifies for the loan.
7. Explaining the steps that a consumer would need to take in order to obtain a loan offer, without providing guidance specific to that consumer's circumstances.
8. Communicating on behalf of the MLO that a written offer, including disclosures required by the TILA, has been sent to the consumer without providing any details of that offer.

Offering or Negotiating a Loan for Compensation or Gain

The following examples illustrate when an employee does or does not offer or negotiate terms of a loan "for compensation or gain."

Offering or negotiating terms of a loan for compensation or gain ***includes*** engaging in any of the activities discussed in the course of carrying out employment duties, even if the employee does not receive a referral fee or commission or other special compensation for the loan.

Offering or negotiating terms of a loan for compensation or gain ***does not*** include engaging in a seller financed transaction for the employee's personal property that does not involve the covered financial institution.

The Ability-to-Repay Rule (ATR)[28]

The Ability-to-Repay rule, as set forth under the Dodd-Frank Act, became law on January 10, 2014. The Rule states that creditors must make a reasonable and good faith effort at or before consummation to determine if, the borrower will have a reasonable Ability-to-Repay the loan according to its terms.

The ATR rule applies to all consumer credit transactions secured by a dwelling **EXCEPT**: home equity lines of credit (HELOC), reverse mortgages, temporary or "bridge" loans less than 12 months, loans secured by an interest in a timeshare plan, and a construction phase of 12 months or less on a construction-to-perm loan.

The rule contains eight general underwriting factors that creditors must consider and verify:

1. Creditors must consider the current and reasonably expected income and assets necessary to support the determination that the borrower can repay the loan, using third-party records that provide reliable evidence of the borrower's income/assets.
2. Employment may be full-time, part-time, irregular, etc. as long as the creditor considers these factors when determining the repayment ability.
3. The Borrower's monthly payment must be calculated on the fully indexed rate (or intro rate; whichever is greater) for ARMs and temporary buydowns; note rate for fixed rate loans.
4. Housing expense ratio must include any simultaneous loan.
5. Housing ratio must include any mortgage related obligations.
6. Current debt obligations to include alimony and child support.
7. Creditor must consider the borrower's residual income.
8. Borrower's credit history must be considered.

CFPB Issues New Rules for Qualified Mortgages

With certain exceptions, Regulation Z requires creditors to make a reasonable, good faith determination of a consumer's Ability-to-Repay any residential mortgage loan.

[28] Ability to Repay and Qualified Mortgage Standards under Reg. Z

Loans that meet Regulation Z's requirements for "qualified mortgages" (QMs)[29] obtain certain protections from liability.

Regulation Z contains several categories of QMs, including the General QM of loans that are eligible for purchase or guarantee by government-sponsored enterprises (GSEs). A temporary GSE QM sunsetted with the effective date of the General QM, October 1, 2022.

Seasoned Qualified Mortgage Loan

The CFPB has issued a final rule to create a new category of QMs (Seasoned QMs) for first-lien, fixed-rate covered transactions that have met certain performance requirements and are held in portfolios by the originating creditor or first purchaser.

The CFPB's primary objective with this final rule is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions.

This new final rule to create Seasoned QMs states the loan must be a first lien, fixed-rate covered transaction that has met certain performance requirements.

1. The loan has been held by the originating creditor (or first purchaser) for a 36-month period.
2. The loan must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the 36-month seasoning period.
3. The loan complies with general QM guidelines, points and fees.
4. Loan has been underwritten to certain requirements.

CFPB Amends General QM APR for ARMs

Creditors that wish to make qualified mortgages (QMs) under the price-based General QM definition must calculate the annual percentage rate (APR) for

[29] Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act

loans to determine whether they satisfy the price-based General QM definition. The priced-based General QM definition contains a special rule for calculating the APR for loans where the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. These loans are sometimes referred to as “short-reset” adjustable-rate mortgages (ARMs) and step-rate loans.

The interest rate used to calculate prepaid interest under the General QM ARMs special rule requires that the APR calculation include any prepaid interest, sometimes referred to as “odd-days” or “per diem” interest.

General QM ARMs Special Rule

For example, if Ficus Bank is originating an ARM that has an interest rate of 2.5% in years 1-3 and 4.5% for the remainder of the loan term, Ficus Bank must use 4.5% as the interest rate when determining if the loan satisfies the price-based General QM definition. This rule also applies for calculating any prepaid interest or negative prepaid interest as part of the APR calculation.

A creditor must use the maximum interest rate in the first five years for calculating the APR for purposes of the special rule, even if the creditor will use a different rate for calculating prepaid interest due at consummation.

SECTION 2

COMPLAINTS

Submitting a Complaint to CFPB

Each week the Consumer Financial Protection Bureau receives in excess of 10,000 complaints. The CFPB then forwards these complaints to companies for responses. These complaints are received from the public. The complaints are a result of consumers who believe they have been wronged by various financial institutions regarding the financial products and/or services they have encountered or received.

The CFPB currently accepts complaints about:

1. Checking and savings accounts
2. Credit cards
3. Credit repair services
4. Credit reports and other personal consumer reports
5. Debt collection
6. Debt settlement
7. Money transfers, virtual currency, and money services
8. Mortgages
9. Payday loans
10. Personal loans (i.e. e. installment and title loans)
11. Prepaid cards
12. Student loans
13. Vehicle loans or leases

The CFPB has made it very easy for a consumer to submit a complaint on their website (https://www.consumerfinance.gov/). An online complaint takes about 7-10 minutes to complete. If you can't submit online, you can submit over the phone which generally takes 25–30 minutes. Help is available in over 180 different languages.

There is a short 3-minute video for consumers to view that explains how the complaint process works. On their homepage, in the upper right-hand corner is a ***'Submit a Complaint'*** button that is easily located. The video explains the importance of submitting a complaint.

The CFPB is then better able to identify problems that might show a trend within a certain industry that they regulate. It does not cost the consumer to submit a complaint, but the CFPB does encourage consumers to first try to work out the issue directly with the company.

Consistent with applicable law, the CFPB securely shares complaints with other state and federal agencies to facilitate supervision and enforcement of activities and to monitor the market for consumer financial products and services.

CFPB also publishes complaint data (without information that directly identifies the consumer) in their Consumer Complaint Database.

Once a consumer has made a complaint, they can check on the progress right on the CFPB web site.

The web site encourages consumers to be clear and concise about the problems they are having; including dates, amounts and communication the consumer has experienced. The website also allows the consumer to upload up to 50 documents relevant to their complaint.

CFPB Advisory Committees

Unknown by many, the CFPB also convenes four independent groups for formal input on everything from consumer engagement, to policy development, to research. One of these groups is the Consumer Advisory Board.

Through a public process, the Bureau has invited external experts, industry representatives, consumers, community leaders and advocates to apply to be a member of this advisory group.

The Consumer Advisory Board is a crowd-sourced group of experts on consumer protection, consumer financial products or services, community development, fair lending, civil rights, underserved communities, and communities that have been significantly impacted by higher priced mortgage loans. They are charged with identifying and assessing the impact of emerging products, practices, or services on consumers and other market participants.

The CFPB Ombudsman's Office

In addition to the Consumer Advisory Board, the CFPB Ombudsman's Office is an independent, impartial, and confidential resource to help you informally to resolve process issues arising from CFPB activities.

You may want to contact the CFPB Ombudsman if you are a consumer, financial entity, consumer or trade group, or anyone else who has a process issue from interacting with the CFPB and you:

1. Have not resolved that issue after contacting the CFPB itself or
2. Want to share it with the CFPB Ombudsman in confidence

The Role of the Ombudsman

Independent

The CFPB Ombudsman reports to a CFPB's Deputy Director with access to the Director. This reporting line ensures the Ombudsman's independence within the CFPB. It also allows the CFPB to act as an early warning system and serve as a catalyst for change.

Impartial

They do not advocate for one side but for a fair process.

Confidential

Safeguards have been put in place to preserve confidentiality and the staff will not share your identifying information outside the Ombudsman's Office unless you authorize disclosure. They may have to share it if there is a threat of imminent risk of serious harm, an issue was raised about government fraud, waste, or abuse, or if required by law.

Time to Think 2.1

1. The Agency that regulates QM rules is?
   a. CFPB b. NMLS

2. Which Regulation describes registration requirements for MLOs?
   a. Dodd-Frank b. REG G

Ethics in Mortgage Banking

The Importance of Being an Ethical Mortgage Loan Originator

The longer you work in the mortgage industry, the more apparent it becomes that you are successful for many different reasons. However, the one reason that stands out above the others centers around your ethical behavior.

Often MLOs believe that the company they work for is what sets them apart. Is it the rates, the types of programs, the speed at which loans are processed or just what is it? While all of these are important, this author believes that your ethical behavior or your ethics has a big part of your success.

While legislation, such as the Dodd Frank Act, tries to keep our industry from having unethical originators, no law or regulation can control the ethics that you bring to your job.

So Why Do Ethics Matter?

Ethics matter because:

1. It is part of how many groups define themselves and thus part of the identity of their individual members.
2. Other following standards in most ethical systems both reflect and foster close human relationships and mutual respect and trust.
3. It could be "rational" for a self-interested person to be moral, because his or her self-interest is arguably best served in the long run by reciprocating the moral behavior of others.[30]

Right vs. Wrong

The Institute for Global Ethics® in a seminar entitled Moral Courage™, outlined five tests that are useful in determining whether or not an action is wrong.[31]

1. The *legal test*: Is the action legal? If not, it may be unethical.
2. The *professional standards test*: Is the action consistent with the accepted standards of your profession?
3. The *gut feeling test*: How do you intuitively feel about the action?
4. The *front-page test*: How would you feel if your action was published on the front page of a newspaper or posted on social media?
5. The *role model test*: Would your role model perform the action?

Regardless of the industry or profession, these five questions should be part of every originator's personal Code of Ethics.

CAMP's Code of Ethics

The members of the California Association of Mortgage Professionals, believing that the interest of the public and private sectors are best served

[30] https://www.youtube.com/watch?v=yesE4mcv4CM
[31] Moral Courage™, Institute for Global Ethics®

through the voluntary observance of ethical standards of practice hereby subscribe to the following Code of Ethics[32].

Honesty and Integrity
CAMP members shall conduct business in a manner reflecting honesty, honor, and integrity.

Professional Conduct
CAMP members shall conduct their business activities in a professional manner.

Honesty in Advertising
CAMP members shall endeavor to be accurate in all advertisements and solicitations.

Confidentiality
CAMP members shall avoid unauthorized disclosure of confidential information.

Compliance With Law
CAMP members shall conduct their business in compliance with all applicable laws and regulations.

Disclosure of Financial Interests
CAMP members shall disclose any financial interest they may have in a loan transaction.

CAMP's Best Practices

Every member of CAMP is committed to uphold CAMP's set of values as follows:

"I pledge to conduct my business in accordance with the laws, rules, and regulations of the state of California, the federal government, and in accordance with the Code of Ethics, Standards of Practice, Bylaws, and Board Policies of the California Association of Mortgage Professionals, and the National Association of Mortgage Brokers, as applicable. I understand that

[32] https://thecampsite.org/StandardsandEthics

failure to do so may result in the termination of my membership without refund."[33]

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

CAMP Stand on Predatory Lending

The California Association of Mortgage Professionals supports a consumer's right to be treated fairly and honestly, and to be given equal access, full disclosure, and be subject to an objective evaluation of their creditworthiness.

Ethical mortgage professionals utilize recognized standards including work history, creditworthiness, down payment capacity and debt-to-income ratios to evaluate and process loan applications. They strive to provide consumers with a variety of options based on each consumer's individual financial situation and long-term goals.

