



Duane Gomer Education Presents



PROFESSIONAL EDUCATION FOR PROFESSIONAL

MLO'S

2024 TEXTBOOK

BY DUANE GOMER, DAVID GOMER,
MICHELLE RODRIGUEZ, JOHN SHORE &
MICHELLE VELEZ

CA DRE/DFPI SAFE COMPREHENSIVE 8 HOURS OF CONTINUING EDUCATION

STUDENT COPY



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Written By: Duane Gomer, Michelle Rodriguez, John Shore and Lorene Randich
Senior Editor: Duane Gomer

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Comments or suggestions to:

Duane Gomer Education, Inc.
23312 Madero #J,
Mission Viejo, CA 92691
(800) 439-4909

Duane.G@duanegomer.com

8 Hour CA-DFPI SAFE Comprehensive: Professional MLO Education 2024 Edition

Course Provider: **Duane Gomer Inc.**

Address: **23312 Madero #J**

Mission Viejo, CA 92691

800-439-4909



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Attachments:

1. NMLS Rules of Conduct for Students



DUANE GOMER EDUCATION

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

Dear DRE and 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 2024 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/2024.pdf>

Thank you,



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](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

NON-TRADITIONAL MORTGAGES

SECTION 1

WHO ESTABLISHED THE REQUIRED CE TOPICS AND WHY?

Introduction

- Important: The required CE topics for 2024 have been ranked from 1-10 by the Multi-State Mortgage Committee (MMC) and were derived from the 2021 3rd quarter examination reports. The top 10 ranked topics the MMC considers 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. Their role is to implement cooperative protocol between state agencies and the financial industry. For additional information Ref: MMC Mortgage Examination Manual¹
- The role of the State Regulator's includes licensing and supervising of state-chartered banks and non-bank entities to include mortgage lenders. They ensure the financial services operate in a safe and sound manner.

¹ [MMC Mortgage Examination Manual](#)

- 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.

SECTION 2

NEGATIVE AMORTIZATION

Introduction

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

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

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

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

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

Another question to CFPB: What is a qualified mortgage?

Answer: A QM is a category of mortgage with certain more stable features that make it more likely that you will be able to afford the loan. There are certain types of loans

with certain risky features that are not permitted, one being Negative Amortization.

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

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

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

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

1. Someone who might not have much money at this time but is expecting more later. Med School Student.
2. Investor with courage. This will increase leverage and IF the property does well, the overall return is better. Some investors (this includes me) might like even more negative amortization, like no payments at all. That is mega Negative Amortization. Takes real courage.
3. Sometimes the lower payment will help make a good Performa Sheet to allow purchase of an investment property or to qualify a homebuyer.
4. Someone can make it through the early years, because their payments are lower.
5. Some sophisticated investors might believe that the market will be increasing, and in five years or so, he or she will refinance.
6. If someone is conservative, they will not like the idea of interest going up, or equity dropping as the payments do not cover the interest. I would have a policy of describing this feature of a loan and have the borrowers sign a written notice that they understand the risks. Not on a big form, just a small simple agreement, saying this loan has some interesting features that could prove to be toxic, and they understand the risks.

Can you get a Negative Amortization loan today? Yes, but the interest rates might be higher and they would not be sold on the secondary market. The loans would be kept in the lender's portfolio².

Time to Think 1.1

1. Negative Amortization loans are _____.
 - a. Non Traditional
 - b. Traditional

2. Negative Amortization loans normally carry _____ interest rates.
 - a. Lower**
 - b. Higher**

² [12 CFR Subpart E 1026.43](#)

SECTION 3

ADJUSTABLE RATE MORTGAGES

Introduction

The SECURE AND FAIR ENFORCEMENT ACT OF 2008³ states: "A nontraditional mortgage product is any product other than a 30-year fixed-rate mortgage". (Title V, Sec. 1503 (6)). That is simple as stated before, but in the "Guidance on Nontraditional Mortgage Product Risks"⁴ the definition of NTM states that it includes "interest-only" and "payment options" terms such as adjustable-rate mortgages (ARM's) where a borrower has flexible payment options with the potential for negative amortization.

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

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

Wellenkamp, Garn, et al.

In 1978 the California State Supreme Court ruled in the Wellenkamp decision that lenders could not enforce any "due on sale clauses" if the buyer had "comparable credit". Obviously lenders did not appreciate this decision so they influenced Congress to pass the Garn-St. Germain Depository Institutions Act in 1982⁵. This Act stated simply that due on sale clauses could be enforced. For mortgage loan

³ [SAFE Act](#)

⁴ [Nontraditional Mortgage Products: Guidance on Nontraditional Mortgage Product Risks](#)

⁵ [Garn-St. Germain Depository Institutions Act of 1982](#)

originators those four years from 1978 to 1982 were memory makers. High double digit interest rates were common, and creative financing was used by many buyers and lenders. This included wrap around mortgages. Also, a Financing Disclosure form was required by State regulation.

There was another aspect of the Act. It allowed lenders to market Adjustable Rate Mortgages. An important addition to the alternative methods of borrowing. You might want to consider learning the nuances of these mortgages, just in case.

Details of ARMs

Index – The index is selected at the origination of a loan. The index is the cost of money determined by market forces. As the index fluctuates, so does the interest rate.

Margin – The margin is a fixed amount that when added to the index determines the interest rate.

Fully Indexed Rate or Note Rate – The fully indexed rate is the total of the Index & Margin.

Periodic Interest Rate Cap – The periodic interest rate cap is the maximum that the interest rate can increase from one adjustment period to the next.

Lifetime Interest Rate Cap – The lifetime interest rate cap is the maximum that the interest rate can increase during the term of the loan.

Initial Rate Adjustment Cap – If the loan has an initial rate adjustment cap, it is used only once for the first adjustment.

Hybrid ARM;s – *Hybrid ARM's* have a fixed rate for longer than one year before the rate adjusts. Up to this point the examples given are for 1 year ARM's. Any loan that remains fixed for 2 or more years and then adjusts would be a hybrid ARM. The description of a loan that is fixed for 2 years and then adjusts each following year would be a 2/1 Hybrid ARM.

Discussion Points of ARMs

ARM's are not for every borrower or trustor.

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

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

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

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

Interest Rates

The interest rate is based on two factors, Index and Margin. The index rate reflects the current market and is normally selected by the lender and then technically approved by the applicant. The new CHARM book says that indices can include the U.S. prime rate and the Constant Maturity Treasury (CMT). Nothing is said about LIBOR anymore. The margin is the extra percentage that the lender adds to the loan, their gross operating income. A future borrower can shop for a preferred index and a lower margin. The Loan Estimate shows the index and the margin being offered to the applicant.

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

Paying Points

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

Conversion Option

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

Teaser Rates

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

Interest-Only ARMs

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

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

Many of you have worked with ARM's for many years and since you have all passed the National Exam, you have studied the Basics of ARM's.

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

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

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

CHARM Booklet

There have been some recent corrections to the CHARM Booklet⁶ given to applicants. The original booklet published by the Federal Reserve Board was outdated. The new edition has brought the material up-to-date according to new regulations and eliminated about 20 pages.

How to Use the Booklet

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

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

About the CFPB's Mission

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

How can this booklet help you, the applicant?

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

⁶ [CHARM Booklet](#)

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

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

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

After you finish this booklet:

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

The Latest Updates to the CHARM Booklet

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

Time to Calculate Rates

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

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

4. What is the rate for the fourth year assuming an index of 7%?
5. What is the rate for the fifth year assuming an index of 8%?

Answers:

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

SECTION 4

15 YEAR LOAN

Introduction

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

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

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

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

Then, the clients read the fourth box, and most of them said something like, "Oh, my God, what in the world is this, you have got to be kidding, no way", etc. The box was the total of all payments and the principal was added to this amount. It was a rather large number. This form was for a 30-year loan and the interest paid does add up. The MLO could recommend a 15-year loan. Now, the client might be satisfied with

column four, but not so satisfied with the amount of the payments.

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

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

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

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

One item that the LE has that the TILA Estimate did not is a space for the applicant to sign that they received the form and the date received. Another use of the form is to explain page three: Important Information.

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

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

Time to Think 1.2

1. The _____ is the cost of the money.
 - a. Index
 - b. Margin

2. The booklet given to ARM applicants is the _____ booklet.
 - a. CHARM
 - b. CFPB

SECTION 5

REHAB LOANS

Introduction

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

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

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

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

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

The FHA requires that you use a minimum of \$5,000 towards costs and that you complete the repairs within six months. You cannot include improvements for

commercial use or luxury items such as tennis courts, gazebos, or swimming pools.

Eligible Homes⁷

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

Two Types

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

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

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

An escrow account will be set up for the repair costs. An excellent method to understand these loans is to review the 203(k) and Streamlined 203(k) Maximum Mortgage worksheet.⁸ It is included at the end of Section 1.

Streamline Requirements⁹

1. Only FHA-approved Lenders can offer 203(k) streamline loans.
2. No foreclosures, bankruptcies, or short sales in the past 3 years.
3. Must be able to prove income. (W2's, tax returns, bank statement).
4. Down payment of 3.5%.
5. Minimum 640 credit score.
6. Stable employment history.
7. No more than 1 late payment in past 12 months.

⁷ [*The Section 203\(k\) Loan Program*](#)

⁸ [*HUD-92700 Form*](#)

⁹ [*24 CFR 203.5*](#)

Streamline Guidelines

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

Loan Process for a Standard 203(k)¹⁰

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

Some Extra Fees¹¹

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

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

More Facts¹²

1. The Maximum Mortgage Amounts are the same as for standard FHA loans (203b). The loan amount must not exceed the purchase price plus rehab costs, less the 3.5% down payment or 110% of the expected market future less the 3.5% down payment.
2. Can I do the work myself? In some cases, yes, if you are extremely qualified.
3. Will I ever need HUD-consultants? Not on a Streamline loan, but in most cases on a Standard 203(k).

¹⁰ [The 203K Loan Process](#)

¹¹ [The FHA 203k Rehab Loan: Financing the Fixer-Upper](#)

¹² [24 CFR 203.50](#)

4. Can a 203k loan be used on an investment property or to buy furniture? No.
5. Most people who qualify for a 203b loan can qualify for a 203k loan.
6. Lenders may charge a higher interest rate and higher fees for 203Ks.

Important Alert for MLO's

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

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

AB 68: State of California Regulation

A Brief Summary of the Provisions of AB 68¹³.

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

¹³ [AB68](#)

- Require, as a condition for ministerial approval of an application, correction of physical conditions that do not conform to current zoning standards.
- Allowing ministerial “by-right” approvals for:
 1. Two ADUs per single family property, an attached or detached ADU.
 2. Plus, a “junior” ADU (made from existing living space).
 3. Multiple ADUs at multifamily properties.

Ministerial Right

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

SECTION 6

SOCRATES TIME

Socrates is considered by most historians to be the greatest teacher of all time: He always sought answers to urgent questions and helped others to do the same.

The Socrates method is a form of dialogue between individuals based on asking and answering questions. So for this section we will be using a questioning approach. Join the dialogue.

And asking questions is in most instances the best way to Disclose Information to clients. Helps you make sure they understand.

Questions	Answer
1. Is a 15 year loan a Traditional Loan?	NO
2. A client must accept the Index used by your lender?	False, it would be considered the same as an interest rate, a condition of the loan.
3. Which agency was established by the Dodd-Frank Act?	CFPB (Consumer Financial Protection Bureau)
4. What does the acronym NMLS stand for?	Nationwide Mortgage Licensing System and Registry
5. What does QM stand for?	Qualified Mortgages
6. What does ATR stand for?	Ability to Repay
7. Which Regulation lists minimum standards for ATR?	Reg Z
8. What does CFR stand for?	Code of Federal Regulations

9. What is the outcome when payments do not cover interest charges?	Negative Amortization
10. In normal circumstances, would older or younger clients be the best candidates for a 15 year loan?	Older
11. What are two disadvantages to 15 year loans?	Higher monthly payments and more difficult to qualify with the higher costs.
12. What are two advantages of 15 year loans?	You will normally get a lower interest rate when compared to 30 year loans and your mortgage burning celebration date will be accelerated.
13. How many pages to the Loan Estimate?	Three
14. How many pages to the Closing Disclosure?	Five
15. Which type of loan is a 203B loan?	Your regular FHA loans
16. Can a flipper get a 203K loan?	No
17. What is churning?	Refinancing often
18. On an ARM loan in California the borrower is probably called the _____.	Trustor
19. On the East Coast the borrower is probably called the _____.	Mortgagor
20. Which type of Loans have the lowest default rate?	VA
21. A Legal offer would be a _____ offer.	Bona fide

22. An alienation clause is _____.	Due on sale
23. The FHA was created in ____.	1934
24. The Intent to Proceed can be oral. True or False?	True
25. Consummation in California is when _____.	Docs are signed
26. What does LESA stand for?	Life Expectancy Set Aside
27. The Non-Traditional section of the 8 hour CE course must be ___ hours long.	Two
28. A loan estimate is required because of which Federal Act?	TILA
29. What does SAFE Act stand for?	Secure and Fair Enforcement Act
30. What does TRID stand for?	TILA RESPA Integrated Disclosure, Mortgage Loan
31. What year that CFPB was created?	2010
32. Equal monthly payments on a Reverse Mortgage	Tenure
33. A loan where the lender can only look to the property	Non-recourse loan
34. How long does an heir have to act on a reverse mortgage?	Six months
35. What does HECM stand for?	Home Equity Conversion Mortgage

36. How does the VA stand behind their loans?	Guarantee
37. Rate of PMI on a VA loan?	None
38. FHA loans are what type of loans?	Insured loans
39. What does IRRRL stand for?	Interest Rate Reduction Refinance Loan
40. What does FDIC stand for?	Federal Deposit Insurance Corporation
41. What does NINA stand for?	Borrower with No Income, No Assets
42. What does NINANJ stand for?	Borrower with No Income, No Assets, No Job
43. The act of allowing another person to take over the existing mortgage on a property at the existing terms.	Assumption
44. An indication that the borrower wishes to move forward with their application.	Intent to Proceed
45. What does GPM stand for?	Graduated Payment Loan
46. How many counties are in California?	58

SECTION 7

REVERSE MORTGAGE UPDATE

We decided to present a short update on Reverse Mortgages. As our authority we selected David Gomer, Broker, Founder and Owner of Senior Funding, Calabasas, CA. He has been specializing in all types of Reverse Mortgages since 1989. He earned the prestigious Certified Reverse Mortgage Professional Designation awarded by the National Reverse Mortgage Lenders, and a Real Estate Degree from California State University Northridge. Senior Funding Associates is the #1 All Time Wholesale Reverse Mortgage Broker in California. I can vouch for David's honesty and knowledge as I have known him for many years.

HECM: Home Equity Conversion Mortgage from Federal Housing and Urban Development. There are many different products available today. This is the standard Reverse Mortgage loan (95% of the market) that has the over 62 limit and the other well-known Federal Regulation

PROPRIETARY REVERSE MORTGAGE: A mortgage from a private lender with normally higher limits for homes up to \$1,500,000; higher interest rates, no Mortgage Insurance Premiums, and younger people qualify.

H4P: A Reverse Mortgage for purchase of a residence with no monthly payments. Real Estate Agents like this loan because they possibly could create two transactions.

