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NMLS Approved Course Provider - ID number #1400385

8 Hour CA-DBO SAFE Comprehensive –

Today's Compliance Course ID # 7284

Date of course content: August 22, 2017

Date of the course approval: September 10, 2017

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

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

Rules of Conduct

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

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

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

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

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

____
Course Number(s)

___________________________________ ______________
Signature Date (mm/dd/yyyy)

___________________________________ ______________
Print Name NMLS ID (If Known)

Contents

Chapter 1. Federal Law

Overview of changes

A. Need for Change

HMDA and the new URLA

Why change a good thing right? Well that answer can be summed up by quoting Bob Dylan, "The times, they are a changing." The last time that there had been any substantial updates to the URLA were in 1996, The Movie Jerry Maguire hit the box office, The Tickle Me Elmo was the hot new toy, and the song The Macarena was a number one hit on the radio.

With the increased oversight of the CFPB in recent years, increased transparency is being required of lenders. Changes are being made to reporting requirements of HMDA which in turn has made it necessary to update the data fields available on the URLA to capture these new required data points.

Among other items, the new HMDA Rule expanded the reportable data requirements related to the collection of borrower ethnicity, race, and sex. Lenders are now going to be required to collect the new and amended borrower demographic information on loan applications taken on or after January 1, 2018. The current URLA did not have the correct corresponding fields necessary to collect the new data required under the new HMDA requirements.

Along with the new URLA, (*Freddie Mac Form 65 / Fannie Mae Form 1003*) a new Uniform Loan Application Dataset (ULAD) has been created. The ULAD maps each data field on the redesigned URLA to equivalent data point(s) in the corresponding Mortgage Industry Standards Maintenance Organization (MISMO) v3.4 Reference Model.

The hopes of the using the new URLA form, are that it will provide borrowers with a clearer and more consumer-friendly application.

Knowledge Check

1. What is one reason for reason for additional information being collected in the URLA?
   A. Increased transparency is being required of lenders
   B. Increased paperwork results in higher fees to lenders
   C. The more information collected up front, the easier it is to decline a loan.
   D. The more information asked of a consumer makes them more involved in the application process.

Answer A. Increased transparency of lenders into application processes and decisions is being required by the CFPB.

2. Which Federal Law update has forced the re-tooling of the URLA?
   A. TILA
   B. HMDA
   C. ECOA
   D. FCRA

Answer B. HMDA. New regulations under the Home Mortgage Disclosure Act, that go into effect in 2018 prompted additional fields to be completed for proper reporting.

Section One: Header/Borrower Information

Header/ULI

Lender Loan Number/Universal Loan identifier is a new Identifier assigned to identify and retrieve a loan or application that contains the Financial Institution’s Legal Entity Identifier (LEI), an internally generated sequence of 45 characters, including a check digit. The premise of this is that there will be a unique identifier for each loan originated nationwide after January, 1 2018.

To be completed by the ***Lender:***
Lender Loan No./Universal Loan Identifier 123456789 Agency Case No.

A. 1a. Personal Information

Subsection One

One of the first items that a seasoned mortgage professional may notice is that the loan application is in a new order. Also, there is something missing from the Borrower information section Absent is a Co-Borrower section that mirrors the Borrower section. There is however a section to list all other borrowers applying for the loan to tie the applications together. This is because with the new Form, there will be a requirement to have a borrower fill out a separate section of the application. Because of the absence of a co-borrower section on a single form, Loan Originators will need to parse out and aggregate some of the data that was collected from the borrower.

It is the assumption that most mortgage origination software that is used by Lenders will be updated to accommodate for this data sorting and integration.

Section 1: Borrower Information. This section asks about your personal information and your income from employment and other sources, such as retirement, that you want considered to qualify for this loan.

1a. Personal Information

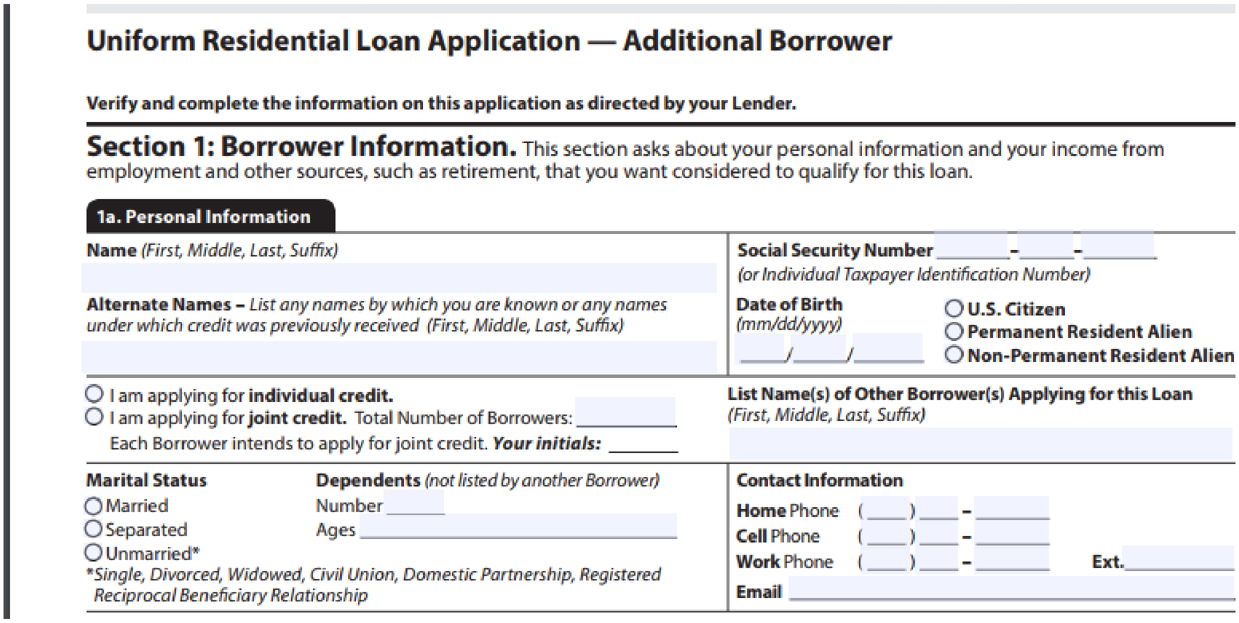
Name *(First, Middle, Last, Suffix)* John A. Homeowner	**Social Security Number** 123 - 45 - 6789 *(or Individual Taxpayer Identification Number)*
Alternate Names – *List any names by which you are known or any names under which credit was previously received (First, Middle, Last, Suffix)* John Adams Homeowner	**Date of Birth** *(mm/dd/yyyy)* 01 / 01 / 1980 ◉ **U.S. Citizen** ○ **Permanent Resident Alien** ○ **Non-Permanent Resident Alien**
○ I am applying for **individual credit.** ◉ I am applying for **joint credit.** Total Number of Borrowers: 2 Each Borrower intends to apply for joint credit. ***Your initials:*** ______	**List Name(s) of Other Borrower(s) Applying for this Loan** *(First, Middle, Last, Suffix)* Mary Ann Homeowner