Professional loan originators explain all relevant loan information and give consumers the time necessary to make informed and considered decisions regarding their home financing choices. By contrast, predatory lending practices are based on fraud, deception, coercion and greed.

The Association unconditionally denounces predatory lending practices.

Predatory Lending is intentionally placing consumers in mortgage loans with significantly worse terms and higher costs than loans offered to similarly qualified consumers by the majority of mortgage professionals or lenders in the region. This is done for the primary purpose of enriching the loan originator and with little or no regard to the costs to the consumer.

Predatory lending is not only unethical, predatory lending practices are often violations of State and Federal law. Examples include:

[33] Standards and Ethics - Best Practices

Fraud: Forged loan documents, falsified tax returns or other documents, overstating income or assets to qualify borrowers for loans they cannot afford, inflated appraisals.

Discrimination: Charging higher rates and fees, with less favorable terms, to borrowers based on their race, national origin, age, marital status or neighborhood, than would be charged according to traditional factors. These could be factors such as employment history, credit record, and sufficient income to make required mortgage payments.

Misrepresentation: The costs or loan terms at closing are not as advertised, or as presented at the time of application, and are not properly disclosed prior to closing as mandated by law.

Bait and Switch: Qualified borrowers are steered away from affordable options for the express purpose of increasing fee income to the unethical loan originator.

Non-Disclosure: Key costs, fees, and terms are not disclosed, or inaccurately or only partially disclosed in violation of law and State and Federal lending regulations.

To protect consumers from falling victim to predatory lending practices, CAMP encourages its members to advise borrowers to:

1. Never sign a blank document.
2. Read all documents carefully and ask questions. Do not be hurried into signing anything you do not clearly understand. Stop the entire transaction if you feel you are not getting clear answers.
3. Be wary of telephone, mail or e-mail solicitations, especially promises that seem “too good to be true.” Experience shows they probably are.
4. Do not be pressured into applying for more money than you can reasonably be expected to pay back according to the terms of your loan.
5. Get copies of all loan documents, especially anything you have signed.

Whenever possible, seek recommendations from friends, associates, and other trusted advisors, to assist in selecting a broker or lender.[34]

[34] https://thecampsite.org/

Fannie Mae Anti-Fraud Training Series

FNMA provides some very informative anti-fraud educational videos on their company website[35]. These tutorials can support your existing policies, processes and procedures and encourage new and more effective approaches. These tutorials are part of FNMA's Anti-Fraud partnership training series.

This series of eleven tutorials covers the gamut from basic mortgage fraud to topics that you may have never heard about. These tutorials are just a small part of the extensive information provided on the FNMA website. Unfortunately, they are hard to find but well worth the time to educate yourself on how to spot and prevent mortgage fraud. So keep looking.

The link is: https://singlefamily.fanniemae.com/mortgage-fraud-prevention

Common Mortgage Fraud Schemes

Mortgage fraud occurs when a potential homebuyer, seller, or lender lies or omits key information that leads to a mortgage loan approval or terms that the applicant wouldn't normally qualify to receive.

More formally, the FBI defines mortgage fraud as any "misstatement, misrepresentation, or omission in relation to a mortgage loan which is then relied upon by a lender."

Mortgage fraud is a serious offense and can lead to prosecution and jail time for convicted offenders. Under U. S. Federal and State laws, mortgage fraud violation can result in up to 30 years in federal prison and up to one million dollars in fines.

According to a recent report by the FBI, here is a review of the most common mortgage fraud schemes:

Document fraud: Some borrowers forge documents (such as bank statements, pay stubs, W-2s, etc.) to improve their chances of getting approved for a mortgage. They may also inflate their income or claim to work at a fake company to qualify for a larger mortgage than they would otherwise receive.

[35] https://singlefamily.fanniemae.com/mortgage-fraud-prevention

Asset fraud: Asset rental fraud is when a loan applicant rents or borrows someone else's assets to bolster their application.

Straw Buyer Scheme: A straw buyer scheme is when someone asks a "straw buyer" (someone who has a better borrowing profile than them) to apply for a mortgage on their behalf. Once the loan is finalized, the straw buyer transfers the property's deed to the scheming buyer.

Stolen Identity Fraud: Stolen identity fraud is similar to straw buyer fraud. However, it uses an unknowing person's identity to apply for the loan, rather than a straw buyer who is in on the scheme. The scammer will apply with the identity theft victim's Social Security number and use other falsified documents. If the loan is approved, the scammer can get a mortgage on a property they don't own or live in.

Silent Second: If a seller is eager to sell their home, they may lend a buyer money for a down payment in the form of a non-disclosed second mortgage. The buyer can then apply for a mortgage with a lender, using this borrowed down payment to secure the loan. Since the lender doesn't know the down payment is borrowed, they may approve the loan under false pretenses.

Illegal Property Flipping: Illegal property flipping is when a homebuyer purchases a property and resells it shortly after purchase at a higher price using devious means. In most cases, property flipping isn't illegal. However, it can become fraudulent if a buyer colludes with a corrupt appraiser to misrepresent the value of the home. For instance, the appraiser may undervalue the home during the purchase and inflate its value during the resale to maximize profits for the schemer.

Occupancy Fraud: Occupancy fraud is the fastest-growing type of mortgage fraud. It occurs when an applicant lies about their intended use of a property that they're trying to purchase. They may claim that they plan to live in it as a primary residence when they actually intend to rent the property. The buyer does so in an attempt to secure a lower interest rate and down payment.

The Growth of Mortgage Fraud

Mortgage fraud is a growing problem. According to CoreLogic, mortgage fraud increased 16.9% in the second quarter of 2017 vs. the prior year[36]. Mortgage fraud is on the rise for multiple reasons:

Rising Demand for Homeownership: U.S. homeownership rates hit 64.2%, according to the latest U.S. Census data released. Homeownership has been on the rise since 2016, when it hit a 50-year low of 62.9%. As home inventories shrink, demand for homes is on the rise. That can lead to more fraudulent mortgage applications being filed, as homebuyers try to get an edge in a competitive home-buying field.

Interest Rates Are Rising: Part of the growing demand for new homes is time-related. With interest rates once again on the rise, homebuyers want to act now, and buy a home before rates rise even further. Conversely, home sellers want to cut a deal before high interest rates thin the pool of qualified buyers.

Higher Home Values: Mortgage fraud is also fueled by stronger U.S. home values, which draws more buyers into the market to capitalize on them. In some cases, these buyers will turn to mortgage fraud to get the inside track on buying a potentially profitable property.

Old-Fashioned Greed: In the event of seller-oriented mortgage fraud, like home appraisal fraud, shady home sellers will try to artificially inflate the price of their home to get a bigger pay day when the property is sold.

Case Study – Mortgage Fraud

American Financial Network, Inc., a mortgage lender based in Brea, California, has agreed to pay $1,037,145 to resolve allegations that it improperly and fraudulently originated government-backed mortgage loans insured by the Federal Housing Administration (FHA), a component of the U.S. Department of Housing and Urban Development (HUD).

Since at least December 2011, AFN has been a participant in FHA's Direct Endorsement Program. Lenders such as AFN are responsible for carefully

[36] The Growth of Mortgage Fraud

underwriting the mortgages to make sure that they meet all FHA requirements. Once a mortgage loan is insured by FHA, if the borrower defaults or is unable to repay the mortgage, the lender that holds the mortgage note can submit a claim for insurance benefits to FHA to cover its losses.

The settlement resolves allegations that between December 2011 and March 2019, AFN knowingly underwrote certain FHA mortgages and approved for insurance certain mortgages that did not meet FHA requirements or qualify for insurance, resulting in losses to the United States when the borrowers defaulted on those mortgages. The settlement further resolves allegations that AFN knowingly failed to perform quality control reviews that it was required to perform.

This case began in March 2019 when a whistleblower, a former loan processor with AFN, filed a qui tam complaint under seal in federal court in Spokane. When a whistleblower, or "relator," files a qui tam complaint, the False Claims Act requires the United States to investigate the allegations and elect whether to intervene and take over the action or to decline to intervene and allow the relator to go forward with the litigation on behalf of the United States. The relator is generally able to then share in any recovery. **Pursuant to this settlement agreement, the relator in this case will receive $228,172 of the settlement, and will also recover her attorney's fees, expenses, and costs.**

Discussion Questions

1. When a mortgage lender is found guilty of fraud concerning a FHA loan, what is the action that FHA will take?

2. If you or a client would like to find out which companies have been suspended or disbarred, what can you do?

3. What is a Qui Tam lawsuit?

4. What is Quality Control?

5. What is your opinion of the process, whereby the whistleblower (relator) receives a percentage of the recovery?

Statistics on Mortgage Fraud[37]

According to CoreLogic's 2021 Mortgage Fraud Report, Nevada is the top state for mortgage application fraud. New York, Hawaii, Florida, and California round out the top five. The report found that 1 in 120 mortgage applications have indications of fraud, which is up 37.2% from the previous year.

Purchase applications have higher indications of fraud (1 out of 90) than refinance applications (1 out of 169). The risk for purchase applications increased by 40% and refinance applications by about 20% compared to the previous year. The highest-risk applications are for investment properties where 1 in 23 applications are fraudulent. The lowest-risk applications are for loans backed by the VA. (No surprise there)

Mortgage fraud has increased significantly as the housing market has heated up. The cost of mortgage fraud is high, with every $1 of fraud costing mortgage lending companies $5.34. More than half of fraudulent transactions are now through online and mobile channels.

Mortgage Fraud: Don’t Be Complicit

California is the fifth-highest state for mortgage fraud risk as of Q2 2021. For reference, nationally, Core Logic’s mortgage fraud index rose to 132 in Q2 2021, where 100 equals the average mortgage fraud level in 2010, when the index began. In California, the index was as high as 157.

[37] https://www.fool.com/the-ascent/mortgages/mortgage-fraud/

In California, the metro areas with the highest level of mortgage fraud risk are, in order of highest risk:

1. Riverside; 85% upon average
2. Vallejo; 80% above average
3. Modesto; 79% above average
4. Stockton; 71% above average and
5. Fresno; 67% above average

The city that has the honor of having the highest incidents of mortgage fraud in the United States is:

1. Las Vegas, Nevada; which is 90% above average and a 3.9% increase over last year.

High levels of mortgage fraud are worrisome because when mortgage applicants skirt around the requirements, they are usually failing to meet the terms needed to ensure they avoid default down the road.

Further, mortgage fraud can point to more sinister practices. For example, unlike money laundering, which tends to be perpetrated directly by *all-cash buyers*, mortgage fraud can often originate with *the lender* and end up targeting borrowers.

Mortgage fraud played a major role in the most recent housing market downturn and remains a concern and risk for homebuyers, lenders, insurers, real estate agents and other parties involved in property transactions.