REFINANCE: One advantage of this Mortgage is that the borrower already has a Reverse Mortgage so communication is much easier. Typically done to reduce the interest rate and for increased cash.

LINE OF CREDIT: A major point is that the Line of Credit grows every year. It grows at the rate of the sum of the current interest rate and the Mortgage Insurance Premium. If the sum of two factors today is around seven, using the rule of 72 the amount available to borrow would double in just over 10 years. A \$400,000 limit at age 62 would be almost \$800,000 at age 72 and so forth. This is like an insurance policy against financial disaster.

SECOND LOAN REVERSE MORTGAGE: This loan will be subordinate to the existing loan. Homeowners can cash out funds and retain their seasoned, low interest rate primary loan. This is an interesting new RM product and may open up new markets.

INTERESTING INFORMATION: On March 31, 2023, Finance of America announced the purchase of American Advisors Group. Most of you know that AAG was the company that used Senator Fred Thompson and Tom Selleck as their spokespersons. This acquisition now positions Finance of America as one of the top two RM lenders with Mutual of Omaha. Data from HECM WORLD for 2023 shows the companies each with approximately 24% of the RM market and Longbridge Financial LLC at third with around 11%.

INTERESTING INFORMATION #2: Two important results to remember from a recent poll by the American Advisor Groups for US homeowners between the ages of 60-75: 92% of Californians want to Age in Place and for 75% of Senior Citizens their home is their major asset. Also, an AARP poll stated that 93% of Reverse Mortgage holding homeowners found their loan a positive effect on their life.

Be aware of the myths still existing concerning the dangers of Reverse Mortgage. One authority presented the HELOC very favorably when comparing it to a HECM. They forgot to mention that with a HELOC a borrower must qualify showing income, make monthly interest payments, maintain the property in a suitable manner, and pay all insurance costs, property taxes, and Home-Owner Association fees. Then, after a "draw" period of probably 10 years, they will have to pay off all funds borrowed at a completely amortizing rate.

Standard bank HELOCS can also be frozen due to market conditions, but a line of credit with a federally insured reverse mortgage is available, as long as the borrower complies with the loan terms.

Time to Think 1.3

1. The FHA Rehabilitation loan is number?
 - a. 203(k)
 - b. 203(b)

2. The HECM loan designed to purchase a home is?
 - a. HELOC
 - b. H4P

CHAPTER 1

REVIEW QUIZ

1. The SAFE Act was effective in
 - a. 2023
 - b. 2008

2. An interest only loan could result in a _____ payment.
 - a. Balloon
 - b. Equity

3. The interest rate on an ARM is determined by the index and
 - a. Cap Rate
 - b. Margin

4. There are two types of 203(k) loans, standard and
 - a. Adjustable
 - b. Streamlined

5. A Proprietary Reverse Mortgage is from a _____ lender
 - a. Private
 - b. State

CHAPTER 2

ETHICS

SECTION 1

IDENTITY THEFT AND DUTIES OF THE MLO

Introduction

In the Code of Federal Regulations (CFR), regulation 16 CFR § 681.1 contains the duties regarding the detection, prevention and mitigation of identity theft.¹⁴ If you or one of your borrowers has been a victim of identity theft, then you are aware of how difficult it can be to clean up the wrong doing and make your client “mortgage ready”.

This regulation applies to the relationship that is established by a person who is seeking to obtain a product for household purposes. Applying for an extension of credit to purchase or refinance a home or business falls into this definition and is therefore classified as a *covered account*.

A financial institution or creditor is required to conduct a risk assessment to determine whether it offers or maintains covered accounts. The lending institution must take into consideration:

1. The methods it provides to open its accounts (mortgages).
2. The methods it provides to access its accounts; and
3. Its previous experiences with identity theft.

¹⁴ [Code of Federal Regulations, Title 16, Chapter 1, Subchapter F, Part 681](#)

Lenders are also required to establish an Identity Theft Program. The program must explain how the company will detect, prevent and mitigate identity theft. The program must also include reasonable policies and procedures to:

1. Identify relevant Red Flags for the origination and/or servicing of the mortgages and incorporate those Red Flags into its Program.
2. Detect Red Flags that have been incorporated into the Program.
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically to reflect changes to risk to borrowers and to the safety and soundness of the financial institution from identity theft.

The Program must also provide for the continued administration of the Program and must:

1. Obtain approval of the initial written Program from its Board of Directors, committee of the Board or senior management.
2. Involve the Board, committee or a senior management in the oversight, development, implementation and administration of the Program;
3. Train staff to effectively implement the Program; and
4. Exercise appropriate and effective oversight of any service provider arrangements.

The Identity Theft Red Flags Rule lists 26 specific identity theft red flags that companies should consider.¹⁵ Some of these Red Flags are obvious signs of possible identity theft. However, it is suggested that this list be read in its entirety and kept as a reference for mortgage originators. Here are some recent statistics that might explain how serious this problem has become.¹⁶

1. You are more likely to have your identity stolen than your car taken or home burglarized.
2. 18% of victims take 4 years or more to discover they are victims of identity theft.
3. 38% discover their identities were stolen within 3 months.
4. The average number of hours spent repairing damage from identity theft is 330. (That is approximately 41 eight-hour days).
5. The average identity theft victim loses an average of \$1,820 - \$14,340 in lost wages dealing with identity theft.

¹⁵ [Identity Theft Red Flags](#)

¹⁶ [Identity Theft Examples](#)

IdentityTheft.gov

If you have a client who has been a victim of identity theft, you should be aware that the Federal Trade Commission has a special website for the reporting of identity theft¹⁷. 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. These steps are:

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 let consumers know what their rights are if someone has stolen their identity. Those rights are:

1. Create an FTC Identity Theft Report
2. Place a one-year fraud alert on your credit report.
3. Place a seven-year extended fraud alert on your credit report.
4. Get free copies of your credit report.
5. Get fraudulent information removed (or "blocked") from your credit report.
6. Dispute fraudulent or inaccurate information on your credit report.
7. Stop creditors and debt collectors from reporting fraudulent accounts.
8. Get copies of documents related to the identity theft.
9. Stop a debt collector from contacting you.

Telemarketing & Consumer Fraud and Abuse Prevention Act¹⁸

Originally passed into law in 1994, this Act still seems to be the most violated and abused of all consumer protection acts. While phone calls from solicitors continue to be a problem, there seems to be a group of older Americans who have become easy targets. In late 2000, Congress made the following findings.¹⁹

¹⁷ Identitytheft.gov/#/Know-Your-Rights

¹⁸ [15 U.S.C. §§ 6101-6108](#)

¹⁹ [Pub. L. 106-534, §2, Nov. 22, 2000, 114 Stat. 2555](#)

1. Older Americans are among the most rapidly growing segments and are too frequently the victims of violent crime, property crime and consumer and telemarketing fraud.
2. According to the National Consumers League, telemarketing fraud costs consumers nearly \$40B each year.
3. Fraudulent telemarketers compile lists of consumers who are potentially vulnerable to telemarketing fraud. The list is called the “mooch list”.
4. It is estimated that 56% of the names on the “mooch list’ are aged 50 or older.

Consumer Protection

As mortgage originators, we have all taken numerous classes that reminded us about the discrimination that takes place in financing and mortgage lending. However, one does not have to look far to find enforcement actions that show that discrimination is still a problem. (It can be discrimination based upon one’s race, color of their skin, their national origin, their sex, their marital status, their age, their eligibility for public assistance or if they have exercised any rights under the Consumer Credit Protection Act.)

CFPB Cites Citibank for Violation of Regulation B, ECOA²⁰

In November 2023, the CFPB ordered Citibank to pay \$25.9 million in fines and consumer redress for intentionally and illegally discriminating against credit card applications the bank identified as Armenian American. From 2015 through 2021, Citibank was singled out for discriminating against applicants for certain credit card products, based on their surnames and whom were suspected of being of Armenian descent.

Bank supervisors conspired to hide the discrimination by instructing employees not to discuss the discriminatory practices in writing or on recorded phone lines. Citibank employees also lied about the basis of denial, providing false reasons to denied applicants. Citibank will pay \$1.4 million to harmed consumers along with a \$24.5 million penalty.

TransUnion Charged with Violating Fair Credit Reporting²¹

So much of mortgage lending and other types of consumer credit, depends upon a client’s credit score. There are companies that specialize in helping individuals

²⁰ [CFPB cites Citibank for ECOA Violation](#)

²¹ [CFPB requires TransUnion to pay \\$15M](#)

improve their credit scores. One would think that the three major credit repositories would exercise diligence and make a concerted effort to keep accurate records, when such a huge emphasis is placed upon one's credit score.

In October 2023, the CFPB issued an order against TransUnion, parent company of one of the three nationwide consumer reporting agencies, and two of its subsidiaries, Trans Union, LLC and TransUnion Interactive, Inc.

Starting in September 2018, Federal Law has required nationwide consumer reporting agencies to provide security freezes as a free service. The CFPB found that TransUnion, from as early as 2003, failed to timely place or remove security freezes and locks on the credit reports of tens of thousands of consumers who requested them. In some cases, those requests were left unmet for months or years.

It was found that these failures to place or remove freezes in a timely manner violated the Fair Credit Reporting Act (FCRA), and were also in violation of the Consumer Financial Protection Act of 2010 (CFPA). The CFPB's order required TransUnion to pay \$3M to consumers in redress and \$5M in civil penalties. One has to wonder how many consumers were unable or discouraged from buying a home as a result of these violations!

Marketing Service Agreements²²

The Real Estate Settlement Procedures Act (RESPA) is not new to the industry. It was passed in 1974 and has seen several changes and updates. Section 8 of RESPA which addresses prohibited kickbacks for referral business has always been a part of the Act since its inception. Many Lenders, Title companies, Real Estate Agents and others have tried to justify and circumvent RESPA by establishing Marketing Service Agreements with each other.

Any agreement that entails exchanging a thing of value for referrals of settlement service business involving a federally related mortgage loan likely violates RESPA, whether or a MSA or some related arrangement is part of the transaction. Illegal kickbacks and referral fees, including those disguised by MSAs, present compliance risks not just for the individuals who are directly involved in the impermissible conduct, but also for the companies that employ them.

An example of such liability: A title company entered into unwritten agreements with individual loan officers in which it paid for the referrals by defraying the loan

²² [*Compliance-bulletin-2015-05-respa-compliance-and-marketing-services*](#)

officers' marketing expenses. The company supplied loan officers with valuable lead information and marketing materials. In exchange, the loan officers sent referrals to the title company. The mortgage companies involved did not detect these agreements as RESPA violations and/or correct or prevent them, even when they had reason to know that the title company was defraying the marketing expenses of the lenders and their loan officers.

Mortgage Service Agreements (MSAs) often involve providers of settlement services in a mortgage loan transaction, such as a lender, real estate agent or broker, or a title company. They may also involve third parties who are not settlement services providers, such as membership organizations. MSAs are usually framed as payments for advertising or promotional services, but in some cases the payments are actually disguised compensation for referrals.

The CFPB has completed a significant number of public enforcement actions under RESPA. The payment of improper kickbacks and referral fees has been the basis of almost all of these actions. Resolving these matters has entailed injunctive relief including bans on entering into MSAs or working in the mortgage industry for periods of up to five years.

RESPA violations have cost industry participants over \$75 million in penalties. In addition to corporate liability, some of these enforcement actions have required individuals in charge of companies that committed the violations to pay significant monetary penalties.

Affiliated Business Disclosures²³

An affiliate relationship is the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607). However, when referring a client to an Affiliated Business, the arrangement must be disclosed to the consumer, in writing, before or at the time of the referral. It is also important to make sure your Affiliated Business Disclosure (AfBA), meets all of the requirements of HUD and the CFPB.

²³ [*Affiliated Business Disclosures*](#)

A correctly composed Affiliated Business Arrangement Disclosure Statement (AfBA), must contain the following information:

1. Your client's name.
2. Your Company Name.
3. The property which to this refers (if any).
4. Date of this notice.
5. Reason for the disclosure.
6. The nature of the relationship.
7. The percentage of ownership.
8. Statement that this referral may provide a financial or other benefit.
9. Statement of the estimated charge for using the provider.
10. Statement that you are not required to use the preferred provider.
11. Statement that you are free to shop around.
12. Acknowledgment from the consumer of receipt.
13. Clients' signature.

For a detailed sample with specific verbiage, please use this link from the CFPB website: <https://www.consumerfinance.gov/rules-policy/regulations/1024/d/>

Misleading Mortgage Advertisements

The CFPB and the Federal Trade Commission (FTC) have expressed concern that there are a number of mortgage lenders that are potentially violating the Mortgage Acts and Practices (MAP) Rule that concerns misleading advertisements. The MAP Rule took effect in 2011, yet both the CFPB and FTC are concerned especially with misleading practices that seem to be directed at older Americans, Service Members and Veterans.²⁴

The CFPB has received examples of the following potentially misleading practices through their complaint system: Be suspicious of ads with:

1. Official looking seals or logos that imply some kind of government status, making one think that the lenders come from the VA or HUD.
2. Promises of amazingly low rates, that turn out to be only in effect for a short period of time.
3. Promises that a reverse mortgage lets one stay in their home without any payment. Conveniently not mentioning that taxes and insurance needs to be paid by the senior.
4. Announcements that you are “pre-approved” and a large amount of cash or credit is available.

²⁴ [Deceptive Mortgage Ads](#)

Regulation N – Mortgage Acts and Practices

Regulation N was established by the CFPB and the FTC to enforce the Dodd-Frank Act. Violations of Regulation N includes false advertising and misleading claims in advertising. Regulation N is also known as the Mortgage Acts and Practices Act (MAP Act).

This regulation prohibits any person (or business) from making any material misrepresentation in connection with an advertisement for any mortgage credit product. An action under this act may be brought by a federal regulator or any state attorney general or other officer authorized by the state.²⁵

The MAP Act specifically prohibits a misrepresentation about:

1. The amount of interest paid monthly
2. Any difference between the amount owed and the amount paid
3. The APR
4. The amount of fees being charged
5. Costs of additional products sold with the loan
6. The terms, payment amounts including PITI
7. Any prepayment penalty and terms
8. If the rate is variable
9. Is the rate fixed for the entire term of the loan.
10. Is the loan fully amortized
11. The amount of cash or credit available to the consumer
12. The amount of any minimum payments
13. Potential for default including nonpayment of taxes and insurance
14. Effectiveness of the loan in helping the consumer resolve default
15. Provider is/or affiliated with any government agency
16. Leading consumer to believe you are working on behalf of their current lender
17. Conditions under which the consumer can stay in the dwelling
18. The consumer has been pre-approved
19. The availability of counseling services

DRE's Mortgage Loan Advertising Requirements

California MLOs who are required to take the 8-hour continuing education yearly class are licensed either by the Department of Financial Protection and Innovation (DFPI) or the Department of Real Estate (DRE).

²⁵ [*Code of Federal Regulations Title 12, Ch X, 1014.1*](#)

The DRE has an eight-page Advertising Guidelines publication available on the department's website.²⁶ The following items must be disclosed in advertisements:

1. Their license name and DRE license number
2. Their brokers' identity and their DRE license number
3. Licensee's NMLS unique identifier and
4. The disclosure of licensure and licensing department

Brokers may submit proposed advertisements for review and approval. Ads are reviewed for compliance with the requirements of the Business and Professions Code and the Regulations of the Real Estate Commissioner. The ads are not reviewed for Federal compliance. The fee for reviewing mortgage loan advertising is \$40 per advertisement.