The marital Status and Contact information sections remain relatively unchanged from the current URLA version.

Marital Status ◉ Married ○ Separated ○ Unmarried* **Dependents** *(not listed by another Borrower)* Number 2 Ages 10, 14 **Single, Divorced, Widowed, Civil Union, Domestic Partnership, Registered Reciprocal Beneficiary Relationship*	**Contact Information** **Home** Phone (999) 222 – 1234 **Cell** Phone (999) 333 – 5678 **Work** Phone (999) 444 – 9876 **Ext.** 321 **Email** johnhomeowner@email.com

Additional Borrower

When there is more than one borrower each must complete their own section of the application. Here is the additional borrower section which you see is identical to the borrower application. The entire application is identical for each borrower to complete.



Uniform Residential Loan Application — Additional Borrower

Verify and complete the information on this application as directed by your Lender.

Section 1: Borrower Information. This section asks about your personal information and your income from employment and other sources, such as retirement, that you want considered to qualify for this loan.

1a. Personal Information

Name *(First, Middle, Last, Suffix)*

Alternate Names – *List any names by which you are known or any names under which credit was previously received (First, Middle, Last, Suffix)*

Social Security Number ____-____-____
(or Individual Taxpayer Identification Number)

Date of Birth *(mm/dd/yyyy)* ____/____/____

○ **U.S. Citizen**
○ **Permanent Resident Alien**
○ **Non-Permanent Resident Alien**

○ I am applying for **individual credit.**
○ I am applying for **joint credit.** Total Number of Borrowers: ______
Each Borrower intends to apply for joint credit. ***Your initials:*** ______

List Name(s) of Other Borrower(s) Applying for this Loan *(First, Middle, Last, Suffix)*

Marital Status
○ Married
○ Separated
○ Unmarried*
**Single, Divorced, Widowed, Civil Union, Domestic Partnership, Registered Reciprocal Beneficiary Relationship*

Dependents *(not listed by another Borrower)*
Number ______
Ages ______

Contact Information
Home Phone (___) ___ - ______
Cell Phone (___) ___ - ______
Work Phone (___) ___ - ______ **Ext.** ______
Email ______

How do you know if you must fill out the Additional Borrower section? Here is some recent guidance from Fannie Mae:

The URLA and the URLA – Additional Borrower are used together, if needed, to collect information for two borrowers who have joint assets, liabilities, and/or real estate information. The URLA and URLA-Additional Borrower can also be used for borrowers that do not have joint information, but wish to combine their information on the URLA for ease of use. The following scenarios are examples of how to use the URLA and URLA-Additional Borrower:

• One Borrower – Complete the URLA.

• Two Borrowers with joint financial information – Complete the URLA plus the URLA-Additional Borrower. The assets, liabilities, and real estate for the additional borrower are reported on the URLA.

• Two Borrowers with separate financial information – Complete a separate URLA per borrower.

• Three or more borrowers – Repeat the above scenarios starting with One Borrower, as applicable. Note: Joint assets, liabilities, and real estate should be listed on only one application and not duplicated on more than one application.[1]

When your borrower chooses Unmarried, they fill out the Unmarried person's addendum:

[1] https://www.fanniemae.com/content/fact_sheet/urla-instructions.pdf

Uniform Residential Loan Application — Unmarried Addendum

For Borrower Selecting the Unmarried Status

Lenders Instructions for Using the Unmarried Addendum
The Lender may use the Unmarried Addendum only when a Borrower selected "Unmarried" in Section 1 and the information collected is necessary to determine how State property laws directly or indirectly affecting creditworthiness apply, including ensuring clear title.

For example, the Lender may use the Unmarried Addendum when the Borrower resides in a State that recognizes civil unions, domestic partnerships, or registered reciprocal beneficiary relationships or when the property is located in such a State. "State" means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

If you selected "Unmarried" in Section 1, is there a person who is not your legal spouse but who currently has real property rights similar to those of a legal spouse? ○ NO ○ YES

If YES, indicate the type of relationship and the State in which the relationship was formed. For example, indicate if you are in a civil union, domestic partnership, registered reciprocal beneficiary relationship, or other relationship recognized by the State in which you currently reside or where the property is located.

○ Civil Union ○ Domestic Partnership ○ Registered Reciprocal Beneficiary Relationship ○ Other (*explain*) ____________

State: ________

Also, the Address section remains relatively unchanged except for the addition of questions relating to Military Service. Gathering this new information relating to Military service will aid Lenders and servicers to comply with SCRA (Service members Civil Relief Act) requirements relating to servicing and collection requirements for eligible borrowers.