CoreLogic's Mortgage Fraud Trends Report examines this activity and includes data on national, statewide and metro-area trends. The report offers insights into past, current and future mortgage fraud risks and information of occupancy, identity, income and debt to help enable better decision-making.[38]

Time to Think 2.2

1. The maximum fine for Mortgage Fraud is?
   a. $1,000,000.00 b. $85,000.00

[38] https://www.corelogic.com/category/intelligence/reports/mortgage-fraud/

2. The City in the United States with the highest % of Mortgage Fraud is?
   a. Las Vegas b. Racine, WI

The Role of the FTC

The Federal Trade Commission enforces a variety of antitrust and consumer protection laws affecting every area of commerce with few exceptions.[39]

The Agency's two primary missions are protecting competition and the consumer. All FTC investigations are non-public. If a company itself announces that it is the subject of an FTC investigation, they can confirm that fact. However, they can't discuss complaints about specific companies or the status of ongoing investigations. Broad categories of complaints filed with FTC and other organizations can be found at Consumer Sentinel Network website[40]

Consumer Sentinel is a unique investigative cyber tool that gives members of the Consumer Sentinel Network access to millions of fraud reports. Consumer Sentinel includes mortgage and finance related reports about:

1. Identity Theft
2. Do-Not-Call Registry Violations
3. Telemarketing Scams
4. Advance-fee Loans and Credit Scams
5. Debt Collection, Credit Reports and Financial Matters

Identity Theft

An estimated nine million Americans have their identities stolen each year. Identity thieves can drain accounts, damage credit, and even put medical treatment at risk. The cost to business — left with unpaid bills racked up by scam artists — can be staggering, too.[1]

It wasn't 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

[39] https://www.ftc.gov/news-events/media-resources/what-ftc-does
[40] https://www.ftc.gov/enforcement/consumer-sentinel-network

amended the following phrase; "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.[41]

The Identity Theft and Assumption Deterrence Act accomplished four things:

1. 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. 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. Increased criminal penalties for identity theft and fraud. Specifically, the crime now carries a maximum penalty of 15 years imprisonment and substantial fines.
4. Closed legal loopholes, which previously had made it a crime to produce or possess false identity documents, but *not* to steal another personal's personal identifying information.

ReportFraud.ftc.gov[42]

The Federal Trade Commission (FTC) also enforces federal consumer protection laws that prevent fraud, deception and unfair business practices. The Commission also enforces federal antitrust laws that prohibit anticompetitive mergers and other business practices that could lead to higher prices, fewer choices, or less innovation.

As part of the FTC's efforts to keep consumers from becoming victims, the FTC has a very user-friendly website; specifically, to report fraud. (www.reportfraud.ftc.gov)

On this site, a consumer can quickly and easily protect others in their community by reporting fraud, scams and bad business practices. The site lets the consumer know that they can't always resolve each individual report, but

[41] www.ftc.gov/node/119459
[42] https://reportfraud.ftc.gov

the FTC will use reports to investigate and bring cases against companies who are guilty of bad business practices.

All reports are shared with more than 3,000 law enforcement agencies.[43] When a report has been entered on this website, the consumer will receive a unique Report Number. This number allows a consumer to get an updated Report of their complaint.

For reporting Identity Theft, the FTC has set up a separate website: IdentityTheft.gov.[44] IdentityTheft.gov is the federal government's one-stop resource for Identity Theft victims. The site provides streamlined checklists and sample letters to guide one through the recovery process. Especially helpful is a list of "*Clues That Someone Has Stolen Your Information.*"

Additionally, the site offers the consumer a list of what should be done right away if one thinks they have been a victim.[45]

1. Call the companies where you know fraud occurred.
2. Place a fraud alert with the credit bureaus and obtain a copy of your credit report.
3. Report identity theft to the FTC.

The site goes on to suggest, in detail, other possible steps depending upon the individual situation of the crime.

Time to Think 2.3

1. The maximum prison sentence for Identity Theft is?
   a. Life b. 15 Years

2. The Ability to Repay rule was established in?
   a. 2014 b. 2001

[43] https://reportfraud.ftc.gov/#/
[44] https://www.identitytheft.gov/#/
[45] https://www.identitytheft.gov/#/Steps

CHAPTER 2

REVIEW QUIZ

1. The loans with the lowest rates of Mortgage Fraud are?
   a. VA Loans   b. Junior Loans

2. Predatory loans are normally based on?
   a. Fraud   b. Location

3. The top state for Mortgage Fraud is?
   a. Nevada   b. Wisconsin

4. CAMP stands for?
   a. CA Association of Mortgage Professionals
   b. CA Alliance of Member Producers

5. Which year was the Identity Theft Act passed?
   a. 1998   b. 2020

CHAPTER 3

3-HOUR FEDERAL LAW

SECTION 1

FEDERAL LAW

Introduction

Who Established the Required CE Topics and Why

The required CE topics for 2023 have been ranked from 1-10 by the Multi-State Mortgage Committee (MMC) and were derived from the 2020 3rd quarter examination reports. The top 10 ranked topics are considered important information that every Mortgage Loan Originator must adhere to in order to prevent violations actionable by State Regulators.

Furthermore, the final action taken per the examination, resulted in additional audits, required written letters of explanation, implemented corrective action plans, refunds, and assessed penalties.

The Multi-State Mortgage Committee (MMC) is comprised of 10 appointed State Regulator members and one Conference of State Bank Supervisors (CSBS) member. The CSBS is a nationwide organization of American financial regulators. CSBS supports state regulators in advancing the system of state financial supervision by ensuring safety, soundness, and consumer protection, promoting economic growth, and fostering innovative, responsive supervision. CSBS also represents its members before federal policymakers and regulators, and provides training.

In 2006, the CSBS in cooperation with the American Association of Residential Mortgage Regulators, formed the State Regulatory Registry LLC (SRR) to oversee the development and operations of NMLS as a licensing and registration system for the non-depository financial services industries.[46]Their role is to implement cooperative protocol between state agencies and the financial industry. For additional information Reference: CSBS-AARMR MMC Exam Manual.

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 institutions loans and corporate records are conducted to decide whether the entities are effectively meeting the requirement to operate, monitor, and control risks associated with loan origination activities.

Individual Mortgage Loan Originators are and will be held accountable by State Regulators for violations found during examinations.

Next, we will explore legal violations that financial regulators found when performing examinations of financial services providers. We will go through the regulations, check how regulations were violated, and what could be done to comply. We can learn from their mistakes.

[46] https://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx

SECTION 2

TRUTH-IN-LENDING ACT: EXCESSIVE CHARGE FOR THIRD-PARTY FEES

Citation Violation: Regulation Z, promulgated under the authority of TILA, states that for closed-end consumer loans secured by real estate except for reverse mortgage, "The amount imposed upon the consumer for any settlement service shall not exceed the amount actually received by the settlement service provider for that service."[47]

Examination Findings: Excessive compensation charged or received by a third party for loan-related goods, products, and services.

Introduction to TILA: 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.

Coverage: TILA applies to a creditor which is defined as, "A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the promissory note or contract, or by agreement when there is no promissory note or contract."[48] A person regularly extends credit if they extend credit more than 5 times in the preceding or current calendar year for transactions secured by a one-to-four unit dwelling, or extend credit that is a High Cost Loan more than one time in a 12 month period.[49]

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[47] 12 CFR 1026.19(f)(3)(i). There is an exception in which the creditor of settlement service provider may charge the average charge for a settlement service if certain conditions are met. (12 CFR 1026.19(f)(3)(ii))
[48] 12 CFR 1026.2(17)(i)
[49] 12 CFR 1026.2(17)(v)

Exemptions: The following loans are exempt from coverage under TILA[50]:

1. Primarily for a business or commercial purpose
2. Primarily for an agricultural purpose
3. To a party other than a natural person
4. Down payment assistance
5. Non-real-property-secured that exceed a certain threshold
6. Public utility credit
7. Securities and commodities accounts
8. Home fuel budget plans
9. Student loan programs
10. From an employer-sponsored retirement plan

Excessive Charge for Third-Party Fees: The regulation cited above prohibits the practice of "up-charging", or charging a borrower or seller more for a settlement service than the third party has charged and actually received. For instance, if a flood insurance company charges $18 for a flood certification, the lender may not charge $20 and pocket the extra $2.

A lender may charge a separate $2 "flood insurance review fee", if the lender actually performs the review. As a practical matter, settlement lenders and brokers are generally reluctant to charge a lot of separate small fees for performing small tasks, and generally roll the fees for small tasks into a loan origination fee or loan processing fee.

[50] 12 CFR 1026.3. There are other exemptions from TILA which are not pertinent to this discussion.

SECTION 3

REAL ESTATE SETTLEMENT PROCEDURES ACT: CHARGING ADVANCED FEES

Citation Violation: RESPA and Regulation X prohibit lenders from charging, as a condition for providing a Good Faith Estimate (GFE), any fee for an appraisal, inspection, or other similar settlement service. The lender may charge a fee for the cost of a credit report but cannot charge additional fees until after the applicant receives the GFE and indicates an intention to proceed with the loan covered by that GFE.[51]

Examination Findings: A fee was collected in advance of the borrower's receipt of the GFE and the borrower's intent to proceed with the loan application.

Introduction to RESPA: RESPA was passed in 1974, and was mostly concerned with the disclosure of settlement costs. Another provision of RESPA, Section 8, pertains to prohibiting kickbacks and unearned fees to be charged in connection with settlement services.

Section 8 of RESPA is one of the few mortgage statutes the violation of which could land 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.[52] 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.

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[51] 12 CFR 1024.7(a)(4).
[52] 12 United States Code (USC) 2607(d).

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 on the property, and for which one of the following applies:

1. The loan is 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. Is 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;
   c. Is intended to be sold by the originating lender to Fannie Mae, Ginnie Mae, Freddie Mac, or a financial institution from which the loan is to be purchased by Freddie Mac;
   d. Is 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 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;
   e. Is 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
   f. Is 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.[53]

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 loan directly from an uninsured account such as an investment account,

[53] 12 CFR 1024.2(b).

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, commercial
2. Agricultural
3. 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)
4. Assumptions without lender approval
5. Conversions, such as converting a loan from adjustable rate to fixed rate, whether or not a fee is charged
6. Secondary market transactions
7. To governments or government agencies
8. From certain housing assistance loan programs
9. Temporary loans[54]

Temporary loans are "short term loans to facilitate a person who is selling a property and buying another to cover interim obligations".[55] Construction loans may be covered if they can be converted to permanent financing and may be covered if they are for a term greater than 2 years (unless the loan is made to a bona fide builder).[56] There used to be an exemption for loans secured by property containing 25 or more acres, but that exemption was removed in 2013.[57]

Prohibition Against Charging Advanced Fees: One principle of sales is to get the prospect committed to the transaction early in the process. One way to accomplish the early commitment of the prospect is to induce the prospect to pay money, or something else of value, early in the transaction. Even if the amount is relatively small, the prospect will feel more committed.

Unfortunately, this is not allowed under RESPA section 8 and Regulation X. A borrower can only be charged a fee for the credit report prior to the borrower receiving the Loan Estimate, which is what the GFE is now called. Brokers and lenders must train loan officers and processing staff regarding this rule, so the broker or lender does not charge a fee to a borrower in violation of the rule.

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[54] Id.
[55] 59 Federal Register (FR) 6,506 to 6,521, 6,507 (1994).
[56] 12 CFR 1024.5(b)(3).
[57] 78 FR 79730 (2013).

Time to Think 3.1

1. RESPA stands for?
    a. Real Estate Settlement Procedures Act
    b. Real Estate Sales Producers Act

2. RESPA was established in?
    a. 1974 b. 1948

SECTION 4

TILA: HIGHER-PRICED LOANS

Citation Violation: TILA states a creditor cannot extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if the seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property, and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent.[58]

Additionally, 12 C.F.R. § 1026.35(c)(4)(iv) states, one of the two required appraisals must include an analysis of: (A) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller; (B) changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and (C) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property.

Examination Findings: The two required appraisals conducted showed discrepancies and did not comply with these loan requirements.

What is a Higher-priced Mortgage Loan? A higher-priced mortgage loan is defined as a closed-end consumer loan (i.e. not a HELOC) that is secured by the borrower's primary residence with an annual percentage rate ("APR") that exceeds the average prime offer rate ("APOR") as of the date the rate is set by (a) 1.5 or more percentage points for loans secured by a first mortgage that doesn't exceed the Freddie Mac loan limit, (b) 2.5 or more percentage points for loans secured by a first mortgage that exceeds the Freddie Mac loan limit, or (c) 3.5 or more percentage points for loans secured by junior mortgages (i.e. 2nd mortgages, 3rd mortgages, etc.)