CA Code Regulations Title 10 § 2848

The Business and Professions Code, Title 10 § 2848 provides more requirements when quoting terms of repayment of loans. A representation of a specific installment in repayment of a loan must include an equally prominent disclosure of the following information regarding a fixed rate loan:

1. Principal amount
2. Simple annual interest rate
3. Annual percentage rate
4. Number, amount and period of payments scheduled to maturity
5. Balance due at maturity if not fully amortized

This section goes on to include these notable violations:

1. Representing that loans are available on terms more favorable to the borrower than terms generally available at that time.
2. Representing that a loan can or will be approved by telephone.
3. Representation of a simple annual interest rate without equally prominent disclosure of the APR.
4. A statement that the licensee can arrange "low doc/no doc", "no income/no asset", "stated income", "stated asset", "no ratio" or similar products without a statement that these products may have higher rates, more points or more fees than products requiring documentation.

²⁶ [Real Estate Advertising Guidelines](#)

Predatory Lending

Predatory Lending is defined as any unfair practice that hinders a borrower's ability to repay debt and serves to benefit the lender.²⁷ These loans are often devastating to victims as they can severely harm borrowers credit, devastate their finances and make it much harder for them to get out of debt or save money.

Borrowers are encouraged to shop around for a mortgage. HUD suggests that a borrower should always get a minimum of three quotes or offers – and to get them in writing. The Home Loan Toolkit provides a page that makes it easy for borrowers to record the comparisons. It also gives them suggested questions to ask of the lender. The Home Loan Toolkit is a publication of the CFPB and there is a requirement for lenders to provide them to borrowers within three days after they have applied for their mortgage.

The Toolkit is also available online at the CFPB website. It can be downloaded by going to their website at this link: <https://www.consumerfinance.gov/owning-a-home/explore/home-loan-toolkit/>

The Toolkit has a section for the borrowers that discusses about how to handle problems. In response to a borrower who thinks they have been a victim of predatory lending, the CFPB suggests, “Don't believe anyone who tells you they are your only chance to get a loan”.

While we still see some predatory lending in the mortgage field, both the CFPB and DFPI have taken aim at the loans known as “Payday Loans.” This type of loan has affected the mortgage industry when a potential borrower is unable to credit qualify for a mortgage, because they have fallen victim to a Payday Lender.

Payday lending is prohibited in 13 states. The maximum interest rates vary from state to state as does the maximum loan amount that is available. Even though 13 states have outlawed payday lending, most of the remaining states only regulate the size of the loan and the fees that can be charged. California has limited the maximum loan at \$300. To do business in California, a payday lender must be licensed by the DFPI.

Here is how the loan works: A California payday lender making a \$300 loan is allowed to charge a maximum fee of 15% of the amount of the loan. On a loan of \$300, 15% is \$45. A 15% fee is equivalent to an APR of 460% for a two-week loan.

²⁷ [*What is Predatory Lending Practices*](#)

The loan is secured by a post-dated check to the lender for \$300 and then the borrower receives \$255 in cash. The date of the check is the borrower's payday.

A payday lender cannot issue a new loan while the borrower still has an existing loan. However, another payday lender can. If the post-dated check bounces, the payday lender may charge only one bounced check fee (up to \$15).²⁸

The DFPI has a very informative brochure entitled "What You Need To Know About Payday Loans." This downloadable document gives consumers the facts about the pitfalls of payday lending, California law protections, credit counseling and information about avoiding bankruptcy.

The document is a tri-fold, two-sided printable piece of information that an MLO should be aware of. Here is a link: <https://dfpi.ca.gov/wp-content/uploads/sites/337/2019/07/What-You-Need-to-Know-about-payday-loans.pdf>

ACE Cash Express – Predatory Lending at its best?²⁹

The CFPB filed a lawsuit in July 2022 accusing payday lender ACE Cash Express of concealing free repayment plans from struggling borrowers. Individual borrowers paid hundreds of thousands of dollars in re-borrowing fees, when they were in fact eligible for free repayment plans. These practices generated at least \$240M in fees for ACE while keeping borrowers in debt.

ACE Cash Express offers a variety of financial products, including high-cost, small dollar payday title loans, along with bill payment, check cashing and prepaid debit-card services. ACE has approximately 979 stores in 22 states and the District of Columbia.

The Gramm-Leach-Bliley Act

Enacted in 1999, this act required all businesses in the financial service industry to be in full compliance by July 1, 2001.³⁰ The FTC is responsible for enforcing the law's Privacy of Consumer Financial Information Rule, known as the Privacy Act and sometimes referred to as the Privacy Rule. This Rule protects a consumer's "nonpublic personal information" (NPI), which is defined as any personally identifiable information that an institution collects about an individual in connection

²⁸ [What You Need To Know About Payday Loans](#)

²⁹ [CFPB Takes Action Against ACE Cash Express](#)

³⁰ [Privacy of CFIR Gramm-Leach-Bliley-Act](#)

with providing a financial product or service, unless that information is otherwise “publicly available.”

The Rule requires Financial Institutions to provide their customers or consumers, a clear and conspicuous written notice describing their privacy policies and practices. This notice must be provided by the time the customer relationship is established. Lenders may choose to give their consumers a “short-form notice” instead of a full privacy notice. The short-form notice must:

1. Explain that your full privacy notice is available on request;
2. Describe a reasonable way consumers may get the full privacy notice; and
3. Include an opt-out notice.

The GLB act prohibits financial institutions from sharing account numbers or similar access numbers or codes for marketing purposes. This prohibition applies even when a consumer or customer has not opted-out of the disclosure of NPI concerning their account. This prohibition applies to the disclosures of numbers for an individual’s credit card account or deposit account.

Time to Think 2.1

1. The telemarketing act was passed in
 - a. 1994
 - b. 2022
2. The basis of most of the violations of RESPA are concerned with
 - a. Kickbacks
 - b. False Advertising

SECTION 2

IMPORTANT ASPECTS OF DISCRIMINATION

Types of Implicit Bias

Implicit or unconscious biases are attitudes that are held subconsciously and affect the way individuals feel and think about others around them. They can be very ingrained and be established in a person's childhood. These biases can color the emotional and rational responses of individuals in everyday situations and affect their behavior.

There are many types of implicit bias. Some are biases in how individuals regard their own thought processes and reasoning abilities, such as focusing on negative qualities that align with one's existing attitudes. Others are related to how people may look, talk, and behave. Obviously, these biases are not conscious and rely on stereotypes.

These actions can result in discriminatory practices when people are not treated like individuals.

There are many articles on the Internet and in libraries about the types of implicit bias. Everyone has their own views and descriptions. Following are some of the more common terms. You should be thinking of your own biases.

1. **AFFINITY BIAS:** Also known as similarity bias, is the tendency people have to connect with others who share similar interests, experiences, and backgrounds.
2. **CONFIRMATION BIAS:** Is the inclination to draw conclusions about a situation or person based on your personal desires, beliefs, and prejudices rather than on unbiased merit. You say that you know that is how these stereotypes act.

3. **ATTRIBUTION BIAS:** Is a phenomenon where you try to make sense of or judge a person's behavior based on prior observations and interactions you've had with that individual that make up your perception of them.
4. **CONFORMITY BIAS:** Is the tendency people have to act like the people around them---peer pressure.
5. **HALO EFFECT:** Is where you learn something great about someone and then place them on a pedestal. For example, they went to a name brand school or a favorite school of yours.
6. **HORNS EFFECT:** Is the complete opposite of the halo effect and this bias can affect your thinking and your actions.
7. **CONTRAST EFFECT:** When you compare two or more people with whom you have come in contact and this causes you to exaggerate the performance of one in relation to the other.
8. **GENDER BIAS:** Refers to a person receiving different treatment based on the person's real or perceived gender identity.
9. **AGEISM:** Is having negative feelings about someone because of their age. Either too young or too old based on your biases. As we all know, this is one of the most common biases whether conscious (explicit) or subconscious (implicit).
10. **NAME BIAS:** People are judged on their names; sometimes you get confused because a Smith marries a Chang.
11. **BEAUTY BIAS:** A social behavior where people believe that attractive people are more successful, competent and qualified. A Central Casting type executive can move up the ladder faster, talented or not.
12. **HEIGHT BIAS:** The tendency to judge a person by whether he or she is short or tall. There are many surveys that show taller men make more money than short men.
13. **ANCHOR BIAS:** Someone who hangs on to some early piece of information from that person and judges people based on it.

14. **NON-VERBAL BIAS:** A weak handshake, folded arms, no eye contact. You might judge someone based on this external fact.
15. **AUTHORITY BIAS:** Something has to be true because it came from a real authority. Follow the leader.
16. **OVERCONFIDENCE BIAS:** You have a tendency to have more confidence in your abilities than you should have.
17. **RACE AND ETHNICITY BIAS:** You assume certain characteristics about someone based on these factors. Asians are better at math, Jewish are better at medical situations, Blacks are better athletes, Hispanics have trouble with English and this is not always true.
18. **DISABILITY BIAS:** It is sad but true that many capable people with disabilities are not treated equally.
19. **LGBTQIA+ BIAS:** When someone would without thinking discriminate against gays, transgender, and others.
20. **WEIGHT BIAS:** Decisions are made based not on facts of the situation but whether the person is overweight or underweight.
21. **TATTOOS, HAIR AND DRESS, and ETC. BIAS:** A prospect for a position in your company is dismissed because of appearance with ability never considered.
22. **LIFE STYLE, MUSIC, and ETC. BIAS:** People are judged by their lifestyle.
23. **RELIGION AND POLITICAL BIAS:** Two of the oldest biases and still prevalent today.
24. **WEALTH BIAS:** Someone is judged based on their assets in comparison to other people.
25. **REGIONAL BIASES:** Where was the person raised? In the South, Flyover, Europe.

Understanding Identity

Your identity or mine can be discussed in singular terms (I am male) or multiple/intersecting such as male, senior, veteran, etc. Part of understanding identity means understanding how someone fits into other groups and understanding how some groups have more social, political or economic power than others.

We may focus on cultural markers such as clothing, names, and skin color. Our identities are comprised of shared ideas, ideologies, biases and ways of seeing the world around us.

I am not just the stereotyped male, there are other factors. I am a senior, Veteran, white, educated, lived in Europe, a Badger, a Hoosier, a UCLA Bruin, Navy officer, father, husband, grandfather, parent, great-grandfather, Californian, Realtor, and there are many other facets that are political, religious, etc.

And these facets probably influence my thinking on many topics. So do not put everyone into your preconceived ideas of where they fit. You are also a product of many situations and understand that your clients, associates, and leaders have many sides to their makeup. They are not coming from just one spot.

Where do these other factors come from? Possibly families, peers, role models, schools, organizations, governments, and don't forget the media. Media plays a prominent role in creating meaning, shaping our values, defining who we are, establishing norms and reinforcing our current values.

We internalize these values and take them for granted. They seem natural and shape the way we see people, objects, practices and institutions. And many times we cannot understand how anyone can believe differently. But not all people believe as we do and that is okay, and we must take these differences into consideration when dealing in the real world.

Our gender, race and ethnicity, sexual orientation, class, disability, religion and age can play a big role in determining whether or not we have social, political or economic power. Prejudices can manifest in unequal opportunities, rights, or wages as well as being stereotyped, marginalized or persecuted. These factors hurt individuals, classes, groups and many others. This is not good for people, companies, societies, and even countries. We should strive to understand bias whether implicit or explicit and act accordingly.

Individual aspects of our identities intersect and shape how we are treated, what kind of education and jobs we get, where we live, what opportunities we are afforded and what kind of inequities we may face. There are the ism's; sexism, racism, classism, ageism, ableism, anti-Semitism, just to name a few.

Putting people into stereotypical groups allows people to feel superior to them. Men over women, whites over non-whites, straight over gay, wealthy over poor, young over old, able-bodied over disabled, and brand university students over state schools.

We should all become educated in recognizing bias in all shapes. Just like other people are educating the public on what is sexual harassment. Some people do not know that certain words, touching, and other actions are not appropriate. They must be educated so that harassment is eliminated.

SECTION 3

KNOWLEDGE OF WHAT IS EXPLICIT BIAS

Attitudes and Beliefs

Explicit Bias is much easier to understand and to explain. Earlier we mentioned that Unconscionable Bias is sometimes referred to as Implicit Bias. Explicit Bias would therefore be Conscionable Bias. If you have an Explicit Bias, you know it and many people around you know it too.

A dictionary definition of explicit is: "fully revealed or expressed without vagueness, implication, or ambiguity, and leaves no question as to meaning or intent". Very definite. The Bias could be positive or negative. Positive Bias might be expressed as partiality.

Attitudes and beliefs are formed by our interactions from birth. They are fostered by circumstances of birth, upbringing, education, relationships, and so forth. Years ago there was an outstanding musical both a movie and Broadway play - South Pacific. The play written by Rodgers and Hammerstein opened on Broadway in 1949.

There is a pivotal song sung about bi-racial relationships and the hatred directed toward them. The song is called, "You Have to Be Carefully Taught How to Hate" and the lyrics discuss how some families raise bigoted children. (Another article at that time was titled "Children Learn What They Live".)

And South Pacific was almost cancelled due to criticism and statements that the lyrics and plot were not appropriate. The play won 10 Tony's and the movie was a huge success. So people were watching and this recognition of racism was noted 73 years ago.

Examples of Explicit Bias

There are many areas of Explicit Bias. They include racism, age, gender, ethnicity, religion, immigration status, life style, abortion, guns, disabilities, capital punishment, LGBT, weight, conservatives, taxes, infrastructure, liberals, tattoos, trade, and on and on. And there are levels of Bias. They can range from subtle or minor to obsessive and major.

And major biases can lead to many problems in education, work, culture, opportunities, housing, security, etc. It is racism and religion that lead to many mass shootings. Many of the mass shootings are at churches; synagogues; mosques; and schools. And at government facilities.

Time To Think 2.2

1. Explicit Bias is a/an _____ bias.
 - a. Conscious
 - b. Unconscious

2. Ageism is having negative feelings about someone because of their
 - a. Height
 - b. Age

SECTION 4

UNDERSTANDING THE IMPACT OF IMPLICIT, EXPLICIT AND SYSTEMIC BIAS

Introduction

There is a new word in our heading: Systemic. **Systemic bias**, also called **institutional bias**, and related to **structural bias**, is the inherent tendency of a process to support particular outcomes. The term generally refers to human systems such as institutions. Institutional bias and structural bias can lead to institutional racism, and can also be used interchangeably. Institutional racism is a type of racism that is integrated into the laws, norms, and regulations of a society or establishment.

Structural bias, in turn, has been defined more specifically in reference to racial inequities as "the normalized and legitimized range of policies, practices, and attitudes that routinely produce cumulative and chronic adverse outcomes for minority populations". The issues of systemic bias are dealt with extensively in the field of [industrial organization](#) economics. Systemic bias plays a part in [systemic racism](#), a form of racism embedded as a normal practice within society or an organization.