Current Address
Street 175 13th Street Unit # 1A
City Washington State DC Zip 12345 Country USA
How Long at Current Address? 1 Years 6 Months ○ Own ◉ Rent ($ 1,500 /month) ○ No primary housing expense

If at Current Address for LESS than 2 years, list Former Address ☐ ***Does not apply***
Street 123 Main Street Unit #
City Washington State DC Zip 67890 Country USA
How Long at Former Address? 2 Years 10 Months ○ Own ◉ Rent ($ 1,200 /month) ○ No primary housing expense

Mailing Address – *if different from Current Address* ☑ ***Does not apply***
Street Unit #
City State Zip Country

Military Service – Did you (or your deceased spouse) ever serve, or are you currently serving, in the United States Armed Forces? ○ **NO** ◉ **YES**
If YES, check all that apply:
☑ Currently serving on active duty with projected expiration date of service/tour 12 / 2020 *(mm/yyyy)*
☐ Currently retired, discharged, or separated from service
☐ Only period of service was as a non-activated member of the Reserve or National Guard
☐ Surviving spouse

Knowledge Check

1. How many borrowers' personal information is collected on each section of the application?
   A. One
   B. Two
   C. Three
   D. Four

Answer A. One borrower's personal information is included on each section of the application.

2. By collecting Military Service information on a borrower aids in the compliance of which federal law?
   A. Veterans Administration Loans (VA)

B. Housing and Urban Development (HUD)
C. Service members Civil Relief Act (SCRA)
D. Rural Housing Loans (USDA)

Answer C. Service members Civil Relief Act. Collecting this information aids in the compliance of requirements relating to servicing and collection for eligible borrowers.

B. 1b. Current Employment/Self Employment and Income

Subsection One

There are minor changes to this section. The current URLA asks how many years on the current job. The new URLA asks for a start date.

The new URLA asks ask the question relating to Non-Arm's Length Transactions and additional questions relating to Self-employment and percentage of ownership.

1b. Current Employment/Self Employment and Income ☐ *Does not apply*

Employer or Business Name US Army Phone (999) 222 – 1111
Address 1600 Pennsylvania Ave
City Washington State DC Zip 11111

Position or Title Intelligence
Start Date 05 / 2008 *(mm/yyyy)*
How long in this line of work? 8 Years ___ Months

Check if this statement applies:
☐ I am employed by a family member, property seller, real estate agent, or other party to the transaction.

☐ **Check if you are the Business Owner or Self-Employed**
○ I have an ownership share of less than 25%.
○ I have an ownership share of 25% or more.
Monthly Income (or Loss) $

Gross Monthly Income

Base	$ 7,680	/month
Overtime	$	/month
Bonus	$	/month
Commission	$	/month
Military Entitlements	$ 2,700	/month
Other	$	/month
TOTAL	$ 10,380	**/month**

C. 1C. Additional Employment/Self Employment and Income

This section is a mirror image of section 1b. and would be used if the borrower had additional regular or self-employment income.

1c. IF APPLICABLE, Complete Information for Additional Employment/Self Employment and Income ☐ *Does not apply*

Employer or Business Name John A Homeowner Internet Sales Phone (999) 222 – 1234
Address 175 13th St
City Washington State DC Zip 12345

Position or Title Owner/Operator
Start Date 01 / 2010 *(mm/yyyy)*
How long in this line of work? 6 Years ___ Months

Check if this statement applies:
☐ I am employed by a family member, property seller, real estate agent, or other party to the transaction.

☑ **Check if you are the Business Owner or Self-Employed**
○ I have an ownership share of less than 25%.
◉ I have an ownership share of 25% or more.
Monthly Income (or Loss) $ 500

Gross Monthly Income

Base	$	/month
Overtime	$	/month
Bonus	$	/month
Commission	$	/month
Military Entitlements	$	/month
Other	$	/month
TOTAL	$	**/month**

D. 1d. Previous Employment/Self Employment and Income

This section was modified slightly from the current URLA. Mostly in the date section is the manner that dates of employment are gathered. The current URLA asks Employment dates (from-to). Then new URLA asks start and end dates specifically in a Month/Year format.

This section is only to be completed if the borrower has been at their current employment for less than two (2) years.

1d. Previous Employment/Self-Employment and Income ONLY IF your Current Employment is LESS than 2 years. ☑ *Does not apply*

Employer or Business Name ____ Address ____ City ____ State ____ Zip ____ **Position or Title** ____ **Start Date** ___/___ *(mm/yyyy)* **End Date** ___/___ *(mm/yyyy)*	☐ **Check if you were the Business Owner or Self-Employed**	**Previous Gross Monthly Income** $ ____

E. 1e. Income from Other Sources

Borrowers at times have income that falls outside the category of employment income. This section is intended to capture the income that was not already gathered in employment income sections 1b and 1c.

As in the current URLA, Income from Child support, Alimony or separate maintenance only need to be disclosed if the borrower is wishing to have them included in determining the borrower's income qualification for the loan.

1e. Income from Other Sources ☐ *Does not apply*

Include income from other sources below. Under Income Source, choose from the sources listed here:

- Alimony
- Automobile Allowance
- Boarder Income
- Capital Gains
- Child Support
- Disability
- Foster Care
- Housing or Parsonage
- Interest and Dividends
- Notes Receivable
- Public Assistance
- Mortgage Credit Certificate
- Mortgage Differential Payments
- Retirement *(e.g., Pension, IRA)*
- Royalty Payments
- Separate Maintenance
- Social Security
- Trust
- Unemployment Benefits
- VA Compensation
- Other

NOTE: *Reveal alimony, child support, separate maintenance, or other income ONLY IF you want it considered in determining your qualification for this loan.*

Income Source – *use list above*	**Monthly Income**
Interest and Dividends	$ 100
	$
	$
Provide TOTAL Amount Here	**$ 100**

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Knowledge Check (Employment and Income)

1. Previous employment income is required if the borrower has been on their current job for less than _______ years.
   A. One
   B. Two
   C. Three
   D. Four

Answer B Two years. Previous employment income is required if the borrower has been on their current job for less than Two (2) years.