The APOR is defined as an annual percentage rate derived from average interest rates, points, and other loan pricing terms currently offered to

58 12 C.F.R. § 1026.35(c)(4)(i)(A)

borrowers by a representative sample of creditors for mortgages that have low-risk pricing characteristics.[59]

The APOR tables can be found at the website of the Federal Financial Institutions Examination Council ("FFIEC"): https://ffiec.cfpb.gov/tools/rate-spread . There are two tables; one for fixed rate loans and one for adjustable-rate loans.

The Freddie Mac loan limits can change each year, vary by county, and by state. California is considered to be a high-cost area under the Housing and Economic Recovery Act of 2008 ("HERA") for purposes of the Freddie Mac loan limits. Information on the 2023 Freddie Mac loan limits can be found at the Federal Housing Finance Agency ("FHFA") website here: https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Conforming-Loan-Limits-for-2023.aspx

Let's look at an example to see if the loan in question is a higher-priced mortgage loan.

Example 1:

In 2023, the Freddie Mac loan limit for a one-unit home in Los Angeles County is $1,089,300. Brianna is considering loan options to refinance her first mortgage. On the loan estimate for a 30-year, fixed-rate loan of $900,000 with First Friendly Mortgage Company, the interest rate is 6.5%, and the APR is 6.6%. Assume that the APOR for a 30 year fixed rate loan is 6.26%.

Analysis:

A loan amount of $900,000 in Los Angeles County does not exceed the Freddie Mac loan limit for that county, and the loan in question is a first mortgage, therefore 1.5% would be added to the APOR to see if the loan's APR exceeds the threshold. The applicable APOR for this loan is 6.26% plus 1.5% or 7.76%, therefore 7.76% is the threshold. The loan's APR is 6.6%, which is less than 7.76%, therefore Brianna's loan is not a higher-priced mortgage loan.

Higher-priced mortgage loans must contain an escrow, (or impound as they are called in California) for taxes and insurance.[60] Also, the loans must have an

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[59] 12 CFR 1026.35(a)

[60] 12 CFR 1026.35(b).

appraisal performed by a licensed appraiser, and the appraisal must meet certain criteria.[61]

Appraisal Requirements for Higher Priced Mortgage Loans: A creditor cannot make a higher priced mortgage loan without obtaining, prior to consummation of the loan, a written appraisal of the property to be secured by the mortgage with certain exceptions. The appraiser must be certified or licensed, and must perform a site visit of the interior of the property. The creditor must provide a copy of the written appraisal to the borrower no later than three business days prior to loan consummation, or if the loan is not consummated (i.e. the loan is denied or the application is withdrawn by the borrower, etc.), no later than 30 days after the creditor determines that the loan will not be consummated.

The copy of the appraisal can be delivered electronically if the borrower consents, and the other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) are followed. The borrower may not be charged for a copy of the appraisal.[62]

Exemptions:[63] The higher priced mortgage loan appraisal rules do not apply to the following transactions:

1. Qualified mortgages
2. Loan amount equal to or less than $31,000 in 2023 (the threshold may be adjusted annually to reflect increases in the Consumer Price Index and is published in the Official Staff Commentary to 12 CFR 1026.35(c)(2)(ii));
3. Loans secured by a mobile home, boat, or trailer;
4. Loan to finance the initial construction of a dwelling;
5. Bridge loan with a maturity of 12 months or less connected with the acquisition of a dwelling intended to be the consumers primary residence;
6. Reverse Mortgage
7. Refinancing secured by a first mortgage that meets the following criteria:
    a. Either –
        - The credit risk of the refinancing is retained by the person that held the credit risk of the existing loan and there is no

[61] 12 CFR 1026.35(c).
[62] 12 CFR 1026.35(c)(3)
[63] 12 CFR 1026.35(c)(2)

commitment, at consummation, to transfer the credit risk to another person, or
- The refinancing is insured or guaranteed by the same Federal agency that insured or guaranteed the existing loan;

b. The regular periodic payments under the refinance loan do not –
- Cause the principal balance to increase (i.e. no negative amortization);
- Allow the consumer to defer repayment of principal; or
- Result in a balloon payment; and

c. The proceeds from the refinancing are used solely to satisfy the existing loan and amounts attributed solely to the cost of the refinancing.

8. Loans secured by a manufactured home and land, but the exemption only applies to the requirement that the appraiser conducts an interior site visit of the manufacture home; and
9. Loan secured by a manufactured home and not land, for which the creditor obtains one of the following, and provides it to the borrower not later than three business days prior to loan consummation:
   a. For a new manufactured home, the manufacturer's invoice, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the borrower's loan application;
   b. A cost estimate for the manufactured home obtained from an independent cost service provider; or
   c. A valuation of the manufactured home that is not produced solely by an automated model or system, and that is performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction, and who has training in valuing manufactured homes.

Safe Harbor: Regulation Z provides a safe harbor for the requirement that the creditor obtains a written appraisal if the creditor meets the following requirements:

1. Requires that the appraiser prepare the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") as amended, and any implementing regulations in effect at the time the appraiser signs the appraisal certification.

2. Verifies that the appraiser who signed the appraisal certification is duly licensed or certified in the State in which the appraised property is located on the date that the appraisal certification was signed.
3. Confirms that the elements of Appendix N are addressed in the written appraisal.
4. The creditor has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

Appendix N: Higher Priced Mortgage Loan Safe Harbor Review: To qualify for the appraisal safe harbor, the written appraisal must contain the following:[64]

1. Identify the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicate whether the contract price was analyzed.
3. Address conditions in the property's neighborhood.
4. Address the property condition and any improvements to the property.
5. Indicate which valuation approach was used (sales, income, or cost approach), and include a reconciliation if more than one approach is used.
6. Opinion of value and its effective date.
7. Indicate whether or not a physical property visit of the interior of the property was performed.
8. Certification that the appraisal was prepared according to USPAP guidelines.
9. Certification that the appraisal was prepared in accordance with FIRREA as amended and any implementing regulations.

Additional Appraisal for Certain Higher-priced Mortgage Loans: In some purchase transactions, the rules require that a second appraisal be obtained by the creditor. Two written appraisals are required if:

1. The seller acquired the property 90 or fewer days prior to the date of the borrower's purchase agreement to acquire the property, and the purchase price in the borrower's purchase agreement exceeds the seller's acquisition price by more than 10%; or
2. The seller acquired the property 91 to 180 days prior to the date of the borrower's purchase agreement to acquire the property, and the

[64] 12 CFR Part 1026, Appendix N

purchase price in the borrower's purchase agreement exceeds the seller's acquisition price by more than 20%.

The creditor must obtain two written appraisals, unless the creditor can demonstrate by exercising "reasonable diligence" that the requirement doesn't apply, by basing its determination on written source documents, such as those listed in Appendix O:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller
4. A copy of the RESPA settlement statement from the seller's acquisition (i.e., the HUD–1 or any successor form).
5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with § 1026.35(c)(3)(i) for the same transaction.
9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
10. A property abstract.

If a second appraisal is required, the borrower may only be charged for one appraisal. Also, the two appraisals cannot be performed by the same appraiser. Each appraisal must be conducted by a licensed or certified appraiser, be in writing, and the appraiser must conduct a physical visit of the interior of the property. If the creditor chooses, they can follow the criteria for the Appendix N safe harbor on only one of the two appraisals to gain the protection of the safe harbor. One of the appraisals must include an analysis of:

1. The difference between the seller's acquisition price and the borrower's purchase price.
2. Changes in market conditions between the date the seller acquired the property and the date the borrower signed the purchase agreement.
3. Any improvements made to the property between the date the seller acquired the property and the date the borrower signed the purchase agreement.

Unlawful Higher-Priced Mortgage Loans: The "second appraisal" rule for higher-priced mortgage loans was written to address the problem that the Consumer Financial Protection Bureau perceived with illegal property flipping. Illegal property flipping occurs when a person buys a house with the intent to sell it at an artificially inflated price for a considerable profit, even though they only make minor or no improvements to [the property]." [65]

Usually, when illegal house flipping occurs, the sale of the property happens in a relatively short time after the fraudsters purchase the property. Often, it involves a fraudulent appraisal when the property is sold. The regulation, by requiring a second appraisal for home sold for substantially higher prices a short time after the previous purchase, would help prevent a buyer from being defrauded through an illegal property flipping scheme.

There are exceptions to this rule for the following sellers:[66]

1. A local, State or Federal government agency.
2. A person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan.
3. A non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure.
4. A person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party.
5. An employer or relocation agency in connection with the relocation of an employee.
6. A service member, as defined, who received a deployment or permanent change of station order after the service member purchased the property.

[65] Federal Bureau of Investigation, *Illegal Property Flipping*, https://www.fbi.gov/video-repository/newss-property-flipping/view#:~:text=This%20is%20how%20they%20work,make%20minor%20improvements%20to%20it.

[66] 12 C.F.R. § 1026.35(c)(4)(viii)

The following properties are also exempt:

1. Property located in an area designated by the President of the United States as a federal disaster area
2. Property located in a rural county

A checklist and training of employees can help to ensure compliance. Also, loan origination software may have a checklist for this rule built-in, and managers must train staff how to use it, and then do periodic quality-control reviews to ensure that the procedures are being followed.

Time to Think 3.2

1. USPAP stands for?
   a. United States Productive Appraisal Procedures
   b. United Standards of Professional Appraisal Practice

2. Higher priced mortgage loans must contain impound rules for ___ and ___.
   a. Taxes and Insurance b. Repairs and Maintenance

SECTION 5

TILA: FAILED TO ACCURATELY COMPLETE THE LOAN ESTIMATE

Citation Violation: Regulation Z requires that the lender provide all borrowers with Loan Estimates that accurately states the late payment charge for the loan program.[67]

Examination Findings: Borrowers received Loan Estimates that contained a late charge of five percent for United States Department of Veterans Affairs and Federal Housing Administration loans. The maximum late charge for these government backed loan programs is four percent.

Completing the Loan Estimate: The Loan Estimate is one of the TILA-RESPA Integrated Disclosures, or TRID disclosures, also known as the "Know Before You Owe" or KBYO disclosures. The TRID disclosures must be given by the creditor to a loan applicant for all closed-end consumer loans to be secured by any real estate except for reverse mortgages.[68]

A mortgage broker may also provide the Loan Estimate.[69] The Loan Estimate must be sent to the borrower within three business days of receiving the loan application from the borrower.[70] There is a lot of information on the Loan Estimate, including the names of the parties to the transaction, the loan terms, and an itemization of the loan charges, as well as the annual percentage rate ("APR").

On page three of the Loan Estimate, there is a place to disclose the grace period and late fee. The grace period is the time allowed after the loan payment is due before a late payment fee will be assessed if the loan payment is not received by the lender or servicer. Below is a sample of what the late payment disclosure on the LE looks like:

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[67] 12 C.F.R. §1026.37(m)(4).
[68] 12 CFR 1026.19(e)(1)(i)
[69] 12 CFR 1026.19(e)(1)(ii)
[70] 12 CFR 1026.19(e)(iii).

> Late Payment: If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

All of the information on the LE must be correct, in the correct place on the form, and following all of the formatting rules. Loan origination software is invaluable in completing the TRID forms including the Loan Estimate. Brokers and lenders can use a double-checking system to ensure that the information entered on the LE is correct.