Unconscious Attitudes and Their Impacts

These attitudes both conscious and unconscious affect all consumers and social groups, and especially the Real Estate and Lending Industries. There are practices like Redlining (lenders drawing a red line around an area and refusing to make loans there); Blockbusting and Panic Selling (listing agents haranguing homeowners to sell their properties because "those kinds of people are coming and the prices will fall, so get out while the getting out is still good"); Steering and Channeling (selling agents telling prospects "that area is no good, too many of those people living there").

Other illegal and unethical actions involve not lending to certain protected classes, not presenting offers, setting higher rental figures and higher deposits, not hiring certain genders or older agents, slow closing or no closing, escrow officers exhibiting racism, ageism, or other biases, and on and on.

These actions deprive many eligible people from owning property and achieving the "American Dream". Others will pay more for their properties than other privileged buyers and receive less money when they sell.

Impact on Housing

The difference biases and stereotypes and discrimination policies have a huge impact on housing. They keep many eligible people from getting housing. The low numbers of Black, Single Women, LGBT, Asian, Latino, Gen Z and Y, and Elderly owners limit growth. These policies do not harm only those discriminated against but all of us. These policies are costing you, your associates, and your companies' money, reputation, and pride.

It all starts with education. We need more education. The National, State and Local Associations must be the leaders. They have the money to educate both current members and future members.

Current Policies Not Working

The current policies of many licensees and companies create and reproduce inequitable outcomes that serve to reinforce biases. Becoming more diverse in hiring and retaining associates would not hurt your company. Many people work and live in a vacuum. They never see people who are different in age, gender, race, lifestyle, and other factors.

What is hurting companies and might be changed? Hiring policies, advertising policies, training policies, office procedures, compensation, management policies, and human resource policies.

Talk to your people and listen, and just do a better overall job of handling discrimination. You and your associates and staff need to realize how important these policies are. Change comes from within. There will be no change until people need and want change. Educate everyone as to how important these policies are.

Recognizing and Addressing Implicit Bias

Individual and Institutional Strategies to Override Bias

First, let's talk about individual strategies concerning implicit bias. How to address them, consider them and change them if need be. Some points follow from the Harvard Business Review.

Everyone says that everyone has some individual implicit and explicit biases. If you are living in the United States, you have feelings about many types of people and many types of situations. Some of them are negative and some are positive and some are probably neutral.

Overcome denial. One of the first steps in the famous twelve step program is to admit that you need to be in the program. You might recite, "I have biases and want to eliminate them for I am a nice person". Take responsibility for your biases and vow to change. Eliminate the escape route, "This is just how I am, and I have tried to change before and no go".

Call out any stereotypes. A brand name college means everything. It is so much better to hire my kind. Those prospects are the wrong color. And be more introspective when considering your beliefs and your actions.

Widen your work circle with more diverse people. This may put you in an uncomfortable zone, but that can mean that you are learning new ideas and changing.

Slow down. Do not rush any choices or decisions. You can process only about 40 items of information per second consciously and 11 million unconsciously. Give yourself more time to think and make better decisions. Remember the mantra of John Wooden: "Be quick but don't hurry".

Real Estaters have to remember one mantra when they are out among the people or using any Social Media. Red people buy houses, Blue people buy houses, as do the young, the old, the minorities, and others. Eliminate your biases and meet them. Read the crowd.

Make a commitment to improvement. Write some goals with plans to accomplish these, and then tracking of what you have been doing.

Find a mentor and perhaps a mutual associate. A mentor could help you and might see things that you do not.

Find a diverse group with different interest and meet regularly.

Education is important. Keep learning. A good example, NAR has a new video titled, "Bias Override: Overcoming Barriers to Fair Housing".

Increase the scope of your business. If you have been farming an area for many years, go west, east, south or north. Just go somewhere. Of course, it is not easy but it could be rewarding. Try something new for a couple of hours a week.

Be curious about everything. Network. Be friendly.

You can volunteer, take some classes, exercise, get out into the world and be curious.

Walk your neighborhood. You get to network and find some interesting people.

Creating Protocols

A dictionary definition of Protocol is, "A standard set of rules that allow people to communicate with each other". Protocols in business are necessary for success.

Other words for protocol include procedures, codes, guidelines, rules and so forth. Protocols have different meanings in Politics, Internet and Covid. Protocols can be established by companies and by individuals.

One article mentioned the protocol for a privately hosted party. You will RSVP quickly, you will be on time, you will dress appropriately, you will not drink or eat too much, you will bring a hostess gift, no arguments or improper talk, and you will leave on time and be nice.

Obviously, there must be training. Responsible brokers are responsible for the conduct of all associates, whether salespersons or brokers. They must be taught. Carefully taught to observe all proper protocols. Some thoughts about bias training classes.

#1- Not a onetime affair. Training should be regular and scheduled. The training should not be unscheduled or spontaneous.

#2- The training must be proper and instill the right values for your company.

#3- There must be information on how to use the training in the field. You would not give a weight training class with no follow-ups, scales, and techniques.

#4- Professional trainers might be hired. Human resource employees might be a good source.

#5- Have lesson plans and get feedback for future meetings.

#6- Do not focus on the extreme cases. Most likely none of them will hit a client. Show them the subtle problems and get DRE data on disciplinary sanctions. Cases with big fines get their attention.

#7- Get data about what your company is doing. To whom are you lending to? Do the facts show bias? Surveys should be sent to clients to get feedback about their experiences.

#8- The culture of the office should be non-bias. Many times women or minorities are not given the same opportunities.

#9- Urge agents to track their interactions. Commit to improvement. Find a mentor and solicit feedback, as we said before.

#10- Focus on the potential for growth. Also, provide examples on how to change behavior. "Examine your assumptions". Make sure that performance reviews are handled properly. Some companies have found that self-evaluations done at review time are not good for women and minorities.

#11- Break stereotypes. Sometimes your associates have formed stereotypes of themselves. I am a woman, I can't do math. Expose your people to counter stereotypical individuals. Bring in a female CPA or appraiser.

#12- Hold small group discussions and encourage interactions among people from different groups.

#13- Expand inner circles. Moderate discomfort is a critical catalyst for introspection that can lead to more egalitarian behavior.

#14- Nurture curiosity. IB training should allow people to interview other people. Learn who they are and why they are. And what is bias to them.

#15- There must be procedures and methods to measure the effectiveness of the training. You might check what other companies like Microsoft, Corning and Starbucks are doing.

Perspective Taking and Empathy

Perspective taking is the ability to look beyond your own point of view, so that you can consider how someone else may think or feel about something. Empathy is the ability to understand another person's thoughts and feelings in a situation from their point of view rather than your own. These two thoughts come from different reliable sources, so obviously one patterns the other. To be good at perspective taking you must exhibit empathy.

There are some famous quotes about empathy: "Just walk a mile in his moccasins, before you abuse, criticize and accuse". By Mary T. Lathrap in her poem, "Judge Softly", 1895.

"If you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view, until you climb inside of his skin and walk around in it". Spoken to his daughter by Atticus Finch (Gregory Peck) in the movie, "To Kill a Mockingbird" based on the book by Harper Lee.

"Empathy is seeing with the eyes of another, listening with ears of another and feeling with the heart of another". Alfred Adler, President of the Vienna Psychoanalytic Society 1910.

And empathy is not sympathy. Empathy is feeling with another, and sympathy is feeling for another. In lending to be successful you must be empathic. Case closed.

How do you start to be empathic? To understand their perspective you have to get to know them. This is the hard part. The better you get to know people, the better to remove stereotypes and bias. How do you get to know people? Communicate professionally.

There was an old-time speaker who advertised that they could tell you how to make more money and have more time for your family and friends. He would start and say, "Return your phone calls" and leave the stage. Today we should change that to return your text messages and emails. Follow and update your social media.

If you wanted to become a star athlete in any sport, you know that you would have to practice. Not just practice but practice smart. So practice communication. Talk to people. You and I know that we have met some agents who brighten a room just by leaving.

Develop some questions. Some sales trainers mention preparing scripts. If you have trouble thinking of talking points, check out professional sales trainers. Tailor everything to your personality.

Stay away from controversial topics and be personal. And be appropriate for the situation. Learn to read the room even if the room consists of one person. But remember that even people you dislike buy and sell real estate.

Ask for business cards if your clients still have them. If not, have them put their email address in your phone. Repeat their names. Most people forget prospects names in the five seconds after meeting. And follow-up. Keep learning more and more about your prospects.

And do not think that every meeting is a nail and that the only solution is a hammer. Sometimes you need a screwdriver, pliers, a saw, dynamite, and other tools. Have a bag full of solutions. Every step of the way you are trying to learn more so you can be empathetic.

Many times the people may not be angry at you. Their feelings may not be about you at this time, for they just got news their daughter is in jail, IRS called about an audit or they just are not ready to buy or sell. If somebody tells you that you must close every prospect, obviously they have not worked in real estate very long.

BTW, one final thought. Be empathetic but not to the exclusion of your needs. You have a life too. Some clients are just not good prospects and sometimes you have to make decisions to end the relationship. I saw a book one time that had a great title but not recommended except in rare, rare cases. "Buy something or get out of my car".

Now you be safe out there and be careful and above all be empathetic and close many transactions that benefit all parties. Put people in debt. You want to help everyone achieve the American Dream. To do this they normally must go into debt. So help them achieve the Dream.

Time to Think 2.3

1. Institutional bias is a _____ bias.
 - a. Negative
 - b. Systemic

2. Redlining is practiced by
 - a. Lenders
 - b. Escrow Officers

CHAPTER 2

REVIEW QUIZ

1. The Ethics Chapter of the NMLS 8 Hours CE Requirement is _____ hours.
 - a. 2
 - b. 8

2. CFR stands for _____.
 - a. Code of Federal Regulation
 - b. Code of Franchise Rehabilitation

3. ECOA is contained in
 - a. NMLS
 - b. Regulation B

4. False Advertising is a violation of
 - a. Regulation N
 - b. HUD

5. Panic Selling is considered the same as
 - a. Redlining
 - b. Blockbusting

CHAPTER 3

FEDERAL LAW

SECTION 1

EQUAL CREDIT OPPORTUNITY ACT (ECOA) – “UNKNOWN REASON” FOR LOAN DENIALS

Citation Violation: ECOA was violated by the lender stating "Unknown Reason" and not providing the principal reason for denying an application.³¹

Examination Findings: Pursuant to 12 CFR § 1002.9(b)(2)-9 of the official interpretation of Regulation B, the ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a consumer report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy 12 CFR § 1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations.

³¹ [12 CFR § 1002.9\(b\)\(2\)-9](#)

Introduction to ECOA

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

1. Race
2. Color
3. Religion
4. National origin
5. Sex
6. Marital status
7. Age
8. The fact that all or part of the applicant's income derives from public assistance, or
9. The fact that the applicant in good faith has exercised their rights under the Consumer Credit Protection Act.³²

The act was signed into law on October 28, 1974. Prior to 1974, it was not uncommon for an unmarried or single female borrower to be denied a loan because there was no male borrower on the loan application. Borrowers would also be denied credit if they were on public assistance. A lender could legally deny a loan to an applicant because the applicant may become pregnant. ECOA made these things illegal. Regulation B is the regulation promulgated under the authority of ECOA.

ECOA has three main provisions:

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

Regulation B has a 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, adverse

³² [12 CFR 1002.2\(z\)](#)

action notice, and ECOA notice rules, a creditor includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select a creditor to whom requests for credit may be made.³³ So, in addition to lender, ECOA and Reg. B also applies 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.

Adverse Action Rules

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

The notice of adverse action, or adverse action notice, must be sent to the applicant within 30 days after receiving a complete application concerning the creditors approval of, counteroffer to, or adverse action on the application, or with 30 days of taking an adverse action on an existing account (usually applicable to open-ended lines of credit).³⁴ 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.³⁵

An application is defined as an oral or written request for an extension of credit that is made in accordance with procedures used by the creditor for the type of credit requested. A complete application is an application in which the creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested.³⁶

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, which will be discussed later in the materials.

³³ [12 CFR 1002.2\(l\)](#)

³⁴ [12 CFR 1002.9\(a\)](#)

³⁵ [12 CFR 1002.9\(f\)](#)

³⁶ [12 CFR 1002.2\(f\)](#)

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 an 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.³⁷ The following are not considered to be an adverse action:

1. A change in terms of an account expressly agreed to by an applicant;
2. Any action taken in relation to default, delinquency or inactivity of an account;
3. A refusal to extend credit because applicable law prohibits the extension of credit; or
4. A refusal to extend credit because the creditor does not offer the type of credit requested.³⁸

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 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

³⁷ [12 CFR 1002.2\(c\)](#)

³⁸ [12 CFR 1002.2\(c\)\(2\)](#)

- 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 must include the name, address, and telephone number of the person or office from which the statement may be obtained.³⁹

Stating “Unknown reason” as the reason for the adverse action is insufficient. A specific reason for the adverse action must be given. Also, stating that the adverse action was based on the creditor’s internal standards or policies, or stating that the applicant or other party failed to achieve a qualifying score on the creditor’s scoring system is insufficient.⁴⁰

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.⁴¹

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.⁴²

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 consumer report, or information

³⁹ 12 CFR 1002.9(a)(2)

⁴⁰ 12 CFR 1002.9(b)(2)

⁴¹ 12 CFR 1002.9(a)(3)(i)

⁴² 12 CFR 1002.9(a)(3)(ii)

concerning the affiliates own experience or transactions with the applicant, the Adverse Action Notice must include that information.

To facilitate the creditor to provide the correct notice, the rule provides model forms for the different notices. Model Form C-1 contains the proper notices in the case that the adverse action is based on information from an affiliate.⁴³ The sample form C-1 is found at the end of this section. More ECOA model forms can be found on the CFPB's website at <https://www.consumerfinance.gov/rules-policy/regulations/1002/c/>.

Failure to provide specific reason for loan denial on Adverse Action Notice.

In the violation above, the CFPB cited the lender for using “unknown reason” as the reason for denying a loan application. “Unknown reason” is not a reason, and is not specific. Creditors should document the reason for denying a loan application in the loan file, so a specific reason can be stated on the adverse action notice.

⁴³ Appendix C to Part 1002 (1).

SECTION 2

TRUTH IN LENDING ACT (TILA)- RIGHT OF RESCISSION

Citation Violation: The borrowers were not provided the notice of right to rescind.⁴⁴

Examination Findings: A lender shall provide the notice of the right to rescind to each consumer entitled to rescind which shall clearly and conspicuously disclose the date the rescission period expires. The consumer may exercise the right to rescind until midnight of the third business day following consummation, delivery of the notice required, or delivery of all material disclosures, whichever occurs last.

If the required notice or material disclosures are not delivered, the right to rescind shall expire 3 years after consummation, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first. In the case of certain administrative proceedings, the rescission period shall be extended in accordance with section 125(f) of the Act per 12 CFR § 1026.23(a)(3)(i)(b)(1)(v).

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.”⁴⁵ 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.⁴⁶

⁴⁴ 12 C.F.R. §1026.23(a)(3)(i)(b)(1)(v)

⁴⁵ 12 CFR 1026.2(17)(i)

⁴⁶ 12 CFR 1026.2(17)(v).