2. Income from child support, separate maintenance, and alimony must only be included under the following circumstance:
   A. If the borrower needs the income to qualify
   B. If they get a better rate for a lower DTI
   C. To explain deposits into savings/checking account
   D. If the borrower wishes the income to be included for qualification

Answer D. If the borrower wishes the income to be included for qualification. Income from Alimony, child support or separate maintenance are to be disclosed ONLY if the borrower wishes for them to be included in determining the borrower's qualification for the loan.

Section Two: Financial Information-Assets and Liabilities

Section Two of the URLA is there the Loan originator gathers information relating to Assets and Liabilities. The only assets that need to be listed are assets that the borrower wishes to disclose for the purposes of qualifying for the loan. However, in the Liabilities section, all debts the borrower is PAYING including alimony, child support, separate maintenance, Job related expenses and student loans (even if in deferment) need to be listed.

A. 2a Assets-Bank Accounts, Retirement, and Other Accounts

Subsection One

Section 2a is where the Loan Originator documents the assets that the borrower is wishing to be used in consideration for qualifying for the loan. These accounts would typically be institutional accounts that could be verified through Statements or by sending verifications of deposit requests to the institution.

2a. Assets – Bank Accounts, Retirement, and Other Accounts You Have

Include all accounts below. Under Account Type, choose from the account types listed here:

- Checking
- Savings
- Money Market
- Certificate of Deposit
- Mutual Fund
- Stocks
- Stock Options
- Bonds
- Retirement *(e.g., 401k, IRA)*
- Bridge Loan Proceeds
- Individual Development Account
- Trust Account
- Cash Value of Life Insurance *(used for the transaction)*

Account Type – *use list above*	**Financial Institution**	**Account Number**	**Cash or Market Value**
Checking	Treasury CU	554466	$ 9,000
Money Market	Treasury CU	554468	$ 100,000
Bonds	Treasury CU	554467	$ 2,500
			$
			$
		Provide TOTAL Amount Here	**$ 111,500**

B. 2b Other Assets

Section 2b is used to separate and document other types of assets that the borrower may have relating to the transaction. These assets would typically be non-institutional in nature. Items that would be included in this section would be Earnest money deposits, Lot Equity on construction loans, rent credit, credit on lease purchases (rent to own), Proceeds from a non-real estate asset (example: proceeds from the sale of a car) that will be used in consideration for qualification for the loan.

2b. Other Assets You Have	☐ *Does not apply*
Include all other assets below. Under Asset Type, choose from the asset types listed here: • Earnest Money • Proceeds from Sale of Non-Real Estate Asset • Proceeds from Real Estate Property to be sold on or before closing • Sweat Equity • Employer Assistance • Rent Credit • Secured Borrowed Funds • Trade Equity • Unsecured Borrowed Funds • Other	
Asset Type – *use list above*	**Cash or Market Value**
Earnest Money	$ 10,000
	$
	$
Provide TOTAL Amount Here	**$ 10,000**

Knowledge check (Assets)

A borrower must include asset information under the following circumstances:

A. A borrower must include all information on assets that they wish to use as a basis for making a decision on qualification for the mortgage loan.
B. Any account that shows on the borrower's paystub
C. Any and all accounts the borrower has, even if not used for qualification
D. Assets that produce income not used for qualification.

Answer A. A borrower must include all information on assets that they wish to use as a basis for making a decision on qualification for the mortgage loan. A borrower is only required to disclose assets that they wish to be used in consideration for qualifying for the mortgage loan.

C. 2c Liabilities

Much like the assets sections, the Liabilities section is parsed into two (2) separate sections. The first, Section 2c, is used to gather and document information on institutional liabilities. Examples of these items would be items that would typically show on a consumer credit report. These accounts would be items such as credit cards, Installment loans, Car leases, etc.

There is a section that the Loan Originator can mark if the borrower is intending to pay a certain liability off at or prior to closing.

2c. Liabilities – Credit Cards, Other Debts, and Leases that You Owe ☐ *Does not apply*

List all liabilities below (except real estate) and include deferred payments. Under Account Type, choose from the types listed here: • Revolving (*e.g., credit cards*) • Installment (*e.g., car, student, personal loans*) • Open 30-Day (*balance paid monthly*) • Lease (*not real estate*) • Other

Account Type – *use list above*	Company Name	Account Number	Unpaid Balance	*To be paid off at or before closing*	Monthly Payment
Revolving	Visa	1111222233334444	$ 1,350	☐	$ 50
Revolving	Mastercard	9999888877776666	$ 800	☐	$ 35
Open 30-Day	American Express	5555666644443333	$ 2,500	☑	$
			$	☐	$
			$	☐	$

D. 2d Other Liabilities and Expenses

Section 2d is used to gather and document non-institutional liabilities and expenses. These are items that would typically be listed in this section would be debts that would not show on a consumer credit report. Examples of these types of debts would be Debt or Rent to paid to an individual, court ordered Alimony, and Child Support. Utilities would not need to be listed in this section as they are not used in calculating Debt-to-income ratios.

2d. Other Liabilities and Expenses ☑ ***Does not apply***

Include all other liabilities and expenses below. Choose from the types listed here: • Alimony • Child Support • Separate Maintenance • Job Related Expenses • Other	Monthly Payment
	$
	$
	$

Knowledge Check

What type of Liability would be not be considered under “Other” liabilities?

A. Alimony
B. Job related expenses
C. Credit cards reported to credit bureau
D. Child support

Answer: C. Credit cards reported to credit bureau. Institutional accounts that are reported to a credit bureau would not fall under the category of “other “liabilities. Items that should be listed under “other” liabilities in section 2d would be items that are paid monthly that would not show on a borrower’s consumer credit bureau.

Section Three: Financial Information-Real Estate

Section 3 of the new URLA contains the information pertaining to all Real Estate Properties that the borrower currently owns and the amounts owed on each property.