Also, when hiring employees to produce the Loan Estimate, it would be a good idea to search for people who can demonstrate that they are detail-oriented.

SECTION 6

EQUAL CREDIT OPPORTUNITY ACT ("ECOA"): NOTICE OF ACTION TAKEN

Citation Violation: ECOA requires a creditor to notify the applicant of the action taken within 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application.

Additionally, 12 CFR § 1002.9(c)(1)(i)(ii)(2) states, within 30 days after receiving an application that is incomplete regarding matters that an applicant must complete, the creditor shall notify the applicant either: Of action taken, in accordance with paragraph (a) of this section; or of the incompleteness, in accordance with paragraph (c)(2) of this section.[71]

Examination Findings: A notice of approval, notice of adverse action, or a notice of incompleteness within 30 days of receiving the application was not provided to consumers.

Notice of Incompleteness: If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed. The creditor should designate a reasonable period for the applicant to provide the information, and inform the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time.

If the applicant supplies the requested information within the designated time, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section [12 CFR 1002.9].

Introduction to ECOA 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:

[71] 12 C.F.R. § 1002.9(a)(1) and 12 CFR § 1002.9(c)(1)(i)(ii)(2).

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[72]

President Gerald Ford signed the act into law on October 28, 1974. Prior to 1974, it was not uncommon for a borrower to be denied a loan because their spouse was not on the loan application, or because the borrower was on permanent disability. A lender could legally deny a loan to an applicant because the applicant might become pregnant. ECOA made these procedures illegal. Regulation B is the regulation promulgated under the authority of ECOA.

ECOA has Three Main Provisions:

1. Prohibition against discrimination.
2. Require that creditors issue an adverse action notice after taking an adverse action on a loan application, and the ECOA notice requirement.
3. Require that creditor furnish copies of the appraisal to the applicant.

Regulation B has more provisions, including records retention rules and collecting information for government monitoring purposes.

Who Is Covered Under ECOA and Regulation 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

[72] 12 CFR 1002.2(z)

whom requests for credit may be made.[73] So, in addition to lenders, ECOA and Reg. B. also apply to mortgage brokers.

An extension of credit under ECOA and Reg. 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.

Notice of Incompleteness: As stated in the examination findings, if additional information is needed from the applicant in order to approve or deny the loan application, then the notice of incompleteness must be sent to the applicant within 30 days of receiving the application. 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.
3. Informing the applicant that failure to provide the information requested will result in no further consideration being given to the application.[74]

If the applicant fails to respond in the time given, the creditor is not required to send any further 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.[75] If the applicant sends in the additional information within the specified time, then the creditor must 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 must send out the Notice of Incompleteness.[76] There is an exception for a small creditor who did not receive more than 150 loan applications in the last year. Small creditors may fulfill the Notice of Incompleteness requirement through oral notification.[77]

[73] 12 CFR 1002.2(l)
[74] 12 CFR 1002.9(c)(2)
[75] 12 CFR 1002.9(a)(1)(ii)
[76] 12 CFR 1002.9(c)(3)
[77] 12 CFR 1002.9(d)

SECTION 7

TILA: FAILED TO PROVIDE AN ACCURATE AND COMPLETE CLOSING DISCLOSURE

Citation Violation: Regulation Z, 12 CFR, Section 1026.38(f), (g) and (t)(5)(v) requires that the lender provide all borrowers with Closing Disclosures (CD) that include charges paid by the seller. Borrowers received CDs that did not include all seller-paid charges. Additionally, Regulation Z, 12 CFR, Section 1026.38(p)(3) requires a statement that discloses whether state law may protect the consumer from liability for the unpaid balance in the "Liability after Foreclosure" section. (Recourse or nonrecourse)

Examination Findings: The incorrect box was checked in the "Liability After Foreclosure" section. Additionally, the "Contact Information" table when provided to the borrower shall be complete. Borrowers received CDs with incomplete contact information.

Completion of the Closing Disclosure: The CD is the companion disclosure to the Loan Estimate referred to above. The Loan Estimate is given at the beginning of a loan transaction, within three business days of the creditor's receipt of the loan application, and not later than the seventh day prior to loan consummation, which in California is the signing of the promissory note, deed of trust, and loan agreement.[78] The CD must be given at the end of the transaction, no later than three days prior to loan consummation.[79]

Page 5 of the CD contains disclosures including liability after foreclosure, and a contact information section containing the names, licensing information, and contact information for the settlement service providers involved in the transaction, including the lender, the mortgage broker, real estate brokers, and settlement agent or escrow company, as applicable. All of the disclosures must be complete and accurate on the CD, and all of information in the contact information section of the CD must be complete and accurate.

[78] 12 CFR 1026.19(e)(1)(iii).
[79] 12 CFR 1026.19(f)(1)(ii)

The correct box must be checked, according to the state law where the subject property of the loan is located. Many states have "anti-deficiency" statutes which protect borrowers from having to pay back any unpaid balance of the loan after the foreclosure sale proceeds are applied in certain circumstances which can differ from state to state.

In California, state law may protect a borrower from liability for the unpaid balance of the loan after a foreclosure sale. This is because if a lender chooses to conduct a non-judicial foreclosure, the lender may not seek a deficiency judgement from the borrower for any unpaid balance after the foreclosure sale.[80] Therefore the first box on the Liability after Foreclosure disclosure on the CD should be checked for loans secured by property in California. If the loan is nonrecourse, the lender cannot get a deficiency judgement even if they do a judicial foreclosure.

Time to Think 3.3

1. A Notice of Incompleteness must be sent within?
   a. 30 Days b. 6 days

2. The TRID Disclosure is also known as the?
   a. Know Before you Owe b. The Realty Investment Disclosure

[80] Cal. Civil Code § 580d.

SECTION 8

TILA: CORRECTED CLOSING DISCLOSURE

Citation Violation: Regulation Z specifies that if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed, the creditor shall deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that a corrected closing disclosure is to be provided.[81]

Examination Findings: Loans contained corrected closing disclosures that were delivered after the 30 days. The CD's had excessive compensation charged or received by a third party for loan-related goods, products, and services.

TILA RESPA Integrated Disclosure Rule (TRID) 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.[82] If in the 30 days following consummation an event occurs which causes the CD to become inaccurate, and the inaccuracy results in a change to the amounts paid by the borrower, then the creditor must deliver a corrected CD to the borrower not later than 30 days after receiving information sufficient to discover the event causing the inaccuracy.[83] Here is a summary of the fee tolerance categories:

Zero Tolerance[84]: The following amounts disclosed on the Loan Estimate cannot increase unless an exception applies:

1. Creditor's or broker's charges for their own services

[81] 12 C.F.R. §1026.19(f)(2)(iii).
[82] 12 CFR 1026.19(e)(3).
[83] 12 CFR 1029(f)(2)(iii)
[84] Comment 1026.19(e)(3)(i)-1

2. Charges for services provided by an affiliate of the creditor or broker
3. Charges for services for which the consumer is not permitted to shop
4. Transfer taxes

10% Aggregate Tolerance[85]: The aggregate of the following amounts disclosed on the Loan Estimate cannot increase by more than 10% unless an exception applies (Note the word aggregate):

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

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[86] include:

One of the following affects creditworthiness or the value of the security or causes an estimated charge to increase above the required tolerance:

1. An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction.
2. 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.
3. New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate.

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[85] 12 C.F.R. § 1026.19(e)(3)(ii)
[86] 12 C.F.R. § 1026.19(e)(3)(iv).

Consumer Request: The consumer requests revisions to terms or the settlement that cause an estimated charge to increase.

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.

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.

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.

Opportunity to Cure: As stated above, the rules provide several post-closing circumstances under which the creditor is given an opportunity to cure inaccurate disclosures, and/or refund overcharges to the borrower.

If the estimated costs on a Closing Disclosure increase beyond the permitted tolerances with no bona fide change in circumstance, and a consumer pays those amounts at consummation, then the creditor must refund excess payment to the consumer and deliver or place in the mail a corrected Closing Disclosure that reflects the refund no later than 60 days after the consummation date. This could happen if there was a mistake in estimating the fees on the Loan estimate through something like a transposition of figures, or a misunderstanding between the lender and other service providers. If the change in figures wasn't due to a mistake or miscommunication by the borrower, then the borrower cannot be held responsible for the over-charge.

If an event occurs within 30 days of consummation date that causes a consumer paid amount to change that causes the disclosures to become inaccurate, then a corrected Closing Disclosure must be provided to consumer within 30 days after the creditor receives information sufficient to establish that such an event has occurred. Sometimes after the loan documents are signed, a new lien could appear on title when the date-down is done, resulting in an increase in fees from the escrow and/or title company.

Also, non-numerical clerical errors must be corrected by causing a corrected CD to be delivered to the borrower or placed in the mail within 60 days after the consummation date.[87] This is rarer, but the name of a fee may be typed wrong, or perhaps the wrong payee for a fee was entered onto the CD, or the wrong box check-marked in the additional disclosure.

Corrected Closing Disclosure: To try to catch changes or errors within the cure time-frames, the creditor and broker can have a policy and procedure to review all CD's for accuracy within 30 days of signing the final loan documents, and again after closing. Most of the changes will become apparent after closing, but there are rare instances where there is a lot of time between the signing of loan documents, and when the loan closes.

Lenders will want to allow enough time to review the CD and issue new disclosures and/or refunds within the required time frames. Brokers can also help this process by checking the CD at or immediately after the final documents are signed to help the lender identify changes and errors.

[87] 12 CFR 1026.19(f)(2)

SECTION 9

TILA: CLOSING DISCLOSURE REQUIRED CONTENT

Citation Violation: Section 1026.19(f)(1) of Regulation Z states, in part, "Mortgage loans secured by real property—final disclosures— (1) Provision of disclosures—(i) Scope. In a closed-end consumer credit transaction secured by real property, other than a reverse mortgage subject to §1026.33, the creditor shall provide the consumer with the disclosures in §1026.38 reflecting the actual terms of the transaction."

Examination Findings: Closing Disclosure required and content section was either incomplete or was disclosed incorrectly.

Section 1026.38 of Regulation Z states, in part, "Content of disclosures for mortgage transactions (Closing Disclosure)." For each transaction subject to §1026.19(f), the creditor shall disclose the information in this section:

(1) Closing cost details; other costs. Under the master heading 'Closing Cost Details' disclosed pursuant to paragraph (f) of this section, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section, listed in a table with a heading disclosed as 'Other Costs.' The table shall contain the items and amounts listed under five subheadings, described in paragraphs (1) through (6) of this section.

(2) **Prepaids:** Under the subheading 'Prepaids' and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in §1026.37(g)(2), the name of the person ultimately receiving the payment or government entity assessing the property tax, provided that the person ultimately receiving the payment need not be disclosed for the disclosure required by §1026.37(g)(2)(iii) when disclosed pursuant to this paragraph, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(3) Initial escrow payment at closing. Under the subheading ‘Initial escrow payment at closing’ and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in §1026.37(g)(3), the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2) along with the label ‘aggregate adjustment,’ and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(4) Other. Under the subheading ‘Other’ and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(5) For any cost that is a component of title insurance services, the introductory description ‘Title —' shall appear at the beginning of the label for that actual cost. (ii) The parenthetical description ‘(optional)’ shall appear at the end of the label for costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(6) Other disclosures. Under the heading ‘Other Disclosures’:

(7) Liability after foreclosure. A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading ‘Liability after Foreclosure’.”

(8) Guidance. Additional guidance on prepaids, see comments 37(1)(2)-1 and -2.”