Exemptions

The following transactions are exempt from coverage under TILA⁴⁷:

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

Right of Rescission-Scope

Among other things, TILA affords the consumer a right to rescind certain mortgage loans within a specified time period. The right to rescind covers consumer loans secured by the borrower's primary dwelling. The following types of loans are excluded:

1. A loan to finance the acquisition or initial construction of the dwelling;
2. A transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;
3. A transaction in which an agency of a State is the creditor; or
4. Advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

Anyone who has an ownership interest in the property that will be or is subject to the mortgage or deed of trust is entitled to the right of rescission.⁴⁸ This means that a consumer who owns the subject property but is not a signer of the note may still be entitled to the right of rescission, although the consumer must occupy the subject property as their primary residence.

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

⁴⁸ 12 CFR 1026.15(a)

Notice of Right of Rescission:

The Notice of Right of Rescission (the “Notice”) must be clear and conspicuous and be in a form that the consumer can keep.⁴⁹ For closed-end transactions, the notice must be on a separate document. For open-ended transaction, the notice can be separate or combined with the material disclosures.⁵⁰ The material disclosures of the annual percentage rate, finance charge, amount financed, total of payments and payment schedule are found in the Loan Estimate (“LE”) and Closing Disclosure (“CD”) for most closed-end loans, or may be in a Truth-in-Lending disclosure for loans not subject to the LE and the CD. For both open and closed-end loans, the Notice must contain the following:

1. The retention or acquisition of a security interest in the consumer’s principal dwelling;
2. The consumer’s right to rescind the transaction;
3. How to exercise the right to rescind, with a form for that purpose; designating the address of the creditor’s place of business;
4. The effects of rescission;
5. The date the rescission period expires.⁵¹

For closed-end mortgage, the following information may be added to the notice:

1. A description of the property subject to the security interest;
2. A statement that joint owners may have the right to rescind and that a rescission by one is effective for all; and
3. The name and address of an agent of the creditor who is to receive notice of rescission.⁵²

Model notices are provided in Regulation Z. For closed-end loans, there are two notices: one notice for refinances of a loan by the original lender, and one notice for every other loan. For open-end loans, there are 5 different notices, for different events during the life of the loan.⁵³ The statute allows a lender to use a form other than the model notice so long as the form includes all of the required information and is clear and conspicuous. However, use of the proper model notice gives the lender a safe harbor for compliance except for numerical errors. Therefore, it is recommended

⁴⁹ 12 CFR 1026.5(a)(1) and 1026.17(a)(1). These are the general requirements for disclosures required under this subpart of Regulation Z. The general requirements apply to the Notice of Right of Rescission.

⁵⁰ 12 CFR 1026.15(b) and 1026.23(b).

⁵¹ 12 CFF 1026.23(b)

⁵² Official Interpretations §§ 1026.15(b)-3, 1026.23(b)-3.

⁵³ Regulation Z Model Forms G5-9, and H8 and H9.

that lenders use the model forms. Copies of the model notices for closed-end loans are included in these materials.

Timing of Notice and Right of Rescission

The statute does not specify a time at which the Notice must be given. However, the borrower's right to rescind does not start until they get all material disclosures and the Notice. Then they have until midnight of the third (3rd) day after receiving the material disclosures and the Notice to rescind the loan. In practice, the disclosures and Notice are generally given at the time the promissory note and deed of trust are signed, and the borrower becomes obligated on the note, subject to the right of rescission.

The lender is not permitted to fund the loan until the business day following midnight of the third day after the borrower receives the material disclosures and Notice, unless the borrower waives their right of rescission. A borrower may only waive their right of rescission to meet a bona fide personal financial emergency. The waiver must be in writing in the borrower's own hand, not a pre-printed form.

The waiver must contain the following: i.) describe the emergency, ii.) specifically modify or waive the right to rescind, and iii.) bear the signatures of all of the consumers entitled to rescind.⁵⁴ If the material disclosures or the Notice are not given, or are incomplete, have incorrect information or are in an incorrect form, the borrower has three years from consummation of the loan to rescind the loan.

The right to rescind gives the consumer a right to cancel the loan, and get back all of the points, fees, and interest they have paid for the loan, and have the deed of trust, if it has been recorded, reconveyed. The borrower must tender back any property or money it has received from the loan. It becomes very expensive for the lender, if the borrower rescinds the loan 2 ½ years after the loan was made.

Failure To Provide A Notice Of Right To Rescind To Each Borrower.

In the examination above, the CFPB found that the lender did not provide a notice of right to rescind to the borrower. It is not clear if this was omitted by the lender, or if the settlement agent omitted it, or if the lender mistakenly thought that the right to

⁵⁴ 12 CFR 1026.15(e) and 1026.23(e).

rescind did not apply to the loan. Training staff on when the Notice is required and how to complete it is critical.

Having staff double-check the signed document packages for correct completion of the Notice is also important, as well as auditing files on a periodic basis to make sure that the Notices are being prepared correctly and given when necessary, and that the double-checking is being done. It is also important for the lender to track the timing of the right of rescission, so that they do not inadvertently fund prior to the expiration of the rescission period. This can be done using software, or the old-school way of writing on the front of a physical file.

Time to Think 3.1

1. If the lender fails to give the Notice of Right to Rescind to the borrower, the borrower has _____ to rescind the loan.
 - a. Three years
 - b. 90 days

2. Unknown reason is _____ on an adverse action notice
 - a. allowed
 - b. not allowed

SECTION 3

FAIR CREDIT REPORTING ACT (FCRA)- PROHIBITED FEES CHARGED FOR RAPID RECHECK OR EXPEDITED RESCORE FEES

Citation Violation: The credit report fees charged to the borrowers included prohibited fees for rapid recheck or expedited rescore.⁵⁵

Examination Findings: The Fair Credit Reporting Act prohibits a mortgage company from charging the borrower a fee for a “rapid recheck or expedited rescore” of a consumer credit score. Credit report fees charged to the borrowers appear to contain prohibited fees for rapid recheck or expedited rescore.

Introduction to FCRA

FCRA was passed by Congress to address concerns about the credit reporting industry, because it affected so many consumers, and there was little way for the consumer to have their complaints addressed other than to file a lawsuit against the consumer reporting agencies, or credit bureaus. FCRA provided rules for consumer reporting agencies regarding the fair and equitable treatment of consumers, accuracy of the reports, and respect for consumer privacy.

Scope of FCRA

FCRA mainly covers consumer reporting agencies (“CRAs”), but there are provisions that cover furnishers of information to CRAs, and people who use consumer reports. A consumer reporting agency is a person “that for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information, or other information on consumers, for the purpose of furnishing consumer reports to third parties, and that uses any means or

⁵⁵ 15 USC § 1681i(a)(1)(A).

facility of interstate commerce for the purpose of preparing or furnishing consumer reports”⁵⁶

A “consumer report” is “...any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used, or expected to be used or collected, as a factor in establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, household, or employment purposes, or other purposes expressly authorized under the Fair Credit Act”⁵⁷

There are several exceptions to this definition including (1) “report containing information solely as to transactions or experiences between the consumer and the person making the report;” and (2) “communication of that information among persons related by common ownership or affiliated by corporate control.”⁵⁸

Requirements of FCRA

FCRA imposes many requirements on CRAs such as:

1. Permissible purposes for which a consumer report may be furnished;
2. Contents of the consumer report;
3. Disclosures to consumers;
4. Disputed information.

Some requirements apply to any person who uses a consumer report, including, the requirement for disclosure after adverse action based on information obtained from a consumer report.

Disputed Information

The consumer can notify the CRA of any dispute regarding the completeness or accuracy of anything in the consumer’s credit file. The CRA must investigate the dispute free of charge, and follow specific procedures before the end of the 30 day period beginning on the day the CRA receives the notice of dispute.⁵⁹ Furnishers of information to CRAs have a similar duty.⁶⁰ The CFPB has widened the applicability

⁵⁶ 15 UCC § 1681a(f)

⁵⁷ 15 USC § 1681a(d)(1).

⁵⁸ 15 USC § 1681a(a)(2).

⁵⁹ 15 USC § 1681a(a)(A).

⁶⁰ 15 USC 1681s-2.

of the prohibition to charge the consumer for investigating a dispute of the consumer report to prohibit a mortgage lender from charging a fee for a “rapid recheck” or “expedited rescore”.

Charging a Fee for a “Rapid Recheck” or “Expedited Rescore”

In the examination above, the examiner found that the lender included charges for a “Rapid Recheck” or “Expedited Rescore” in the consumer reporting fee in contravention of FCRA. Lenders can train staff on the prohibition on charging fees for a “Rapid Recheck” or “Expedited Rescore” or for investigating a consumer dispute over information on their consumer report. Also, the lender can keep records of the fees included in the consumer reporting fee so that they can prove to regulators or others that the fee did not, in fact, include prohibited items.

SECTION 4

ECOA- STATEMENT OF SPECIFIC REASONS

Citation Violation: Failed to disclose the credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score.⁶¹

Examination Findings: The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant, joint applicant, or similar party failed to achieve a qualifying score on the creditor's credit scoring system are insufficient per § 1002.9(b)(2). *Official interpretation of Paragraph 9(b)(2)*

Combined ECOA-FCRA Disclosures. The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act (FCRA) requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or its own files. Disclosing that a consumer report was obtained and used in the denial of the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons.

For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy §1002.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. The FCRA also requires a creditor to disclose, as applicable, a credit score it used in taking adverse action along with related information, including up to four key factors that adversely affected the consumer's credit score (or up to five factors if the number of inquiries made with respect to that consumer report is a key factor).

⁶¹ 12 CFR 1002.9(b)(2)

Disclosing the key factors that adversely affected the consumer's credit score does not satisfy the ECOA requirement to disclose specific reasons for denying or taking other adverse action on an application or extension of credit. Sample forms C-1 through C-5 of appendix C of the regulation provide for both the ECOA and FCRA disclosures. See also comment 9(b)(2)-1.

FCRA Adverse Action Notice

FCRA requires users of consumer reports to provide consumers with a notice within 30 days of taking an adverse action based on information contained in a consumer report.⁶² An “adverse action” under FCRA is defined as “a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.” An adverse action does not include when the creditor refuses to extend additional credit when the creditor is in default, or the additional credit would exceed preset credit limits.⁶³

This part of the definition comes straight from ECOA. But under FCRA, an adverse action also includes:

1. A denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
2. A denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
3. A denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit granted by a governmental agency required by law to consider an applicant’s financial responsibility or status; and
4. An action taken or determination that is—
 - a. made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account to determine whether or not the consumer continues to meet the terms of the account and
 - b. adverse to the interests of the consumer.⁶⁴

⁶² 15 USC § 1681m

⁶³ 15 USC § 1681a(k) citing 15 USC § 1691(d)(6).

⁶⁴ 15 USC 1681a(k).

Along with the oral, written, or electronic notice of adverse action, the creditor must do the following:

1. Provide to the consumer in written or electronic form:
 - a. Disclosure of a numerical credit score used by the creditor in taking any adverse action based in whole or in part on any information in a consumer report;
 - b. The range of possible credit scores under the model used;
 - c. All of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4;
 - d. The date on which the credit score was created; and
 - e. The name of the person or entity that provided the credit score or credit file upon which the credit score was created.
2. Provide to the consumer orally, in writing or electronically:
 - a. The name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - b. A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
3. Provide to the consumer an oral, written or electronic notice of their right to:
 - a. Obtain a free copy of a consumer report on the consumer from the consumer reporting agency within 60 days of receipt of the notice; and
 - b. Dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.⁶⁵

The FCRA adverse action notice does not require that the creditor give a specific reason for the adverse action, unlike ECOA. The CFPB has provided a model form which, when properly completed, fulfills the requirements of both FCRA and ECOA.

⁶⁵ 15 USC 1681m(a).

SECTION 5

TRUTH IN LENDING ACT- RESCISSION NOTICE IS NOT IN COMPLIANCE.⁶⁶

Citation Violation: The ‘Notice of Right to Cancel’ (i.e. rescission notice) was not completed in compliance with Regulation Z § 1026.23(b).

Examination Findings: Regulation Z, §1026.23(b) requires that: “In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

1. The retention or acquisition of a security interest in the consumer's principal dwelling.
2. The consumer's right to rescind the transaction.
3. How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
4. The effects of rescission, as described in paragraph (d) of this section.
5. The date the rescission period expires”.

See also Comment 23(b)(1)-3, which states “The notice must include all of the information outlined in Section 1026.23(b)(1)(i) through (v). The requirement in § 1026.23(b) that the transaction being identified may be met by providing the date of the transaction.”

Most common mistakes in completing Notice to Rescind

The most common mistakes that are made in completing the Notice are 1.) omitting the required dates, and 2.) miscalculating the date the rescission period expires.

Omitting the required dates occurs when the lender leaves the dates blank, because they do not know for sure the date that the loan will be consummated, which in California is the date the note and deed of trust are signed. The lender either instructs someone, often the escrow, the notary, or their own staff that is attending the loan

⁶⁶ 12 CFR 1026.23b

signing, to fill-in the proper dates. Sometimes this gets overlooked. If the lender’s staff is not vigilant in checking the Notice thoroughly, they may fail to notice that it is incomplete.

Every self-respecting loan originator should know how to properly calculate the date the rescission period expires, so that they know the earliest funding date, can help manage borrower expectations, and can assist in clearing any prior-to-funding conditions. The right to rescind starts on the day the Notice and all material disclosures are given to the borrower, and expires on midnight of the third business day.

A business day for purposes of the right of rescission is every day except Sunday and federal holidays. Note: This is different from the definition of a business day under other rules, such as TRID.

Miscalculating the date of rescission most often occurs around federal holidays, especially holidays that do not occur on the same day of the week every year, such as Independence Day, Christmas and New Year’s Day.

Example.

June-July						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
25	26	27	28	29	30 Final loan documents signed by borrower	1
2	3	4 Independence Day	5	6	7	8

Let’s imagine that the borrower signed the final loan documents for a refinance of their primary single family residence for a consumer purpose on June 30th. We’ll assume that the borrower received all of the material disclosures, notice of right of rescission, and signed the note and deed of trust. What is the starting date of the right of rescission? When does it expire? The right of rescission starts on June 30th, the day that the borrower received all of the material disclosures, notice of right of rescission, and signed the note and deed of trust.

The rescission period expires on July 5th. Here is the explanation:

If the rescission period starts on June 30th, day one of the rescission period is July 1. Remember, for the right of rescission, Saturdays “count” as a business day. Sundays however, are not considered business days, so we do not count Sunday. Therefore, day 2 is Monday, July 3. July 4 is the federal holiday of Independence Day, therefore July 4th is not counted as a business day. Day 3 is Wednesday, July 5th. The rescission period ends at midnight on July 5th. The first day that a lender could fund the loan would be Thursday, July 6, absent a valid waiver by the borrower of the right of rescission.

June-July						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
	26	27	28	29	30 Final loan documents signed by borrower.	1 Day 1 of rescission period.
2 Sunday does not count as a business day.	3 Day 2 of rescission period.	4 Independence Day Federal holiday – not counted as a business day.	5 Day 3 of rescission period-the rescission period expires at midnight of this day.	6	7	8

Lenders can train staff to double-check that the Notice has been completed, and that it has been completed properly. Lenders can train staff on calculating the rescission period, and consider sending out reminders to staff before federal holidays. There are also tools and applications that can help staff-members calculate the rescission period properly.

SECTION 6

TILA ZERO TOLERANCE OVERCHARGE⁶⁷

Citation Violation: The fees charged to the borrower on the final Closing Disclosure (CD) exceeded the amount originally disclosed (zero tolerance) in the Loan Estimate (LE). Also, the loan file did not find any change of circumstance disclosure that would have validated the additional charge.