A. 3a. Property Owned

Subsection One

Section 3a is used to gather and arrange Properties owned by the Borrower and correspond any amounts owed on each property. This includes all carrying costs related to owning the property. Examples would be Hazard Insurance, flood Insurance, Association Dues, privately held contracts etc. It also asks the status of the property and if it is to be Sold, if it is a Pending Sale, of If it is to be retained by the borrower post consummation of the new mortgage loan transaction.

Relating to the financing on the currently held property, it asks basic loan parameters such as Creditor name, Account number and monthly mortgage payment. It also asks what type of financing the property currently has on it. This is particularly informational when pertaining to Government loans such as FHA and VA as it gives the MLO information on what loan type the borrower would be eligible for.

*An example would be Whether the current loan is a FHA loan and they are not wishing to pay off, would the borrower be Eligible for a new FHA loan?

3a. Property You Own **If you are refinancing, list the property you are refinancing FIRST.**

Address
Street ______ Unit # ______ City ______ State ______ Zip ______

			For Investment Property Only	
Property Value	**Status:** Sold, Pending Sale, or Retained	**Monthly Insurance, Taxes, Association Dues, etc.** Not Included in Mortgage Payment	**Monthly Rental Income**	**For LENDER to Calculate:** Net Monthly Rental Income
$		$	$	$

Mortgage Loans on this Property ☐ ***Does not apply***

Creditor Name	**Account Number**	**Monthly Mortgage Payment**	**Unpaid Balance**	*To be paid off at or before closing*	**Type:** FHA, VA, Conventional, USDA-RD, Other	**Credit Limit** *(if applicable)*
		$	$	☐		$
		$	$	☐		$

B. Section 3b

Subsection One

Section 3b of the new URLA is an identical to section 3a except for the fact that it is to be used for "additional properties". So, if a borrower is doing a refinance transaction, The MLO should list the property being refinanced in section 3a. Any additional properties would be listed in section 3b. If the borrower does not have any additional properties, the MLO would check the box starting the section does not apply to this borrower.

3b. IF APPLICABLE, Complete Information for Additional Property ☐ *Does not apply*

Address

Street ______ Unit # ______ City ______ State ______ Zip ______

			For Investment Property Only	
Property Value	**Status:** Sold, Pending Sale, or Retained	**Monthly Insurance, Taxes, Association Dues, etc.** Not Included in Mortgage Payment	**Monthly Rental Income**	**For LENDER to Calculate:** Net Monthly Rental Income
$		$	$	$

Mortgage Loans on this Property ☐ *Does not apply*

Creditor Name	**Account Number**	**Monthly Mortgage Payment**	**Unpaid Balance**	*To be paid off at or before closing*	**Type:** FHA, VA, Conventional, USDA-RD, Other	**Credit Limit** *(if applicable)*
		$	$	☐		$
		$	$	☐		$

Knowledge Check (property owned)

1. In the property owned section, what type of expense would NOT be included?
    A. HOA dues
    B. Taxes
    C. Hazard Insurance
    D. Monthly Utility Payments

Answer D. Monthly Utility Payments   Monthly Utility payments are not used in considering a borrower's qualification.

Section Four: Loan and Property Information

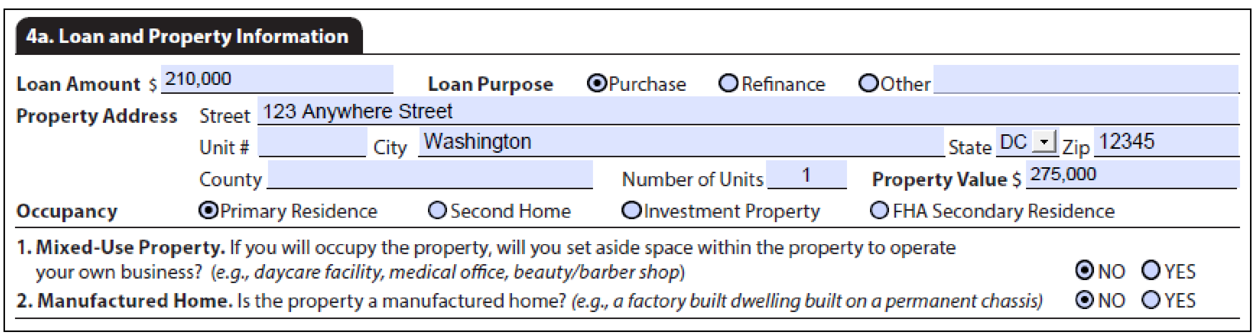
Section 4 Loan and Property information is where the MLO gathers information relating to the property that the borrower is wanting to purchase or refinance.

A. 4a. Loan and Property Information

Subsection One

Section 4a contains specific data relating to the specific loan being applied for. The information gathered pertains to:

- Loan amount
- Loan Purpose: Purchase, Refinance or "Other"
- Property Address
- Property Value
- Occupancy Type: Primary Residence. Second Home, Investment Property, FHA Secondary Residence
- Mixed use property: If the borrower is planning to occupy the property, will a portion of it be used for the operation of a business?
- Manufactured Home: Is the property a factory built dwelling built on a permanent chassis?



4a. Loan and Property Information

Loan Amount $ 210,000 **Loan Purpose** ◉Purchase ○Refinance ○Other

Property Address Street 123 Anywhere Street

Unit # City Washington State DC Zip 12345

County Number of Units 1 **Property Value** $ 275,000

Occupancy ◉Primary Residence ○Second Home ○Investment Property ○FHA Secondary Residence

1. Mixed-Use Property. If you will occupy the property, will you set aside space within the property to operate your own business? *(e.g., daycare facility, medical office, beauty/barber shop)* ◉NO ○YES

2. Manufactured Home. Is the property a manufactured home? *(e.g., a factory built dwelling built on a permanent chassis)* ◉NO ○YES

B. Section 4b

Subsection One

Section 4b is where the MLO would gather information relating to additional loans that are on the property that the borrower is applying for financing on. An example for this section would be a "piggyback" loan used to bring a loan below 80% LTV such as an 80/15/5. On an 80/15/5 loan, the First Mortgage Lien would be 80% LTV the second Lien would be 15% LTV and 5% would be the Borrower's investment in the way of 5% of Borrower's funds.