1. Examples. Prepaid items required to be disclosed pursuant to §1026.37(g)(2) include the interest due at consummation for the period of time before interest begins to accrue for the first scheduled periodic payment and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage rate of interest used to calculate the charge, and the total dollar

amount of the charge. Examples of periodic charges that are disclosed pursuant to §1026.37(g)(2) include: i. Real estate property taxes due within 60 days after consummation of the transaction; ii. Past-due real estate property taxes; iii. Mortgage insurance premiums; iv. Flood insurance premiums; and v. Homeowner's insurance premiums."

(9) Comment 38(p)(3)-1 of the Official Interpretations of Regulation Z states, "Liability after foreclosure. State law requirements. If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, whether the consumer has continued or additional responsibility for the loan balance after foreclosure, and the conditions under which liability occurs, will vary by State. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, §1026.38(p)(3) requires a statement that State law may protect the consumer from liability for the unpaid balance."

Identify Who Will Pay the Fee and When: The rules require that the creditor disclose on the CD for each fee, whether the borrower, seller, or another party will pay the fee, and whether the fee will be paid at closing or before closing. If a party other than the borrower or seller will be paying the fee, the fee is listed under the "other" payor category.

Prepaid Fees: The Prepaid Fees section of the LE and CD should contain an itemization of fees that will be paid by the consumer in advance of the first payment. These items typically include homeowner's insurance, mortgage insurance and property taxes. The TRID rules require that for each item, the number of months of the item to be paid at consummation, the total dollar amount to be paid, the name of the item, and the name of the payee is disclosed.[88] Just like the other fees itemized on the CD, the creditor must also disclose who will be paying the prepaid fees, and when they will be paid, although they usually are paid at closing and not before.

Initial Escrow Payments: In the Initial Escrow Payments section in the Other Costs section located on the Closing Cost Details page which is found on page 2 of the CD, the creditor must itemize the amounts that will be included in the initial escrow or impound deposit for those items that will be collected and paid by the loan servicer over the life of the loan. The amount of the initial escrow payment is determined by the escrow rules under RESPA.

[88] 12 CFR 1026.37(g)(2).

RESPA requires that first, the lender take the total of each escrow item (taxes, insurance etc.) and divide them by 12 to determine the monthly amount for each escrow item. Then the lender must project a trial running balance for the account for 12 months, showing the amounts coming in each month, and going out when the payments are made for the escrow items.

The lender is to assume that payments are made on time, before the deadline for payment, and assumes that the borrower makes the monthly payments equal to 1/12th of the total annual escrow account disbursements. Then, the servicer looks at the trial monthly balances, and adds to the first monthly balance, enough to bring the lowest monthly trial balance to zero, and adjusts the other monthly balances accordingly.[89]

Then, the lender can add a cushion of 2 months of monthly escrow payments to the first monthly balance. This will give the lender the total initial escrow payment. An Excel Spreadsheet that makes the calculations and shows the process can be found here:
https://www.bankersonline.com/sites/default/files/tools/escrow-analysis-3.0.xls

To complete the Initial Escrow Payments section on the CD, the lender would input the monthly escrow payment for each escrowed item. To determine the aggregate adjustment, the lender would subtract the total of the monthly escrow payments from the initial escrow payment that they calculated under the RESPA rules above.

Similar to the Prepaids, these amounts generally include property taxes, homeowner's insurance, and mortgage insurance, if applicable. Also similar to the Prepaids, the creditor must also disclose when they will be paid, although they are always are paid at closing and not before. The creditor doesn't need to disclose to whom the initial escrow payments will be paid, because they are always collected by the lender, and forwarded to the loan servicer.

What Counts as "Other?": There are rules regarding what fees are to be disclosed in the other sections of the CD, including the entire Loan Costs section which contains costs associated with the loan for services required by the lender – such as the appraisal, title insurance, and recording fees, and the Prepaids and Initial Escrow Payment section of the Other Costs section of the CD.

[89] 12 CFR 1024.17(d)(2)(i).

Services that are not required by the lender are disclosed under the Other Costs section of the CD. Items that would be disclosed under the "Other" section include:

1. Optional owner's title insurance
2. Credit life insurance
3. Debt suspension coverage
4. Debt cancellation coverage
5. Warranties of home appliances and systems, and similar products
6. Commissions of real estate brokers or agents
7. Additional payments to the seller to purchase personal property pursuant to the purchase agreement
8. Homeowner's association and condominium charges associated with the transfer of ownership
9. Fees for inspections not required by the creditor but paid by the consumer pursuant to the purchase agreement[90]

If the items are optional and not required by the purchase agreement (such as the home warranties, or credit life insurance), then the items should have the word "(optional)" in parenthesis after the name of the fee.

Simultaneous Issue Owner's Policy: The TRID rules require that the full lender's title policy premium and the full owner's policy premium are disclosed on the LE and CD. This, despite the fact that in some states, such as California, often the owner's policy and lenders policy are purchased together for a discounted premium.

The CFPB's rationale for implementing this rule is so that the actual cost of the owner's title policy premium and lender's title policy premium can be more easily assessed between different lenders and title companies.

According to the TRID rules, the correct way to disclose the owner's policy when there is a discount for a simultaneously issued lender's policy is as follows:

1. Owner's title insurance premium = ((full owner's policy premium) + (the simultaneous premium for the lender's policy, i.e., simultaneous amount)) – (full lender's premium).

[90] Official Staff Commentary to Regulation Z, 37(g)(4)-3-4.

2. Lender's title insurance premium = full lender's premium, not the discounted or simultaneous rate.[91]

If the calculation results in a negative amount for the owner's policy (which is rare), it is acceptable to enter the negative amount onto the LE or CD. It is advisable to double-check the calculations first, to make sure there weren't any errors in the calculations.

For more information and examples of how to calculate simultaneous owner's and lender's title policy premiums, the CFPB has a helpful factsheet that can be found here: https://files.consumerfinance.gov/f/documents/cfpb_tila-respa_title-insurance-disclosures-factsheet.pdf

Title Company Optional Fees: If the fee is being charged by a title company, the name of the fee should be preceded by the word "Title – ". For example, an optional owner's title policy should appear on the CD as "Title – owner's title policy (optional)". Just like the other fees itemized on the CD, the creditor must also disclose who will be paying the Other fees, and when they will be paid – either before closing or at closing. Some of these fees are commonly paid prior to closing in California, such as some home inspection fees.

Time to Think 3.4

1. What is the limitation on fee increases for Property Insurance Premiums on t the LE?
   a. No Limit b. 10%

3. Complete the following phrase: "Best information reasonably available at the time using ___________________".
   a. Reasonable Due Diligence b. Proper Disclosures

[91] Official Staff Commentary to Regulation Z, 37(g)(4)-2 and 38(g)(4)-2.

SECTION 10

TILA: CLOSING DISCLOSURE CONTENT

Citation Violation: Regulation Z states for mortgage transactions subject to 12 C.F.R. § 1026.19(f), the creditor shall utilize the Closing Disclosure (CD) form to disclose an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop.[92]

Additionally, 12 C.F.R. § 1026.19(f)(2)(i) states, the amount imposed upon the consumer for any settlement service cannot exceed the amount received by the settlement service provider for that service.

Examination Findings: Failed to provide consumers with CDs that contained accurate information.

Shopping Versus Not Shopping: Starting with the LE, the creditor must disclose to the borrower the services for which the borrower can shop. On the LE, there is a section called Services You Can Shop For.

Written List of Settlement Service 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, and stating that the consumer may choose a different provider for that service.[93] The Written List of Settlement Service Providers must be provided within three days of the creditor receiving the loan application, just like the LE.[94]

For some services, such as the appraisal, the borrower is rarely allowed to shop. But the borrower is often allowed to shop for services such as pest inspection fees and the title company. If a borrower is allowed to shop for a settlement service and is given a Written List of Settlement Service Providers,

[92] 12 C.F.R. § 1026.38(f)(2) and 12 C.F.R. § 1026.38(f)(2)(i).
[93] 12 CFR 1026.19(e)(1)(vi).
[94] Id.

and selects a service provider on the creditor's list, then if the fee for the service changes after the initial LE is issued, a 10% tolerance applies unless the fee is paid to the creditor, broker, or an affiliate of either.

If borrower is allowed to shop for a settlement service, but selects a service provider that is not on the Written List of Settlement Service Providers, then no tolerance applies. If the fee increases from what was stated on the initial LE for that item, the borrower can be charged the increase.[95]

Closing Disclosure Required Content: In the CFPB's examination findings for this topic, the examinee's CDs were either incomplete or the disclosures were incorrect. Firstly, training of all staff producing LE's or CD's, or who will be entering data that will appear on LE's or CD's is recommended. For the best results, the training should be on-going.

It is advisable to implement policies and procedures regarding the production of LE's and CD's, to ensure that staff members understand the importance, and know how to complete the forms properly. Implementing a double-checking system, by having a second staff member check over the LE and CD before they are released to customers is a good idea. Periodic qualify control reviews of files for compliance is also a good idea.

More forms and information on the LE, CD, Written List of Settlement Service Providers can be found on the CFPB's website at https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/tila-respa-integrated-disclosures/

[95] 12 CFR 1026.19(e)(3)(iii).

SECTION 11

ECOA: FAILED TO TIMELY PROVIDE ADVERSE ACTION LETTER

Citation Violation: Regulation B, 12 CFR, section 1002.9(a)(1) requires that once a creditor has obtained all the information it considers in making a credit decision and the application is complete, the creditor has 30 days to notify applicants of credit decisions in writing. Loan files reviewed contained Notice of Adverse Action letters that were not provided to borrowers within 30 days after receiving a completed application or taking an adverse action on the loan.

Examination Findings: The Notice of Adverse Action was not provided within 30 days of receiving a complete application.

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 within 30 days of taking an adverse action on an existing account (usually applicable to open-ended lines of credit).[96]

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.[97] 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

[96] 12 CFR 1002.9(a)
[97] 12 CFR 1002.9(f)

applications for the amount and type of credit requested.[98] 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.

Definition of 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.
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. [99] 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
4. A refusal to extend credit because the creditor does not offer the type of credit requested[100]

Adverse Action Notice: The notice itself must state the following:

1. The name and address of the creditor
2. A statement that it is unlawful for any creditor to discriminate against any applicant with respect to any aspect of a loan on the basis of race, color, religion, national origin, sex or marital status, or age, or because all or part the applicant's income derives from public assistance, or

[98] 12 CFR 1002.2(f)
[99] 12 CFR 1002.2(c)
[100] 12 CFR 1002.2(c)(2)

because the applicant has in good faith exercised any Consumer Credit Protection Act rights.

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.[101]

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.[102]

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.[103]

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.[104]

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[101] 12 CFR 1002.9(a)(2)
[102] 12 CFR 1002.9(b)(2)
[103] 12 CFR 1002.9(a)(3)(i)
[104] 12 CFR 1002.9(a)(3)(ii)

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. Also, 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.

Time to Think 3.5

1. The Written List of Settlement Providers must be provided within ___ days of receiving the loan application?
   a. 3 b. 10

2. Notices of Adverse Action must be delivered in a _______ fashion.
   a. Timely b. Reasonable

CHAPTER 3

REVIEW QUIZ

1. ECOA stands for?
   a. Equal Credit Opportunity Act   b. Equitable Credit Oversight Act

2. Property taxes are considered?
   a. Not Prepaids   b. Prepaids

3. Which section of RESPA is known as the Kickback Regs?
   a. Section 8   b. Section 54

4. RESPA was passed in?
   a. 2016   b. 1974

5. The Late charge on VA Loans is?
   a. 5%   b. 4%

CHAPTER 4

1 HOUR-SAFE ACT

CALIFORNIA SPECIFIC

SECTION 1

DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

History

The Department of Financial Protection and Innovation (DFPI) was created to strengthen consumer financial protections in California. Governor Gavin Newsom proposed an initiative which would modernize and revamp the existing Department of Business Oversight (DBO). This would include increasing the staff and the authority of the agency, and to enhance its regulatory scope. The vision was to become a national model for consumer protections.