Examination Findings: An estimated closing cost disclosed under section 1026.19(e) is not in good faith if the charge paid by or imposed on the consumer exceeds the amount originally disclosed under section 1026.19(e)(1)(i).

TILA-RESPA Integrated Disclosures

The TILA-RESPA Integrated Disclosures, or TRID are the Loan Estimate (“LE”) and the Closing Disclosure (“CD”). 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 many of the fees, determining whether the borrower can be charged the higher fee, or not, unless there has been a bona fide change in circumstances. Fees paid by the borrower above the allowed tolerance must be refunded within 60 days after consummation. Here is a summary of the fee tolerance categories:

Zero Tolerance⁶⁸

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

⁶⁷ 12 CFR 1026.19(e).

⁶⁸ Comment 1026.19(e)(3)(i)-1.

10% Aggregate Tolerance⁶⁹ (Note Aggregate)

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

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

No Tolerance:

The following amounts disclosed on the Loan Estimate must be based on “best information reasonably available at the time” using “reasonable due diligence”

Otherwise, there is no limitation on fee increases:

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

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 circumstances⁷⁰ include:

1. **An Extraordinary event.** That is beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
2. **Information.** That is 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; or
3. **New information.** That the creditor did not rely on when providing the original Loan Estimate.
4. **Consumer request.** The consumer requests revisions to terms or the settlement that cause an estimated charge to increase.

⁶⁹ 12 C.F.R. § 1026.19(e)(3)(ii)

⁷⁰ 12 C.F.R. § 1026.19(e)(3)(iv).

5. **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.
6. **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.
7. **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.

Fees on CD exceed amount disclosed on LE

In the examination cited above, the fees on the CD were greater than the fees on the LE in the Zero Tolerance category with no bona fide change in circumstance which would allow the lender to increase the fee. Creditors and brokers can monitor fee increases to help ensure that borrower is not charged for fee increases that exceed the tolerances. Some loan origination systems (“LOS”) provide tools to monitor the tolerances. Creditors can audit files to help ensure that staff members are monitoring the tolerances, and provide training to help staff understand the tolerance rules. When the fee increase is due to a bona fide change in circumstance, the creditor can ensure that documentation of the change in circumstance is present in the loan file by training staff, and doing post-closing auditing of files.

Time to Think 3.2

1. An example of zero tolerance fee is ____ taxes.
 - a. Transfer
 - b. Sales
2. The right of rescission expires after midnight of the ____ business day.
 - a. 30th
 - b. 3rd

SECTION 7

TILA LOAN ESTIMATE NOT PROVIDED IN A TIMELY FASHION⁷¹

Citation Violation: Brokered loan, where the initial Loan Estimate was not provided in a timely manner.⁷² In addition, the initial Loan Estimate must be provided no later than the third business day after the receipt of the consumer's application even though a company is the broker and might have established disclosure agreements with the wholesale lender. The responsibility falls on the originators.

Examination Findings: The creditor shall deliver or place in the mail the Loan Estimate not later than the third business day after the creditor receives the consumer's application. Code of Federal Regulation section 1026.2(a (3)(ii) states in part that an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

Loan Estimate Timing⁷³

The Loan Estimate must be delivered or mailed within 3 business days after the application date and at least 7 business days before the consummation date. The "Application Date" is defined as the date when the consumer supplies the creditor with these six items of information:

1. Borrower name
2. Income
3. Social Security number to obtain credit report
4. Property address
5. Estimate of property value
6. Loan amount sought.

⁷¹ 12 CFR 1026.19(e)(1).

⁷² 12 C.F.R. § 1026.19(e)(1).

⁷³ [12 CFR 1026.19\(e\)\(1\)\(iii\)](#)

The borrower is presumed to have received the disclosures three business days after the disclosures are delivered or placed in the mail.

The term “Business Day” for purposes of the three -business day requirement is defined as a day when creditor’s offices are open to public for substantially all of its business functions. This is known as the “general” business day definition.

The term “Business Day” for purposes of the seven- business day requirement is defined as all calendar days except Sundays and the legal public holidays referred to in 12 CFR 1026.2(a)(6). This is known as the “specific” business day definition. Note that the specific business day definition is similar to the business day definition used in the Truth-in-Lending Act three day right to rescind, but for the seven-day rule, the creditor does not have to wait until after midnight of the seventh day to consummate the loan.

“Consummation date” is defined as the date the borrower becomes contractually obligated on the loan. (In California, that is generally the day the borrower signs the note & deed of trust.) However, there could be an earlier consummation date if the lender’s “commitment letter” to the borrower is worded in such a way that the borrower is actually contractually obligated on the loan at the time they sign the commitment.

Who must provide the Loan Estimate?

The creditor is responsible for providing the LE to the borrower.⁷⁴ The rules also provide that if a mortgage broker receives the borrower’s loan application, either the creditor or the broker may provide the LE to the borrower.⁷⁵ The broker is responsible for following all of the rules regarding the LE. The creditor is responsible for ensuring that the broker follows the LE rules.

Closing Disclosure Timing

The initial Closing Disclosure must be received by the borrower at least three business days before consummation date. The term “Business Day” for delivery related to the “consummation” date is defined as every day except Sundays and legal public holidays.

⁷⁴ 12 CFR 1026.19(e)(1)(i).

⁷⁵ 12 CFR 1026.19(e)(1)(ii).

Note: The CD must be “received” by the borrower at least 3 days before consummation. The CD is considered received by the borrower three days after the CD is placed in the United States Mail.

Who must provide the Closing Disclosure?

The creditor is responsible for providing the CD to the borrower.⁷⁶ A settlement agent may provide the CD so long as they follow all of the rules of the CD.⁷⁷ Also, the Settlement Agent is required to provide the seller in a purchase transaction with the disclosures in the CD that relate to the seller’s transaction. If a settlement agent provides the CD, the creditor is responsible for ensuring that the settlement agent follows the CD rules.

Loan Estimate was not provided timely by the broker.

It is a common misconception among brokers and lenders that the LE timing starts on the day the lender receives the application, no matter when the broker receives the application. In truth, whichever party is the first to receive all six items which comprise a loan application under Regulation Z, either the broker or the lender, the timing requirements of TRID are triggered. If the broker receives a full application, the three-day time period starts when they receive the full application, not when they forward it to a lender.

Failure to send out the LE within three days of when the broker receives the loan application will trigger a compliance flag for most lenders. Some lenders will not move forward with the loan application, because they do not want the risk of non-compliance. Therefore, it is critical that brokers have a procedure for handling the disclosure timing – either by having a close relationship with lenders so that the broker can accurately complete an LE for the lender, or getting the loan application to a lender as soon as possible, so the LE can go out on time.

⁷⁶ 12 CFR 1026.19(f)(1)(i).

⁷⁷ 12 CFR 1026.19(f)(1)(v)

SECTION 8

ECOA-PROVIDING AN APPRAISAL AND/OR OTHER VALUATION⁷⁸

Citation Violation: Loan files did not indicate the borrowers were provided with a copy of the appraisal report or other valuation.

Examination Findings: Regulation B requires a creditor to provide to an applicant, a copy of all appraisals and other written valuations developed in connection with an application for credit that is secured by a first lien on a dwelling. A creditor must provide a copy of each appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction, whichever is earlier.⁷⁹

Requirement on Providing Appraisals

When a lender takes an application for a loan that will be secured by a first lien loan on the borrower's 1-4 unit dwelling, the creditor must give the applicant a copy of all appraisals or valuations developed in the connection with the application.⁸⁰ The creditor must provide the copy of the appraisal promptly when the appraisal is completed, or three business days prior to consummation for closed-end loans or account opening for open-end credit, whichever is earlier.

In California, consummation occurs when the promissory note and deed of trust are signed. The applicant is allowed to waive the timing requirement as long as they receive a copy of the appraisal at or before consummation or account opening. The requirement applies even if the application is withdrawn, denied, or if the application is incomplete.⁸¹ The creditor cannot charge the applicant for the copy of the appraisal, but can charge the borrower for the cost of the appraisal or valuation.⁸²

⁷⁸ 12 CFR 1002.14(a)(1).

⁷⁹ 12 C.F.R. §1002.14(a)(1).

⁸⁰ 12 CFR 1002.14(a)(1)

⁸¹ 12 CFR 1002.14(a)(4)

⁸² 12 CFR 1002.14(a)(3)

Failure to Deliver a Copy of Valuation or Appraisal

Failure to deliver a copy of an appraisal when required is an ECOA violation. It is easy to comply, and easy to document. Emailing a copy of the appraisal will suffice if the borrower can receive documents via email. Printing or saving a copy of the email in the loan file will provide documentation that the appraisal was sent to the borrower. Training staff on the ECOA appraisal delivery requirements, adding it to a pre-funding checklist, and monitoring for compliance will help ensure that this easy requirement will not be missed.

Time to Think 3.3

1. The lender _____ required to deliver a copy of the BPO to the borrower.
 - a. Is
 - b. Is not

2. The Loan Estimate must be delivered within ____ days of the broker or lender receiving a loan application.
 - a. 2
 - b. 3

SECTION 9

TILA – POST CLOSING DISCLOSURE (CD) NOT PROVIDED TO BORROWER FOR CHANGE IN THIRD PARTY CHARGES

Citation Violation: Must provide the Post Closing Disclosure with the correct Title Fee and the amount of fees on the Closing Disclosure matches with the final settlement statement

Examination Findings: The Post Closing Disclosure (CD) was not provided to the borrowers for the change in third-party charges.

Re-Disclosures

If the LE or CD become inaccurate prior to consummation, the creditor must provide corrected disclosure reflecting the changes at or before consummation, except for changes that require another three-day waiting period, and also the creditor must allow the borrower to inspect the CD with all of the changes known to the creditor during the business day immediately before consummation. The creditor is allowed to omit from this inspection items that only pertain to the seller.

A new three-day waiting period applies if any of the following occur:

1. The Annual Percentage Rate, or APR, increases more than 1/8th of one percent (or 1/4th of one percent for certain loans);
2. There is a change in loan product (from adjustable rate to fixed, or vice versa)
3. A prepayment penalty feature is added.

As with the original three-day waiting period when the CD is issued, the creditor is not required to wait until after midnight of the third day to consummate the loan. Consummation can happen any time on the third day.

The imposition of a second three-day waiting period if charges increase significantly makes it very important that the CD is correct the first time. The second three-day

waiting period for re-disclosures can postpone the closing of a purchase transaction, causing hardship for both the buyer and the seller. And if there is a “daisy-chain” of purchase transactions, each dependent on the closing of the previous sale in the chain, many people can endure stress and hardship. Brokers, Creditors, and Realtors should review their clients’ CD’s very carefully.

Until a CD is issued, re-disclosures may be made using a LE. Once a CD is issued, no more LE’s can be issued. All new re-disclosures must be done using a CD.

Post-Closing Changes⁸³

If the estimated costs on the Closing Disclosure increase beyond the permitted tolerances with no bona fide change in circumstance, and the consumer pays those amounts at consummation, then the creditor must refund the excess payment to consumer and provide a corrected Closing Disclosure all within 60 days of consummation date.

If an event occurs within 30 days of the consummation date that causes a consumer paid amount to change and that also 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.

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 consummation date.

Failure to provide Post-Closing CD after Change in Fees

The lender’s obligation to disclose fees does not end at closing. Frequently, fees change at closing, such as title or recording fees. The lender must disclose these fee increases to the borrower within 30 days of consummation, which in California is the signing of the note and deed of trust, and not the closing date. Creditors can train staff, add the final CD to a post-closing checklist, and audit closed files to ensure that the a CD is sent if fees have changed. Creditors could consider sending a final CD on every file at closing, so that it is never missed. The risk of making an error on the final CD may outweigh the risk of failing to send a CD when required.

⁸³ [12 CFR 1026.19\(f\)\(2\)](#)

SECTION 10

ECOA – FAILURE TO PROVIDE APPRAISAL AND APPLICABLE VALUATION DISCLOSURE WITHIN THREE (3) BUSINESS DAYS OF APPLICATION.⁸⁴

Citation Violation: Failed to deliver a notice in writing of the applicant’s right to receive a copy of all written appraisals to applicants within three (3) days of application. In the event an appraisal is required on a loan, the “Notice of Right to Receive a Copy of Appraisal” advises the consumer that they will receive a copy upon completion, and in any event, no less than three (3) business days prior to the closing. The disclosure also gives the borrower the right to waive receipt of the appraisal three (3) business days prior to closing.

Examination Findings: Section 1002.14(a)(1) of the Bureau of Consumer Financial Protection’s Regulation B, implementing the Equal Credit Opportunity Act, 15 U.S.C. 1601 et seq., requires a creditor to provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a first lien on a dwelling subject to specific timeframes.

Section 1002.14(a)(2) of Regulation B requires a creditor to mail to the applicant, not later than the third business day after the creditor receives an application for credit that is to be secured by a first lien on a dwelling, a notice in writing of the applicant’s right to receive a copy of all written appraisals developed in connection with the application.⁸⁵

Notice of Right to Receive Copy of Valuation or Appraisal

Under ECOA, when a lender takes an application for a loan that will be secured by a first lien loan on the borrower’s 1-4 unit dwelling, the lender must give the applicant

⁸⁴ 12 CFR 1002.14(a)(1).

⁸⁵ 12 C.F.R. 1002.14(a)(2).

a disclosure that they have the right to receive a copy of all written appraisals or valuations developed in connection with the application. The disclosure must be given not later than the third business day after receiving the loan application.

In addition to the right to receive a copy of the valuation or appraisal discussed in Topic 8, the borrower has the right to waive receipt of the appraisal three days prior to consummation, and agree to receive the appraisal at or before consummation.

In the examination above, it appears that the creditor not only did not give the notice of right to receive the appraisal, but did not give copies of the actual appraisal within the required time-frame. This could be the result of failing to adequately train staff members, and/or failing to monitor compliance with this requirement. Putting this requirement on a pre-consummation checklist would help ensure that it does not get missed.

Time to Think 3.4

1. CD's regulations pertain to
 - a. TILA
 - b. RESPA

2. The ECOA notice that the borrower is entitled to receive a copy of their appraisal must be given within_____.
 - a. 3 days
 - b. 1 day

SECTION 11

CORPORATE TRANSPARENCY ACT BACKGROUND

Introduction

A new federal reporting requirement went into effect this year (2024) which will affect many, if not most, small businesses in the United States. The Corporate Transparency Act (“CTA”) was passed by congress in 2021, and requires companies in the United States to register their beneficial ownership with the federal government by 1/1/2025 if the company was formed prior to January 1, 2024, or within 90 days of formation if formed on or after January 1, 2024 until January 1, 2025; after which date, companies will need to register their beneficial ownership within 30 days of formation. The reporting is a one-time filing, but the information must be updated within 30 days of a change.⁸⁶ The CTA was passed by Congress as part of their attempt to address the problems of money-laundering, tax fraud, terrorist financing, and other crimes.

Reporting Companies

There are two types of reporting companies: domestic and foreign. The definitions of reporting companies are very broad. A domestic reporting company is any entity that is a corporation, a limited liability company, or “created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe”⁸⁷ A foreign reporting company is a corporation, limited liability company, or any entity that is formed under the laws of a foreign country, and “registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe”⁸⁸

⁸⁶ 31 CFR 1010.380(a).