Transaction Example:

Purchase Price: $200,000.00

1st Lien $160,000.00

2nd Lien $ 30,000.00

Borrowers Funds $ 10,000.00

In this example, the MLO should put $30,000.00 in the Loan amount/Amount to be Drawn space of Section 4b.

4b. Other New Mortgage Loans on the Property You are Buying or Refinancing ☐ *Does not apply*

Creditor Name	Lien Type	Monthly Payment	Loan Amount/ Amount to be Drawn	Credit Limit *(if applicable)*
Treasury CU	○ First Lien ◉ Subordinate Lien	$ 50	$ 2,500	$ 10,000

".

C. Section 4c Rental income on Purchase Property

Subsection 1

If the property that the borrower is purchasing will be sued as an income producing property, this section will need to be completed. The MLO will put the projected monthly income amount in this section based on borrower's expectation of future monthly rental income amounts. This section would be completed on 2-4 Unit Primary Residences and for Investment Properties.

4c. Rental Income on the Property You Want to Purchase **For Purchase Only** ☐ *Does not apply*

Complete if the property is a 2-4 Unit Primary Residence or an Investment Property	Amount
Expected Monthly Rental Income	$
For LENDER to Calculate: Expected Net Monthly Rental Income	$

D. Section 4d Gifts or Grants

Subsection 1

This section is completed by the MLO to document sources, types, and amounts of any gift or grant money that the Borrower is using to qualify for the mortgage loan.

Asset types include:

- Cash Gift
- Gift of Equity
- Grant money

Acceptable sources of gifts or Grants include:

- Relative
- Employer

- Community Nonprofit
- State Agency
- Unmarried partner
- Religious Non-profit
- Federal Agency
- Local Agency
- Other

The MLO should also inquire as to whether the funds have already been deposited into the borrowers account, will be deposited later, or at consummation of the mortgage loan.

4d. Gifts or Grants You Have Been Given or Will Receive for this Loan ☐ ***Does not apply***

Include all gifts and grants below. Under Source, choose from the sources listed here:

- Relative
- Unmarried Partner
- Employer
- Religious Nonprofit
- Community Nonprofit
- Federal Agency
- State Agency
- Local Agency
- Other

Asset Type *(Cash Gift, Gift of Equity, Grant)*		**Source** – *use list above*	**Cash or Market Value**
Cash Gift	◉ Deposited ○ Not Deposited	Relative	$ 5,000
	○ Deposited ○ Not Deposited		$

Section Five: Declarations

A. 5a. Declarations

Section 5 asks the borrower specific questions regarding the property, the funding of the loan, and the Borrower's past financial history. There are a few new items added to this section to promote greater clarity on the new URLA.

Subsection A

Subsection A contains the questions relating to the Occupancy of the property being financed.

Questions asked are:

- Will the borrower occupy the property as a primary residence?
- (If Yes) The MLO will ask the borrower whether they have had an ownership interest property in the past Three (3) years?
- (If Yes) What was the Property Type
  - (PR) Primary Residence
  - (SR) FHA Secondary Residence (NEW)
  - (SH) Second Home
  - (IP) Investment Property
- How did the Borrower hold title to the property?
  - (S) By themselves (Solely)
  - (SP) Jointly with their Spouse
  - (O) Other

A. Will you occupy the property as your primary residence?	( ) NO (•) YES
If YES, have you had an ownership interest in another property in the last three years?	(•) NO ( ) YES
If YES, complete (1) and (2) below:	
(1) What type of property did you own: primary residence (PR), FHA secondary residence (SR), second home (SH), or investment property (IP)?	
(2) How did you hold title to the property: by yourself (S), jointly with your spouse (SP), or jointly with another person (O)	

Subsection B

Subsection B asks about whether the property is a Non-Arm's Length transaction by asking if the Borrower has a family or business relationship with the seller of the property. If answered yes, certain underwriting and stricter LTV restrictions may apply to the transaction.

B. If this is a Purchase Transaction: Do you have a family relationship or business affiliation with the seller of the property?	(•) NO ( ) YES

Subsection C

Subsection C asks the borrower if they are borrowing any funds for the Loan transaction. If so, what is the amount? (The amount borrowed section is NEW)

C. Are you borrowing any money for this real estate transaction (*e.g., money for your closing costs or down payment*) or obtaining any money from another party, such as the seller or realtor, that you have not disclosed on this loan application? If YES, what is the amount of this money?	⦿NO ○YES $

Subsection D

Subsection D asks the borrower if they will be applying for a mortgage loan on <u>another</u> property on or prior to consummation of the loan that has not been disclosed on this application elsewhere. (NEW)

Also, the new URLA asks the borrower if they will be applying for any new credit on or prior to consummation of the loan that has not been disclosed elsewhere on the loan application. (NEW)

D. 1. Have you or will you be applying for a mortgage loan on another property (not the property securing this loan) on or before closing this transaction that is not disclosed on this loan application?	⦿NO ○YES
2. Have you or will you be applying for any new credit (*e.g., installment loan, credit card, etc.*) on or before closing this loan that is not disclosed on this application?	⦿NO ○YES

Subsection E

Subsection E asks the Borrower if there are other liens that could take over the first position of the property such as a clean energy lien paid thru the borrower's property taxes. (NEW)

E. Will this property be subject to a lien that could take priority over the first mortgage lien, such as a clean energy lien paid through your property taxes (*e.g., the Property Assessed Clean Energy Program*)?	⦿NO ○YES

Knowledge Check

1. What is the main reason there URLA has a question relating to whether the borrower has a personal or business affiliation with the seller?
    A. It helps in determining chain of title
    B. Borrowers can't buy homes from family members or business associates
    C. It helps determine if the loan is a Non-Arm's length transaction
    D. It makes a difference on rates and pricing

Answer C. It helps determine if the loan is a Non-Arm's length transaction. There may be additional underwriting requirements and LTV restrictions on transactions that are Non-Arm's length transactions.