The DFPI was modeled after the CFPB and is designed to promote innovation, clarify regulatory hurdles for emerging products, and increase education and outreach for vulnerable groups.

The two bills that were passed on August 31, 2020, were AB 1864[105] and AB107[106] which expanded the CCFPL and created the DFPI.

[105] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1864
[106] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB107

Formation of the DFPI

The State Legislature changed the name of the DBO to the Department of Financial Protection and Innovation (DFPI) on September 29, 2020. Although the department was revamped, it still reports to the Business, Consumer Services & Housing Agency.

The CCFPL gave the DFPI new regulatory powers to protect consumers from unfair, deceptive, or abusive practices committed by previously unlicensed financial services or products providers effective on January 1, 2021. Not only do these rules apply to industries that currently exist unregulated in California, but they also cover new products or services that may enter the market in the future.

Additionally, these regulations also created:

1. The Division of Consumer Financial Protection which will supervise the financial services providers not currently regulated by the DFPI. The new division includes:
   a. A market monitoring and research arm
   b. An expanded consumer outreach team engaging vulnerable populations such as students, new Californians, military service members, and senior citizens.
2. The Office of Financial Technology Innovation which is a resource for entrepreneurs, financial tech innovators, consumers, advocates, and others. This department conducts research to identify emerging trends, highlight new strategic opportunities, and to help foresee potential risks. It engages with new industries and consumer advocates to encourage consumer friendly innovation and job creation in California.

Background of the Department of Business Oversight

On March 30, 2012, California Governor Edmund G. Brown submitted a plan to increase the efficiency and cost effectiveness of state government. This was called Government Reorganization Plan No. 2 and was submitted to the Milton Marks “Little Hoover” Commission on California State Government Organization and Economy (“Little Hoover Commission”) for formal consideration. This was sent pursuant to Government Code section 8523 to reorganize state government.

Formation of the Department of Business Oversight[107]

The Department of Corporations (DOC) and the Department of Financial Institutions (DFI) merged to form the Department of Business Oversight (DBO) on July 1, 2013. It would report to the Business, Consumer Services & Housing Agency. This change was part of Governor Jerry Brown's Reorganization Plan No. 2 plan to increase efficiency and cost effectiveness of state government.

The former DOC and DFI continued to operate as divisions within the DBO. The Commissioner of the Department of Business Oversight was appointed by the Governor, subject to confirmation by the California State Senate.

The DBO remained committed to supporting a fair and secure financial services marketplace for all Californians. The DBO also continued to protect the public from investment fraud and educate the public about the risks and rewards of investing and finances. It lasted seven years.

Early History of Divisions of Corporations[108]:

The California legislature enacted the "Investment Companies Act" in 1913 which created the State Corporation Department headed by a Commissioner of Corporations. Then, Governor Hiram Johnson appointed H.L. Carnahan as the first Commissioner of Corporations. The first annual report of the state Commissioner of Corporations was issued in 1916.

There are many laws which have changed the Department of Corporations over time. These laws ensured the California Department of Corporations would assume new authority as assigned by the California Legislature. These laws include: the Escrow Agent Law of 1948, the Corporate Securities Law of 1968, the California Franchise Investment Law (1970), the California Finance Lenders Law (1994), the California Residential Mortgage Lending Act (1994), and the California Deferred Deposit Transaction Law (2005).

[107] https://dfpi.ca.gov/history/
[108] https://dfpi.ca.gov/history/

With the passage of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and the Dodd–Frank Wall Street Reform and Consumer Protection Act in 2010, Congress added additional responsibilities to the Department.

1. **Early History of the Division of Financial Institutions:**
   California began granting charters to banking enterprises beginning in 1857 under the General Corporation Laws. In 1862, Savings Banks were exempted from the 1850 prohibition against banking firms and were authorized to incorporate.
2. **The Board of Bank Commissioners 1878 – 1909**
   California banking supervision began in 1878. The California legislature passed an act to create a three-person Board of Bank Commissioners. This act placed under the Board of Bank Commissioners jurisdiction "every savings bank and banking company incorporated under the laws of this state, or any other state or country and doing business in this state".
3. **The State Banking Department 1909 – 1997**
   The Bank Act of 1909 was passed in order to strengthen regulatory powers and ensure bank chartering and examination practices were sufficient to properly protect depositors. The Bank Act created the State Banking Department and Superintendent of Banks to be appointed by the Governor who will hold a four-year term. In 1911 there was another change to ensure the Superintendent would hold that office "at the pleasure of the Governor".
4. **The Bank Act** was completely revised in 1949 and was codified in 1951 as Division I of the Financial Code. The Banking Law was again extensively revised in 1979 to bring it in line with General Corporate Law and Generally Accepted Accounting Principles.
5. **The Department of Financial Institutions 1997 – 2013**
   The Department of Financial Institutions (DFI) became operative July 1, 1997. This was the first time the responsibility for the safety and soundness of California's depository institutions were combined under one roof. The DFI reduced unneeded regulations and costs for state-chartered credit unions and industrial loan companies formerly regulated by the Department of Corporations.

   Additionally, they reduced unnecessary regulations from commercial banks, savings and loan associations, and trust companies, and other licensees formerly regulated by the State Banking Department which reduced regulatory costs that primarily came from combining technology and reducing duplicative overhead expenses. This allowed the DFI to be able to focus on regulatory reforms for all of California's depository institutions and to help create a climate for financial institution innovation.

California Consumer Financial Protection Law[109]

The California Consumer Financial Protection Law also falls under the DFPI's oversight, and it is designed to better protect consumers.

For consumers, the department offers new tools which are designed to protect consumers from unlawful, unfair, deceptive and abusive practices. The focus is to regulate debt collectors, debt-relief companies, consumer credit reporting agencies, credit repair companies and other companies.

The DFPI will investigate consumer complaints which will take into consideration the use of unlawful, deceptive or abusive practices. Consumers have three ways to file a complaint:

1. Email: Ask.DFPI@dfpi.ca.gov.
2. File a complaint at dfpi.ca.gov/file-a-complaint.
3. Call with questions or issues: 866-275-2677

For businesses, the DFPI has expanded their authority to oversee financial service and product providers that it did not regulate in the past. Areas that are covered are:

1. Credit repair and consumer credit reporting companies
2. Debt relief companies
3. Debt collectors
4. Private, for-profit school funding

Common Financial Frauds and Scams in California

Affinity Fraud: Affinity fraud includes investment scams that usually prey on members of groups such as religious or ethnic communities, the elderly, or

[109] https://dfpi.ca.gov/ca-consumer-financial-protection-law/

professional associations. They convince members to spread the word about fraudulent investments purporting them to be legitimate.

1. Make sure you verify everything before investing
2. Never invest solely from a recommendation of an organization or group you belong to
3. Be wary of "guaranteed" profits

Ponzi and Pyramid Schemes: An affinity fraud scam can also include Ponzi or Pyramid schemes. This is where new investor money is used to pay earlier investors. This makes the early investor feel like they made a successful and profitable investment. However, the scammer will usually steal the investors' money for personal use. These schemes rely on an unending supply of new investors. It collapses when that supply dries up or investors realize their money is gone. Be wary if:

1. You have to make an upfront investment to join or purchase some kind of starter kit
2. You are required to maintain a huge back stock of product (more than you would typically sell in a short period of time)
3. Participants make money off of each recruit you bring in and there are no customer refunds

Promissory Note Fraud: Most promissory notes are legitimate investments, but some can be fraudulent. In order to offer promissory notes, a salesperson must be registered with the Department to sell securities.

A scam can occur when a company promises to return the buyer's funds (principal), and to make fixed interest payments in exchange for borrowing the money. Repayment terms are set in advance for promissory notes, and they range from a few months to several years. A person who considers purchasing a promissory note needs to do their homework. They need to check with the DFPI to ensure that the seller is properly licensed and in compliance with California's securities laws.

Online Escrow Scams: Fraudulent or fake websites. Make sure to avoid a website that doesn't have a phone number or address. Check the browser window on the top of the page to make sure it is a legitimate and secure website.

Abusive Mortgage Lending Practices and Fraud: There are many abusive lending practices that prey on borrowers with low credit scores. They can also affect borrowers with good credit. Some abusive mortgage lending practices can include:

1. Frequent refinancing, or loan “flipping”, without regard to ensure there is a benefit to the borrower.
2. Lending for the MLO’s financial gain while adding excessive points and fees to the loan or adding fees from the financing of credit-related products.
3. Using “exotic” features like negative amortization or balloon payments – which can make it harder for borrowers to reduce or repay their debt.
4. Offering no cost or low-cost (no out-of-pocket) refinances. Typically, the cost is built into the loan, usually at a higher rate.
5. Solicitations to repair consumers’ credit by refinancing – consumers are advised to talk to a credit counselor before taking this step.

SECTION 2

CALIFORNIA HOMEOWNERS BILL OF RIGHTS (HBOR)[110]

During the mortgage meltdown, California was one of the hardest hit states. In 2011, seven of the nation's top ten cities hardest hit by foreclosure were in California. The HBOR was created to ensure there would be an open dialogue between the homeowner and the lender and that the homeowner was aware of any alternatives to foreclosure that are available for them.

The HBOR was the third step by then Attorney General, Kamala Harris' response to California's foreclosure and mortgage crisis. Step one was to create the Mortgage Fraud Strike Force whose objective was to investigate and prosecute any misconduct in the mortgage process. Step two was obtaining a commitment from the nation's five largest banks of an estimated $18 billion for California borrowers.

Key Provisions Include

Notification of Foreclosure Prevention Options: The servicer attempts to contact the borrower at least 30 days before starting the foreclosure process to discuss their financial situation and explore options to avoid foreclosure. Then the servicer can begin to start the foreclosure process by recording a notice of default in the county where the home is located with a copy sent to the borrower within 10 business days. Within 5 days of recording a notice of default, the servicer must provide information about options to avoid foreclosure that may be available. (Civil Code sections 2923.55, 2924.9)

Guaranteed Single Point of Contact: If a borrower asks for a loan modification or other foreclosure-prevention option, the servicer must assign a specific person or team who can walk the borrower through application requirements and deadlines, knows the facts and status of the application,

[110] https://oag.ca.gov/hbor

including missing documents needed to complete the application, and to ensure the borrower can get a decision on their application. Civil Code section 2923.7

Acknowledgment of Application: If the borrower applies for a loan modification, the servicer must notify the borrower within five business days of any missing information, other errors, and deadlines for completing the application. Civil Code section 2924.10

Restrictions on Fees: The borrower cannot be charged a fee for applying for a loan modification. They cannot be charged late fees while the servicer is reviewing and making a decision on the completed loan-modification application, while the borrower is making timely payments under an approved modification, or while a denial is being appealed. The application is "complete" once the borrower submits all required information within the servicer's reasonable deadlines. Civil Code section 2924.11

Restrictions on Dual Tracking: The servicer must generally pause the foreclosure process while it is making a decision on the completed loan-modification application and until after it gives the borrower time to appeal a denial. It also cannot foreclose on the borrower while they are complying with the terms of an approved loan modification, forbearance, repayment plan, or other foreclosure-prevention option. Civil Code sections 2923.6

Denial Rights: If the servicer denies the loan-modification application, it must state its reasons and identify other possible foreclosure-prevention options in writing. It must also give the borrower a chance to appeal the denial. The borrower may submit a new loan-modification application if they have had a material change in their financial situation since the last application. Civil Code section 2923.6

Transfer Rights: If the servicer approves a loan modification or other foreclosure-prevention alternative and then sells or transfers the loan to another servicer, the new servicer must honor that foreclosure-prevention alternative. Civil Code section 2924.11

Verification of Documents: The servicer must review certain foreclosure documents to make sure they are accurate, complete, and supported by reliable evidence about the loan, the borrower's loan status, and the servicer's right to foreclose. No Robo-Signing. Civil Code section 2924.17

Tenant Rights: Purchasers of foreclosed homes must give tenants at least 90 days before starting eviction proceedings. If the tenant has a fixed-term lease that was entered into before the foreclosure sale, the new owner must honor the lease unless certain exceptions apply. Code of Civil Procedure section 1161b

The Homeowner Bill of Rights generally applies to first-lien mortgages on owner-occupied homes that have no more than four units, and the protections above generally apply if your servicer foreclosed on more than 175 homes in the last year.