⁸⁷ 31 CFR 1010.380(c)(1)(i),

⁸⁸ 31 CFR 1010.380(c)(1)(ii).

Exemptions

There are twenty three exemptions from the definition of reporting company:

1. Securities reporting issuer
2. Governmental entity
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business
7. Securities broker-dealer
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment advisor
11. Venture capital fund advisor
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle
19. Tax exempt entity
20. Entity that operated solely to assist a tax exempt entity
21. Large operating company
22. Subsidiary of an certain exempt entities
23. Inactive entity⁸⁹

It is likely that for mortgage broker or lenders, the exemption most likely to apply is the large operating company exemption. To qualify for the large operating company exemption, the company must:

1. Employ more than 20 full time employees in the United States,
2. Have an operating presence in a physical office in the United States, and
3. Filed a tax return for the previous year showing more than \$5,000,000 in gross receipts.⁹⁰

⁸⁹ 31 CFR 1010.380(c).

⁹⁰ 31 CFR 1010.380(c)(xxi).

Content, Form, and Manner of Reports

The reporting forms are required to be filed electronically with the Financial Crimes Enforcement Network (“FinCen”), on the form that FinCen approves. The following items must be reported for reporting companies:

1. The full legal name of the reporting company;
2. Any trade name or “doing business as” name of the reporting company;
3. A complete current address:
 - a. In the case of a reporting company with a principal place of business in the United States, the street address of such principal place of business; and
 - b. In all other cases, the street address of the primary location in the United States where the reporting company conducts business;
4. The State, Tribal, or foreign jurisdiction of formation of the reporting company;
5. For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and
6. The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

The following items must be reported for every individual who is a beneficial owner of a reporting company, or who is a reporting company applicant:

1. The full legal name of the individual;
2. The date of birth of the individual;
3. A complete current address consisting of:
 - a. In the case of a company applicant who forms or registers an entity in the course of such company applicant’s business, the street address of such business; or
 - b. In any other case, the individual’s residential street address;
4. A unique identifying number and the issuing jurisdiction from one of the following documents:
 - a. A non-expired passport issued to the individual by the United States government or; let’s guess a Federal Government or
 - b. A non-expired identification document issued to the individual
 - c. A non-expired driver’s license issued to the individual by a State; or
 - d. A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the other documents described in this section; or

5. An image of the document from which the unique identifying number was obtained.⁹¹

A beneficial owner is any individual who, directly or indirectly, owns or controls at least 25% of the ownership interest of the reporting company or who exercises substantial control over the reporting company.⁹² Substantial control means when an individual:

1. Serves as a senior officer of the reporting company;
2. Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);or
3. Directs, determines, or has substantial influence over important decisions made by the reporting company.

Penalties for Non-Compliance

Companies and beneficial owners may be subject to civil and criminal penalties for non-compliance, including civil penalties of \$500 for each day that the violation continues, or imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of a reporting company that fail to file a report may be held accountable. Also, persons who willfully cause a reporting company not to report or to report incomplete or false beneficial ownership information may be subject to civil or criminal penalties.

To prepare for the January 1, 2025 deadline, companies that existed prior to January 1, 2024 can

1. Determine whether or not they must comply with the rule, or if they fall under an exemption,
2. If they must comply, create a FinCen account (which is free) and
3. Compile the data they are required to report. Brokers working with businesses can inform their clients of this requirement, as many small business owners are unaware of the requirement.

For more information on Beneficial Ownership Interest Reporting, FinCen has a website, <https://www.fincen.gov/boi>, with the reporting portal, the Small Entity Compliance Guide, FAQ's, and a lot more.

⁹¹ 31 CFR 1010.380(b)(1).

⁹² 31 CFR 1010.380(d).

CHAPTER 3

REVIEW QUIZ

1. ECOA became law when it was signed in_____.
 - a. 2010
 - b. 1974

2. TILA stands for
 - a. Truth In Lending
 - b. Territorial Loan Act

3. Which one of the two items is Zero Tolerance?
 - a. Transfer Taxes
 - b. Recording Fees

4. The _____ is responsible for providing the CD to a borrower.
 - a. Trustee
 - b. Creditor

5. The CD regulations pertain to _____ units.
 - a. 1-10
 - b. 1-4

CHAPTER 4

CALIFORNIA SPECIFIC EDUCATION

SECTION 1

LAWS GOVERNING CALIFORNIA MORTGAGE LENDING

Introduction

California has various laws and regulations governing residential lending to ensure the fair treatment of consumers and the proper functioning of the mortgage industry.

California Residential Mortgage Lending Act (CRMLA): The CRMLA regulates residential mortgage lending and mortgage loan origination activities in California. It sets licensing requirements for mortgage lenders and originators, outlines consumer protection measures, and establishes procedures for enforcement.

The CRMLA is outlined in Division 20 of the California Financial Code, starting with Section 50000. The corresponding regulations can be found in subchapter 11.5 of chapter 3 of Title 10 of the California Code of Regulations, commencing with Section 1950.003 (10 C.C.R. §1950.003, et seq.).

Enacted in 1994 and effective from 1996, the CRMLA serves as an alternative to the existing laws governing lenders under the Real Estate Law and the California Finance Lenders Law.

CRMLA licensees are empowered to engage in various activities, including making federally related mortgage loans, financing home construction, selling loans to institutional lenders and so forth. Additionally, licensees are authorized to service any federally related mortgage loan, irrespective of whether they originated the loan or acquired a servicing portfolio.

Homeowner Bill of Rights (HBOR): The California Homeowner Bill of Rights, enacted in 2013, provides additional protections for homeowners facing foreclosure. It includes:

1. **Dual Tracking Restrictions:** Mortgage servicers are prohibited from simultaneously pursuing foreclosure while also considering a homeowner's application for a loan modification.
2. **Single Point of Contact:** Homeowners are entitled to have a single point of contact at their loan servicer who can provide information about their loan and foreclosure prevention alternatives.
3. **Notification of Foreclosure Alternatives:** Servicers are required to provide homeowners with information about foreclosure alternatives, such as loan modifications and short sales.
4. **Right to Appeal Denial of Modification:** If a loan modification application is denied, the homeowner has the right to appeal the decision.
5. **Enforceability:** Homeowners have the right to sue mortgage servicers for material violations of the HBOR, providing an additional layer of protection.

Fair Lending Laws: Various federal laws, such as the Fair Housing Act and the Equal Opportunity Act (ECOA), complemented by state-level regulations, prohibit discrimination in lending based on factors such as race, color, religion, sex, nation origin, marital status, age or source of income.

The term "Fair Lending Act" is often used generically to refer to various fair lending laws and regulations at both the federal and state levels. However, one of the primary federal laws governing fair lending is the Fair Housing Act (FHA). The FHA is part of the broader Civil Rights Act of 1968.

The Fair Lending Act and the ECOA are two important pieces of legislation in the United States designed to promote fair and equal access to credit for consumers. Both laws, specifically the Fair Housing Act, aim to ensure that individuals have equal access to credit and housing without facing discrimination based on certain protected characteristics. Compliance with these laws is essential for financial institutions, lenders, and housing providers.

Truth in Savings Act (TISA) and Truth in Lending Act (TILA): These federal laws mandate disclosure of terms and costs associated with residential mortgage loans. The California Finance Lenders Law also includes provisions related to disclosure requirements.

TISA is specifically designed to protect consumers in their dealings with depository institutions (such as banks and credit unions) by promoting the disclosure of terms and conditions related to deposit accounts.

1. **Disclosure requirements:** TISA mandates that depository institutions provide clear and uniform information about the terms and conditions of deposit accounts to consumers, including interest rates, fees, and other features.
2. **Annual Percentage yield (APY):** TISA requires the disclosure of the Annual Percentage Yield to help consumers compare the actual return on savings products offered by different institutions.
3. **Account Terms and Fees:** Institutions must provide information about the account terms, transaction limitations, and any fees associated with the account.

TILA is a broader consumer protection law that applies to a wide range of credit transactions, including loans and credit cards. Its primary goal is to promote the informed use of consumer credit by requiring clear and meaningful disclosure of terms and costs.

1. **Disclosure of Credit Terms:** TILA requires lenders to provide consumers with clear and comprehensive information about the terms and costs of credit, including the annual percentage rate (APR), finance charges, and total loan costs.
2. **Right of Rescission:** TILA grants consumers a right of rescission for certain types of loans, allowing them to cancel the transaction within a specified period of time without penalty.
3. **Advertising Disclosures:** TILA establishes rules for advertising credit terms, ensuring that any promotional materials accurately reflect the costs and terms associated with credit products.

California Finance Lenders Law (CFLL): The CFLL regulates non-bank lenders, brokers, and servicers in California. It covers various types of loans, including residential mortgage loans.

1. **Licensing Requirements:** The CFLL requires individuals and entities involved in lending or brokering loans to obtain a license from the California Department of Financial Protection and Innovation (DFPI) unless they are exempt.
2. **Scope of Regulation:** The CFLL applies to a variety of lending activities, including personal loans, commercial loans, and certain real

estate-secured loans. It covers both traditional lenders and brokers who facilitate loans between borrowers and lenders.

3. **Exemptions:** Some entities may be exempt from the licensing requirements under certain conditions. For example, banks, trust companies, and other specified financial institutions are generally exempt.
4. **Regulatory Authority:** The DFPI is responsible for administering and enforcing the CFLL. The department ensures compliance with licensing requirements, investigates complaints and takes enforcement actions against those who violate the law.
5. **Consumer Protections:** The CFLL includes provisions aimed at protecting consumers, such as disclosure requirements, interest rate limitations, and restrictions on certain loan terms.
6. **Annual Reports:** Licensees under the CFLL are often required to submit annual reports and financial statements to the DFPI.

The California Finance Lenders Law is part of the broader regulatory framework in California that oversees financial institutions and protects consumers in financial transactions. It is important for individuals and entities engaging in lending activities in California to be aware of and comply with the provisions of the CFLL to operate legally and ethically within the state.

California Home Finance Act (CHFA): This act provides additional regulatory requirements for lenders engaged in residential lending in California. This act encompasses CRMLA, CFLL and HBOR

Privacy Laws: California has stringent privacy laws, such as the California Consumer Privacy Act (CCPA), which may impact how lenders handle and disclose consumer information.

The CCPA is a comprehensive data privacy law in California aimed at enhancing privacy rights and consumer protection for its residents. The CCPA became effective on January 1, 2020, and grants California consumers certain rights over their personal information.

1. **Right to Know:** Consumers have the right to know what personal information is being collected about them, from where it is sourced, how it is being used, and whether it is being disclosed or sold.
2. **Right to Delete:** Consumers have the right to request the deletion of their personal information held by businesses subject to certain exceptions.

3. **Right to Opt-Out:** Consumers have the right to opt-out of the sale of their personal information. Businesses are required to provide a clear and conspicuous link on their homepage titled “Do Not Sell My Personal Information” for consumers to exercise this right.
4. **Right to Non-Discrimination:** Businesses are prohibited from discriminating against consumers who exercise their rights under the CCPA, including by denying goods or services, charging different prices, or providing a different level or quality of goods or services.
5. **Right to Opt-In for Minors:** For consumers under the age of 16, businesses must obtain opt-in consent to sell their personal information. For consumers under the age of 13, the opt-in consent must be provided by a parent or guardian.
6. **Data Breach Liability:** The CCPA provides consumers with a private right of action in the event of certain data breaches, allowing them to seek damages.
7. **Expanded Definition of Personal Information:** The CCPA has a broad definition of personal information, encompassing not only traditional identifiers but also information related to online activities, geolocation data, biometric information, and more.
8. **Accountability:** The CCPA applies to businesses that meet certain criteria, including having annual gross revenues above a certain threshold or handling a significant amount of consumers’ personal information.

The California Consumer Privacy Act represents a significant step in the United States towards giving consumers more control over their personal information and establishing transparency and accountability in the handling of such data by businesses. It is important for businesses subject to the CCPA to understand and comply with its requirements to avoid potential legal consequences.

Foreclosure Laws: California has specific laws and procedures governing the foreclosure process, including notice requirements and opportunities for homeowners to explore alternatives, such as loan modifications. In a later section Senate Bill 1079 and Assembled Bill 1837 are discussed.

Remote Work

On August 26, 2022, Assembly Bill (AB) 2001 was signed into law, introducing amendments to the California Financing Law (CFL) pertaining to remote work. As per the newly enacted legislation, a CFL licensee is granted the authority to assign an

employee, acting within the scope of employment, to carry out work remotely, proved that specific conditions are met. These conditions include the licensee implementing measures such as prohibiting the storage of a consumer's personal information at a remote location unless it is stored on an encrypted device or encrypted media.

Presently, the CFL stipulates that a licensee is prohibited from conducting loan business or administering a PACE (Property Assessed Clean Energy) program in any office, room, or place of business where other business activities are solicited or conducted, or in association or conjunction with such activities, under certain circumstances. Furthermore, the amendment specifies that a finance lender, broker, mortgage loan originator, or program administrator licensee is not allowed to conduct business, issue loans, or administer any PACE program outlined in this division under a name or at a place of business different from what is indicated in the license, except under the currently effective written authorization of the commissioner for an alternative name or location.

More Remote Work Information –

In response to the conclusion of the COVID-19 State of Emergency, the DFPI acknowledged its end on February 28, 2023. Taking into consideration the prevalent remote work landscape, the DFPI provided revised guidance on remote work compliance within the framework of the California Residential Mortgage Lending Act (CRMLA) [Fin Code, § 50000 et seq.]

The CRMLA neither explicitly prohibits nor endorses employees of a licensee from working remotely including from their homes. A licensee may grant permission for employees to undertake specific functions at a remote location, provided that this location does not exhibit branch office characteristics, and it is not publicly promoted as a business address.

In situations where a mortgage loan originator (MLO) or other employees operate remotely, ongoing supervision by a branch manager is imperative. Per Rule 1950.122.6 of the CRMLA (Cal. Code of Regs., tit. 10, § 1950.122.6), the DFPI will continue scrutinizing the supervisory activities of branch managers to ensure effective oversight, irrespective of the employee's work location, be it remote or at a branch office.

Considerations for licensees in determining the adequacy of supervision or the presence of a branch office include:

1. Only one employee or multiple employees from the same immediate family works at the remote location.
2. Assessment of accessibility and secure storage for confidential physical files at the remote location.
3. The MLO's association with a designated branch office, which is reflected in public communications.
4. Supervision of the employee's public communication by the licensee or designated communication person.
5. Usage of the licensee's electronic email system for all electronic mail communications.
6. Reviewability of all loan processing activities at the main or branch office.
7. Maintenance and enforcement of written supervisory procedures related to remote loan origination and lending activities.
8. Keeping a comprehensive list of remote locations maintained by the licensee.
9. Accessibility of all records by the DFPI at the main or branch office.
10. Inclusion of specific provisions in written supervisory procedures addressing cybersecurity and the use of virtual private network (VPN) or another secure system at the remote location which includes:
 - a. Multi-factor authentication
 - b. Back-up system and data recovery procedures
 - c. Protocols for addressing cybersecurity incidents.

The DFPI is committed to collaborating with licensees to ensure effective supervision of employees working remotely, recognizing the increasing preference and capability of employees to perform their duties outside the traditional office settings.