2. Why would it be important to ask a borrower if they have or are intending to apply for any additional financing prior to the consummation of this loan transaction?
    A. The borrower may not qualify on their Debt-to-income ratio with additional monthly debts
    B. It shows if the borrow is honest
    C. It shows a borrower's purchasing habits
    D. A borrower who opens new credit prior to closing is always a bad risk

Answer A. The borrower may not qualify on their Debt-to-income ratio with additional monthly debts. It is not illegal or wrong to open a new credit account during a mortgage transaction. However, the borrower may have a change in debt to income ration or possibly credit score that may affect the approval of the loan.

B. Section 5b Financial Declarations

Subsection F

This section would cover loans such as co-signed loans at a non-institutional lender such as a buy here pay here lot that does not report to the credit bureau.

A co-signor is jointly liable on any debt or loan; a guarantor is only liable if primary borrower cannot pay.

F. Are you a co-signer or guarantor on any debt or loan that is not disclosed on this application?	◉ NO ○ YES

Subsection G

This section asks if the borrower has any outstanding judgements.

G. Are there any outstanding judgments against you?	◉ NO ○ YES

Subsection H

Federal debt refers to any debt owed to the federal government, such as a federally-backed student loan, FHA loan, USDA - RD loan, or a VA loan.

H. Are you currently delinquent or in default on a federal debt?	◉ NO ○ YES

Subsection I

Being a party to a lawsuit where the borrower potential would have a financial liability would need to be considered in an underwriting decision.

I. Are you a party to a lawsuit in which you potentially have any personal financial liability?	◉NO ○YES

Subsection J

This is also called "deed in lieu of foreclosure". Select "Yes" if a property in which the borrower was on title was foreclosed upon or conveyed through a deed in lieu of foreclosure, whether or not the borrower was responsible for repayment of the mortgage loan.

J. Have you conveyed title to any property in lieu of foreclosure in the past 7 years?	◉NO ○YES

Subsection K

This section would be relating to "Short Sales". A short sale is a transaction where the borrower and lender agree to sell the property to a third party for less than the amount owed to the lender to avoid foreclosure.

K. Within the past 7 years, have you completed a pre-foreclosure sale or short sale, whereby the property was sold to a third party and the Lender agreed to accept less than the outstanding mortgage balance due?	◉NO ○YES

Subsection L

This section would be completed if the borrower was on title to any property that was foreclosed on in the past seven (7) years.

L. Have you had property foreclosed upon in the last 7 years?	◉NO ○YES

Subsection M

M. Have you declared bankruptcy within the past 7 years? If YES, identify the type(s) of bankruptcy: ☐ Chapter 7 ☐ Chapter 11 ☐ Chapter 12 ☐ Chapter 13	◉NO ○YES

Knowledge Check

1. A borrower needs to disclose all Foreclosures on properties in which they were on title for the past _____ years.

A. Ten
B. Twelve
C. Seven
D. Two

Answer C. Seven. If a property in which a borrower was on title was foreclosed upon whether or not they were responsible for repayment of the mortgage loan, the borrower must disclose this on the application.

2. Which of the following best describes a short sale?
   A. A property that is sold for greater than the amount owed to lender to avoid foreclosure
   B. A property that is abandoned and the lender takes possession and sells for a loss at Sheriffs sale
   C. A property where the borrower and lender agree to work together to sell the home to a third party at a loss to avoid the expense of Foreclosure.
   D. A home that sells quickly

Answer C. A property where the borrower and lender agree to work together to sell the home to a third party at a loss to avoid the expense of Foreclosure.

A short sale is a sale of real estate in which the net proceeds from selling the property will fall short of the debts secured by liens against the property. In this case, if all lien holders agree to accept less than the amount owed on the debt, a sale of the property can be accomplished.

Section Six: Acknowledgements and Agreements

A. Acknowledgements and Agreements

Subsection One

This section is where the borrower certifies that the information is true and accurate as of the date of the application.

It also states that the borrower is responsible for letting the Lender know if any of the information changes post application and prior to consummation.

There is also a section that the borrower acknowledges that they are aware that misrepresentation can lead to civil and criminal penalties.

Subsection Two

This section covers the Property's Security; it states that the property will be secured by a mortgage or Deed of Trust.

Subsection Three

This section speaks to the Property's appraisal, Value and Condition. It states that the property appraisal can be used by the lender and other parties to the transaction. It also states that the lender has not made any representation of the value, condition, or the property itself.

Subsection Four

This section covers Electronic records and signatures. It states that by signing the application that an express consent is given either by an Electronic or Written signature. It also states that that an electronic application would be as effective and enforceable as a written (paper) application.

Subsection Five

This section covers Delinquency. It states that the Lender and other loan participants may report information regarding the loan to credit bureaus and that delinquency may affect the borrower's credit score.

It also states that the borrower can contact a HUD approved counselor if they have difficulty making payments.

Subsection Six

This section covers the use and sharing of information. It has the borrower acknowledge that the Lender may share information about the loan as permitted by law.

Section Seven: Demographic Information

The demographic portion of the URLA gathers information about the borrower's ethnicity, sex, and race. This section has been updated and expanded to conform to the new 2018 HMDA reporting requirements. The borrower had the option to "OPT-OUT "of providing this information to the lender.

A. Demographic Information of Borrower

Subsection 1. Ethnicity

The Ethnicity section has been expanded to allow for greater granularity into the section under Hispanic or Latino. It now has selections for:

- Mexican
- Puerto Rican
- Cuban
- Other

Also, Under Sex, it is important to note that the expanded HMDA guidelines provide that the borrower may select Male, Female or a combination of both Male and Female.