Time to Think 4.1

1. Preying on your Lodge Members is called?
   a. Affinity Fraud   b. Fraternity Fraud

2. Who was Attorney General of California when HOBR was passed?
   a. Kamala Harris   b. Eleni Kounalakis

SECTION 3

CCPA vs CPRA: WHAT'S THE DIFFERENCE?

California has strict privacy and data security restrictions which was the first comprehensive consumer privacy legislation in the U.S. The California Consumer Privacy Act (CCPA)[111] and the California Privacy Rights Act (CPRA)[112] can potentially be a model for the rest of the country.

The CCPA was signed into law on June 28, 2018. It creates an array of consumer privacy rights and business obligations regarding the collection and sale of personal information. The CCPA went into effect Jan. 1. 2020.

The CPRA is also known as Proposition 24, and is a ballot measure that was approved by California voters on Nov. 3, 2020. It significantly amends and expands the CCPA, and it is sometimes referred to as "CCPA 2.0."

The compliance date to implement CPRA was January 1, 2023. The CPRA makes significant changes from the current law.

Changes include:

1. The CPRA eliminates the employee exception. This means that California-resident employees, applicants, emergency contacts, beneficiaries, independent contractors, and members of boards of directors (collectively, "employees") have the same rights as any other consumers.

2. Employees may make a "verifiable consumer request" to have the company disclose to them the personal information or sensitive personal information collected on them and request that this information be deleted or corrected. Employees may direct the company not to sell or share their personal information, and each

[111] https://www.oag.ca.gov/privacy/ccpa
[112] https://www.carpedatumlaw.com/2022/09/california-privacy-rights-act-cpra-big-changes-for-employers-with-employees-in-california-in-2023/

employee has the right to limit the use of sensitive personal information. Employees have the right to access personal information and to know what personal information is sold or shared and to whom.

3. Employees must be provided notice of their rights under the CPRA and be able to advise the employer of their exercise of these rights. The employer has limited time to respond to a request and must properly document all responses.

4. The CPRA makes a distinction between "personal information" and "sensitive personal information." "Personal information" is "information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household." "Sensitive personal information" includes anything that reveals an individual's personal information, such as Social Security number, driver's license number, state identification card, or passport number; "a consumer's account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account"; "[a] consumer's precise geolocation"; and "a consumer's racial or ethnic origin, religious or philosophical beliefs, or union membership." The data privacy protections for sensitive personal information are required to be more robust than those used to protect personal information.

5. Finally, business-to-business transactions are now subject to the CPRA.

SECTION 4

CALIFORNIA FIRST-TIME HOME BUYER: 2023 PROGRAMS AND GRANTS

California Home Buyer Overview

The median home price in California was $736,300 in November 2022. That was a 2.7% decrease year-over-year, according to redfin.com. California home prices are still outpacing the prices in other states.

California offers plenty of assistance to buyers in the form of home buyer education, special mortgages, and down payment assistance. Eligible first-time buyers could be in line for some real help if they apply.

California First-time Home Buyer Loans[113]

First time home buyers in California with a 20% down payment can get a conventional loan with a fixed interest rate.

With the high cost of rents in California, most first-time buyers do not have the 20% down payment. With the median home cost in California, that cost would be over $150,000.

There are programs available where the borrower would not need to put 20% down. California home buyers can often get into a new home with as little as 3% or even 0% down using one of these low-down payment mortgage programs:

Conventional 97: Freddie Mac and Fannie Mae both offer this loan. The borrower can qualify with a 3% down payment and 620 minimum credit score. This loan will come with Private Mortgage Insurance (PMI). The borrower is eligible to remove the PMI after a few years.

[113] https://www.calhfa.ca.gov/homebuyer/programs/index.htm

FHA Loan: This loan is backed by the Federal Housing Administration. The borrower can qualify for an FHA loan with a 3.5% down and a 580 minimum credit score. The borrower will be required to have mortgage insurance (MI) for the life of the loan. The only way to remove MI is refinance to a different type of mortgage, move, or pay off the loan.

VA Loan: Borrower must be a veteran or an active-duty service member of the service. A VA mortgage offers a zero down payment option. Minimum credit score varies as an overlay by the lender but are usually around 620. There is an upfront funding fee, but there is no Mortgage Insurance on this loan.

USDA Loan: For those with low-to-moderate incomes buying in designated rural areas. Zero down payment required. Credit score requirements vary by lender but often over 640. Low mortgage insurance rates

CalHFA Mortgage Programs: California Housing Finance Agency offers government and conventional home loans that are 30-year fixed-rate first mortgages along with home buyer assistance

Note that government loan programs (including FHA, VA, and USDA home loans) require the borrower buy the home as a primary residence for a minimum of one year – no vacation homes or investment properties.

Funds for closing can be gifted by a family member or employer or the borrower can utilize any of the down payment assistance options to cover their down payment and closing costs. Depending on how the loan is packaged, the borrower can close with minimal out of pocket expense.

California First-Time Home Buyer Programs

California Housing Finance Agency (CalHFA) offers many different loan options for first time buyers. These programs come with their own special rates.

In order to qualify for any of CalHFA’s special mortgage loans, borrower will need to:

Be an eligible first-time home buyer – must not have owned a home within the past 3 years and:

1. Complete a home buyer education course
2. Meet CalHFA's median income limits (vary by county) check: https://www.calhfa.ca.gov/homeownership/limits/income/income.pdf
3. Have a minimum credit score of 660-680, depending on the program
4. Purchase a primary residence within the state of California

Borrowers must take a first-time home buyer class offered by CalHFA. The class is eight-hours, and it's offered online for $99. Participation is mandatory.

California Dream Shared Appreciation Loan

This loan is a down payment assistance loan for first-time buyers in California. It is to be used for down payment and/or closing costs on Dream For All Conventional first mortgages.

Upon sale or transfer of the home, the borrower repays the original down payment loan, plus a share of any appreciation in the value of the home.

The more common loan is where the program provides a loan for 20% of the home purchase price. When the property is transferred, the borrower pays back the original amount plus 20% of any appreciation.

Requirements for Buyer:

1. Be a first-time home buyer and occupy the property as a primary residence.
2. Must complete two levels of homebuyer education counseling and meet CalHFA income limits.

Requirements for Property:

1. Be a single-family, one unit, approved condos, guest homes, granny units, etc.
2. Manufactured housing is permitted and condos must meet the guidelines of the first mortgage.

SAM's or Shared Appreciation Loans are not well known to most prospective homeowners. They were used in the past, for example, by insurance companies making loans on income property. Can be a perfect blend for future buyers.

UPDATE: Funds for these loans have been reserved as of 4/7/2023. For more current information visit calhfadreamforall.com.

Time to Think 4.2

1. CPRA stands for?
   a. CA Privacy Rights Act b. CA Private Recovery Act

2. Rural property owners can get ________ loans?
   a. USVA b. USDA

CHAPTER 4

REVIEW QUIZ

1. HOBR stands for?
   a. Homeowner Bill of Rights   b. Homeowners Basic Rights

2. Dual Tracking is no longer ____________.
   a. Allowed   b. Illegal

3. The Maximum Charge for a Loan Modification by a lender is?
   a. $0   b. $100

4. A veteran might consider a loan from the _____ Administration.
   a. Veterans   b. USDA

5. California MLOs must complete __ hour of California Specific Training.
   a. One   b. Eight

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 within the allotted time.

CASE STUDY

Barry Buyer has found his dream home. The purchase price is $800,000. The seller, Flips R Us LLC, purchased the property 60 days ago for $500,000, and completely updated it and added a 2nd bathroom. Barry submitted an application for a loan to ABNO Lender. After Barry signed the LE, ABNO Lender began processing the loan. When they got Barry's credit report on February 7th, they saw that Barry's credit score of 500 did not match their lending criteria. ABNO Lender stopped processing Barry's loan. On Monday February 13th, a processor at ABNO Lender informed Barry over the phone that his loan request was denied. On April 1st, ABNO Lender sent a notice to Barry informing him that they were denying his loan request.

In the meantime, Barry submitted a loan application to Wild West Loan Corp. (WWL) on February 10th. WWL charged Barry a $200 application fee to cover the cost of processing the application. WWL sent Barry an LE on February 14th for a $520,000, 30 year loan at a fixed interest rate of 9.15% for the first five years, and adjustable thereafter with a 15% late charge, and 10 day grace period. Barry signed the LE.

While WWL was processing the loan, they informed Barry that he would have to pay for a 2nd appraisal of this property due to the "Dodd Frank Rules". Barry paid for a second appraisal. On Friday, February 24th, Barry received a closing disclosure. The closing disclosure only showed the charges being paid by Barry. The "liability after foreclosure" section was not completed, and the contact information for his Realtor was also incomplete. Barry was surprised to see that no escrows for taxes or insurance were disclosed on the CD - he had expected those items to be escrowed. In the section titled "Settlement Services for which consumer did not shop", the title company and escrow company's fees were listed. Barry didn't know he could shop for these services and had never received a written list of providers from which he could shop for those services. Barry signed the CD anyway. When he asked the WWL loan officer about the late charge and the escrows, the loan officer told Barry that the late charge was only 10% and to disregard the error on the CD, and that escrows were required for taxes and insurance, and provided Barry with the payment amount including taxes and insurance. No other closing disclosures were received by Barry from WWL.

Barry's transaction closed on Thursday, March 2nd.

QUESTIONS:

ABNO Lender Loan:

1. Was a 2nd appraisal required under the Higher Priced Mortgage Loan laws? ____

   Answer: ____

   ____

2. Was ABNO Lender's verbal notice to Barry of its loan denial sufficient notice under ECOA? ____

   Answer:____

   ____

Wild West Loan Corp loan:

1. Was there anything wrong with Wild West Loan Corp. charging an application fee?

   Answer: ____

   ____

2. Was a 2nd appraisal required under the Higher Priced Mortgage Loan laws?

   Answer: ____

   ____

   ____

   ____

   ____

3. Did the lender violate Regulation Z by requiring Barry to pay for the second appraisal?

   Answer: ____

   ____

4. There were many problems with the closing disclosure – can you list some?

   ____

   ____

5. What could WWL have done to correct the errors in the closing disclosure?

   Answer: ____

   ____

   ____

Duane Gomer Education Disclosure

Duane Gomer
Founder, Owner

We sincerely appreciate your support and attendance. It is an honor, privilege and a pleasure to help you renew your endorsement. If you have any comments, complaints or problems please contact me at duane.g@duanegomer.com We are here to serve (since 1963) and we thank you, each and every MLO.

Sincerely, DJ & Duane

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.

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