Additionally, questions can be sent to CRMLA.inquiries@dfpt.ca.gov or go to www.dfpt.ca.gov/california-residential-mortgage-lending/

Remote Online Notarization

California has officially joined many other states embracing Remote Online Notarization (RON). California's Legislature officially passed Senate Bill (SB) 696 which was signed into law on September 30, 2023.

As per the stipulations of SB 696, California notaries are gearing up to initiate online notarization services from January 1, 2030. It's important to note that this commencement date is subject to potential adjustments if the Secretary of State determines that additional time is necessary to establish the requisite rules and technology for implementing the new RON statutes. Such determinations would involve notifying the Legislature and Governor before January 1, 2029.

The legislation introduces a simplified application process, streamlining the registration for both existing notaries and those aspiring to become notaries authorized for online notarizations. This process encompasses specific requirements that must be satisfied for successful registration with the Secretary of State.
www.bluenotary.us

Time to Think 4.1

1. The first Fair Lending Act was _____ passed in 1968.
 - a. HBOR
 - b. FHA

2. According to CFL remote work in financing in California is
 - a. Illegal
 - b. Legal

California Down Payment Assistance Programs

There are several first-time homebuyer programs in California aimed at helping individuals and families achieve homeownership. These programs may include down payment assistance, low-interest loans, and other forms of support. It's important to note that program details and availability can change. Here are some examples of California first-time homebuyer programs:

1. **California Housing Finance Agency (CalHFA):** CalHFA offers various programs, including the CalHFA Conventional Loan Program and the CalPlus Conventional Loan Program, which provide down payment assistance and competitive interest rates.
2. **MyHome Assistance Program:** Also provided by CalHFA, the MyHome Assistance Program offers deferred-payment junior loans up to 3.5% of the purchase price or appraised value, whichever is less, to assist with down payment and/ or closing costs.
3. **School Teacher and Employee Assistance Program (School Program):** CalHFA's School Program is designed to aid educators and school employees with down payment assistance. It provides junior loans of up to 4% of the purchase price or appraised value.
4. **Extra Credit Teacher Home Purchase Program (ECTP):** The ECTP program assists eligible teachers with a junior loan for down payment assistance. The loan amount can be up to \$15,000.
5. **California National Guard, Military Reserve, and California State Military Reserve (CalVet):** The CalVet program provides assistance to eligible veterans and active-duty military personnel. It includes down payment assistance and low-interest rate mortgages.
6. **Local Housing Assistance Programs:** Many local governments and housing authorities in California offer their own down payment assistance programs. These programs can vary widely in terms of eligibility criteria and the amount of assistance provided.
7. **Federal Programs:** Programs like the Federal Housing Administration (FHA) and the U.S. Department of Veterans Affairs (VA) also offer assistance to eligible homebuyers, including low down payment options.

www.calhfa.ca.gov <https://www.hud.gov/buying/loans>

<https://www.calvet.ca.gov/HomeLoans>

Freddie Mac DPA One

Freddie Mac has introduced a website that hosts a set of updated mortgage documents aimed at enhancing clarity, consistency, and accessibility of down payment assistance (DPA) programs across the county. These standardized documents provide a uniform framework for lenders collaborating with finance agencies (HFAs) at various levels - state, city, county and local. The objective is to streamline the understanding of DPA

programs by eliminating the current disparities and potential misinterpretations that arise from the considerable variation of existing forms.

Traditionally, subordinate lien documents associated with different Down Payment Assistance (DPA) programs have been specific to Housing Finance Agencies (HFAs) and presented with varying language. This variation has often led to confusion in understanding terms and payment arrangements. By implementing standardization, Freddie Mac is contributing to a more efficient loan manufacturing process, presenting opportunities for time and cost savings throughout the industry. This improved clarity not only enhances visibility but also serves to attract a greater number of lenders interested in engaging with DPA programs. Ultimately, this initiative is anticipated to broaden access for individuals and families seeking to benefit from such programs.

<https://sf.freddie.mac.com/working-with-us/affordable-lending/dpa-one>

USDA/ Section 502 Direct Loan Program

USDA lending eligibility is determined by the property's rural location, and it's based on whether the property is situated in an eligible rural or suburban area. The USDA has established specific criteria to define eligible areas. These criteria consider factors such as population size and density. It's important to note that eligibility can change, and the USDA updates its maps periodically.

The existing income threshold for a standard USDA loan for household with 1-4 members has been increased to \$110,650 up from \$103,500 at the beginning of 2023. Likewise, the income limit for the larger households, ranging from 5 to 8 members, is now set at \$146,050, a rise from \$136,600. It's worth noting that USDA loan limits may vary by county to accommodate the differences in the cost of living.

One of the significant advantages of USDA loans is that they often do not require a down payment. The USDA loan has two main types: The Guarantee Loan Program and the Direct Loan Program. The Guarantee Loan Program involves working with a USDA approved lender, while the Direct Loan Program involves obtaining the loan directly from the USDA.

USDA loans require mortgage insurance. There is an upfront guarantee fee, as well as an annual fee that is paid with the monthly mortgage payment. Some USDA lenders may require borrowers to complete a homebuyer education course as part of the loan process.

<https://www.rd.usda.gov/programs-services/single-family-housing-programs/single-family-housing-direct-home-loans/ca>

Golden State Finance Authority

The Golden State Finance Authority (GSFA) is a Housing Finance Agency in California that offers various programs to assist homebuyers, including down payment assistance and mortgage credit certificates. The GSFA Bond program, specifically, is one of their offerings designed to provide down payment assistance to eligible homebuyers.

Here are some key features of the GSFA Bond Program:

1. **Down payment assistance:** The GSFA Bond Program typically provides a grant or loan to assist with the down payment and/ or closing costs for qualified homebuyers. This assistance aims to make homeownership more accessible, especially for first-time homebuyers.
2. **Eligibility criteria:** Eligibility criteria for the GSFA Bond program may include factors such as income limits, credit score requirements, and property location.
3. **Mortgage Credit Certificate:** In addition to down payment assistance, GSFA may offer a Mortgage Credit Certificate, which is a federal tax credit that reduces the borrower's federal income tax liability. The MCC program aims to make homeownership more affordable by providing ongoing tax savings.
4. **Partnership with lenders:** The GSFA works in partnership with approved lenders who are authorized to offer their down payment assistance programs. Homebuyers interested in the GSFA Bond program should contact participating lenders to learn more about the program and determine their eligibility.
5. **Educational resources:** The GSFA typically provides educational resources and counseling services to help homebuyers navigate the process of purchasing a home and understanding the financial aspects of homeownership.

Downpayment Toward Equity Act

First-time homebuyers will have the opportunity to qualify for a \$25,000 cash grant under The Downpayment Toward Equity Act of 2023 – a commitment by the Federal Government to fulfill its promise of providing down payment assistance for the purchase of quality housing.

Originally introduced as the Downpayment Toward Equity Act of 2021, the bill lapsed during the previous congressional session. However, in early 2023, following our President's Biden's allocation of \$100 billion in the 2024 budget proposal for the homebuyer cash grant program, the first-time buyer initiative was revived.

On June 21, 2023, elected officials reintroduced the \$25,000 cash grant for homebuyers as H.R. 4231: The Downpayment Toward Equity Act of 2023. The primary goal of the Downpayment Toward Equity Act is to offer down payment assistance specifically to first-generation homebuyers, addressing multi-generational inequities in homeownership access and working towards narrowing and ultimately eliminating the racial homeownership gap in the United States. The government will bridge racial wealth and homeownership disparities by providing cash grants to first-time, first-generation homebuyers. <https://www.bankrate.com/mortgages/25000-down-payment-grant/>

SECTION 2

CALIFORNIA LEGISLATURE CREATES “REDEMPTION RIGHT” FOR TRUSTEE SALES OF RESIDENTIAL PROPERTIES

Introduction

FORECLOSURE UPDATE: SB 1079. On September 28, 2020, Senate Bill 1079 was signed into law. It granted a right of redemption or first refusal to purchase a foreclosed residential property to tenants, buyers intending to use the property as their residence, local governments, and other eligible buyers.

It caused all one-unit to four-unit family dwellings (including investment or rental properties) that if at a trustee’s sale following a foreclosure, a property is not sold to a Prospective Owner-Occupant, any one of the following individuals may submit a bid to purchase the property up to 45 days after the trustee’s sale.

1. An Eligible Tenant Buyer;
2. A Prospective Owner-Occupant;
3. A nonprofit in which an Eligible Tenant Buyer or Prospective Owner-Occupant is a voting member or director;
4. A California nonprofit corporation whose primary activity is the development or preservation of affordable rental housing;
5. A limited partnership or limited liability company in which the managing partner or managing member is a California nonprofit corporation whose primary activity is the development or preservation of affordable rental housing;
6. A community land trust;
7. A limited-equity housing cooperative; or
8. The state of California, the Regents of the University of California, or any county, city, or district local government, public authority or agency. Civ. Code § 2024m(a)(3)(A)-(I).

An Eligible Bidder must provide an affidavit to the trustee that they meet one of the conditions above and must send written notice of intent to place a bid no more than 15 days after the trustee’s sale. Civ. Code § 2924m(c)(2). The Eligible Bidder may

submit a bid up to 5:00 p.m. on the 45th day after the trustee's sale. Civ. Code § 2924m(c)(4).

The Bill also imposes fines on new legal owners who fail to maintain any vacant residential property purchased at a foreclosure sale. A failure to maintain may include permitting excessive foliage growth, allowing trespassers or squatters to remain on the property or failing to prevent mosquito population growth in excess standing water. Civ. Code § 2929.3(b). Each day, a city or county may fine the new owner up to \$2,000 for the first 30 days and then \$5,000 for each day afterwards. Civ. Code § 2929.3(a)(3)(A)-(B).

1. A **Prospective Owner-Occupant** means a natural person who certifies in an affidavit to the trustee that:

1. They will occupy the property as their primary residence within 60 days of the trustee's deed being recorded;
2. They will maintain occupancy for at least one year;
3. They are not the mortgagor or trustor, or the child/spouse/parent of the mortgagor or trustor; and
4. They are not acting as the agent of any person purchasing the property.
Civ. Code § 2924m(a)(1).

2. An **Eligible Tenant Buyer** means a natural person who:

1. Occupies the property as their primary residence;
2. Was a party to an arm's length lease agreement with the borrower who was foreclosed upon; and
3. Is not the borrower or a family member.

SB 1079 LOOPHOLES

Since 2022, many individuals have used SB 1079 to purchase homes after a Foreclosure. However, many profit minded organizations lied and purchased foreclosures after a sale claiming to be eligible non-profits. The scammers always seem to rise like a Phoenix from the ashes of previous scams.

So, a new Assembly Bill 1837 was signed into law on September 28, 2022. This is a reform of SB 1079 passed in 2022.

1. Extends effect of the Homes for Homeowners, not for Corporations legislation until 2031

2. Revises requirements for nonprofit corporations and LLCs to be eligible bidders. To be eligible, the organization must be a/an:
 - a. Nonprofit whose main activities must include development and preservation of affordable rental or homeownership housing in California
 - b. LLC wholly owned by a nonprofit that meets the above requirement
 - c. Community and trust
 - d. LEHCX
3. Expand affidavit and declaration requirements for eligible bidders to deter fraud.
4. Authorize the Attorney General, a county counsel, or a city attorney to bring an action to enforce the law.

Let's hope this change helps more eligible bidders and tenants become homeowners.

CHAPTER 4

REVIEW QUIZ

1. CRMLA stands for
 - a. California Residential Mortgage Lending Act
 - b. Code of Real Estate Mortgages Act

2. The right to appeal a denial of a Loan Modification is in
 - a. The Homeowners Bills of Rights
 - b. RESPA

3. The California Privacy Laws are included in
 - a. CCPA
 - b. CHFA

4. Freddie Mac DPA One discusses
 - a. Modification
 - b. Down Payment Assistance

5. The right of redemption on Trustees Sales was granted by
 - a. SB 1079
 - b. C.C. 2924

FINAL PROJECT

Case Study

On April 1st, Bonnie Broker talked to Amy Applicant and they agreed that Bonnie would help Amy find a loan to purchase Amy's dream home. Amy was excited to move in as soon as possible. Bonnie had Amy sign a credit card authorization so that as soon as Amy received the Loan Estimate, Bonnie could order the appraisal.

That day, Bonnie submitted FHA loan applications for her client, Amy Applicant to ACME Mortgage Lenders and to Bountiful Home Loans. Bonnie planned on using her affiliated escrow company on the transaction, but she will allow Amy to use any title company or pest inspection company that Amy chooses. On April 6th, Amy received a Loan Estimate from ACME Lenders that was issued on April 3rd.

Three days prior to signing the loan documents, Amy received the Closing Disclosure. She noticed that Bonnie's name was not on the CD – the broker's information was blank. The transaction closed and Amy got the keys to her dream home. After the closing, Amy received a corrected closing disclosure and a check dated 30 days after she signed her final documents. The CD corrected the messenger fees, which turned out to be less than anticipated, and the refund check was for the difference.

About 2 months after the closing the loan with ACME Mortgage Lenders, Amy received a Notice of Adverse Action from Bountiful Home Loans, stating that her application had been denied, and instead they offered her a lower loan amount.

Case Study Review

- 1. Was there any problem with Bonnie having Amy sign a credit card authorization for an appraisal prior to sending out the Loan Estimate?**
 - a. Yes. The borrower cannot be obligated to pay any fees other than a credit report fee prior to receiving the LE. The CFBP has found that having the borrower sign the credit card authorization, even if no charges are put on the credit card, could make the borrower feel obligated, and therefore it would violate this rule.

- 2. Was the Loan Estimate send out on time?**
 - a. Yes. The application was taken on April 1, and the LE was issued on April 3, so the LE was issued within 3 days of taking the application.

- 3. Was there any additional disclosure Bonnie should have sent with the LE due to her use of an affiliated escrow company?**
 - a. Yes. She should have sent an Affiliated Business Arrangement Disclosure.

- 4. Did Bonnie need an NMLS license to originate Amy's loan?**
 - a. Yes. An NMLS license is required to originate a consumer loan secured by a residential 1-4 unit dwelling. Since Bonnie was planning on moving into the home, it was a consumer loan, and an NMLS endorsement is required.

- 5. On which loan documents was Bonnie required to disclose her NMLS license?**
- a. The loan application;
 - b. The Loan Estimate and Closing Disclosure;
 - c. The note or loan contract; and
 - d. The deed of trust or mortgage.
- 6. Was it a TRID violation to omit Bonnie's name and contact information from the CD?**
- a. Yes. The CD must have all of the contact information complete and accurate.
- 7. Was the CD corrected on time?**
- a. Yes. The lender had 30 days to issue a refund check and corrected CD.
- 8. Was Bountiful Home Loans required to send out an Adverse Action Notice?**
- a. Yes. Even though they offered Amy a loan, they denied her application for a higher loan amount and issued a counteroffer for a lower loan amount. This is considered an adverse action, and an adverse action notice must be sent.
- 9. Did Bountiful Home Loans send out their Adverse Action Notice on time?**
- a. No. The adverse action notice must be sent within 30 days of the lender taking the adverse action. Bountiful didn't send out their notice until almost 60 days.

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, *DG + 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.

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

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E-mail Duane.G@DuaneGomer.com
www.duanegomer.com