Ethnicity
☐ Hispanic or Latino
☐ Mexican ☐ Puerto Rican ☐ Cuban
☐ Other Hispanic or Latino – *Enter origin:*

Examples: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, etc.
☑ Not Hispanic or Latino
☑ I do not wish to provide this information

Sex
☐ Female
☑ Male
☑ I do not wish to provide this information

Subsection 2 Race

The race section has also been expanded to provide greater detail. These changes are being made to conform with HMDA 2018 reporting requirements.

The borrower has the option to opt out of providing this information to the Lender.

Some notable changes are under with the Asian section with the addition of:

- Asian Indian

- Chinese
- Filipino
- Japanese
- Korean
- Vietnamese
- Other Asian

Under Native Hawaiian or Other Pacific Islander:

- Native Hawaiian
- Guamanian or Chamorro
- Samoan
- Other Pacific Islander

Race

☐ American Indian or Alaska Native – *Enter name of enrolled or principal tribe:*

☐ Asian

☐ Asian Indian ☐ Chinese ☐ Filipino

☐ Japanese ☐ Korean ☐ Vietnamese

☐ Other Asian – *Enter race:*

Examples: Hmong, Laotian, Thai, Pakistani, Cambodian, etc.

☐ Black or African American

☐ Native Hawaiian or Other Pacific Islander

☐ Native Hawaiian ☐ Guamanian or Chamorro ☐ Samoan

☐ Other Pacific Islander – *Enter race:*

Examples: Fijian, Tongan, etc.

☑ White

☑ I do not wish to provide this information

Subsection 3

This last section is where the MLO provides how the Race and Ethnicity information was collected. In the case that the borrower is interviewed for the loan application in person, the MLO is required to answer if the information for ethnicity, sex, and race were based on visual observation or surname.

The second section is where the MLO would document how the URLA was completed. The options are

- Face-to-face interview
- Telephone Interview
- Fax or mail
- Email or Internet

To Be Completed by Financial Institution (*for application taken in person*):		
Was the ethnicity of the Borrower collected on the basis of visual observation or surname?	○NO	◉YES
Was the sex of the Borrower collected on the basis of visual observation or surname?	○NO	◉YES
Was the race of the Borrower collected on the basis of visual observation or surname?	○NO	◉YES

The Demographic Information was provided through:

☑ Face-to-Face Interview (*includes Electronic Media w/ Video Component*) ☐ Telephone Interview ☐ Fax or Mail ☐ Email or Internet

Section Eight: Loan Originator Information

A. Loan Originator Information

This section is used to gather and document the registration and licensing information for the MLO and the MLO's Sponsoring company. This information includes:

- The Loan Originator Organization Name and Address
- Loan Originator Organization NMLSR ID# and State License ID
- Loan Originator Name
- Loan Originator NMLSR ID# and State License ID#
- Email Address and Phone number of MLO

The state license ID that is required to be submitted on the application would be the state license number for the state for which the property is located in. This is important to note as many Organizations and MLO's are licensed in multiple states.

Loan Originator Information

Loan Originator Organization Name ABC Lender

Address 123 Note Rate Way

Loan Originator Organization NMLSR ID# 12345678 State License ID#

Loan Originator Name Larry Lender

Loan Originator NMLSR ID# 654321 State License ID# 11111111

Email larrylender@email.com Phone (999) 888 – 7777

Signature ______________________ Date (*mm/dd/yyyy*) 01 / 02 / 2018

Knowledge Check

A MLO must list their state license number for which of the following?

A. The state where the MLO's main office is
B. The state where the MLO's branch is located
C. The state where the property being financed is located
D. The state where the borrower lives

Answer C. The state where the property being financed is located.

A state license allows a MLO to originate a property located in a certain state. A borrower could potentially live in Ohio, but be purchasing a second home in Florida for winter travel. So, in this case the MLO and sponsoring organization would both need to be licensed in Florida.

The above information is filled out by the borrower or MLO. Here is the lender information that is new to the URLA:

Uniform Residential Loan Application — Lender Loan Information

This section is completed by your Lender.

L1. Property and Loan Information

Community Property State
☐ At least one borrower lives in a community property state.
☐ The property is in a community property state.

Transaction Detail
☐ Conversion of Contract for Deed or Land Contract
☐ Renovation
☐ Construction-Conversion/Construction-to-Permanent
○ Single-Closing ○ Two-Closing
Construction/Improvement Costs $______
Lot Acquired Date ____ /______ *(mm/yyyy)*
Original Cost of Lot $ ______

Refinance Type
○ No Cash Out
○ Limited Cash Out
○ Cash Out

Refinance Program
○ Full Documentation
○ Interest Rate Reduction
○ Streamlined without Appraisal
○ Other ______

Energy Improvement
☐ Mortgage loan will finance energy-related improvements.
☐ Property is currently subject to a lien that could take priority over the first mortgage lien, such as a clean energy lien paid for through property taxes (*e.g., the Property Assessed Clean Energy program*).

Project Type ☐ Condominium ☐ Cooperative ☐ Planned Unit Development (PUD) ☐ Property is not located in a project

L2. Title Information

Title to the Property **Will** be Held in What Name(s):

For Refinance: Title to the Property is **Currently** Held in What Name(s):

Estate Will be Held in
○ Fee Simple
○ Leasehold: *Expiration Date* ____ /______ *(mm/yyyy)*

Manner in Which Title Will be Held
○ Sole Ownership
○ Life Estate
○ Tenancy in Common
○ Joint Tenancy with Right of Survivorship
○ Tenancy by the Entirety
○ Other

Trust Information
○ Title Will be Held by an *Inter Vivos* (Living) Trust
○ Title Will be Held by a Land Trust

Indian Country Land Tenure
○ Fee Simple (On a Reservation)
○ Individual Trust Land (Allotted/Restricted)
○ Tribal Trust Land (On a Reservation)
○ Tribal Trust Land (Off Reservation)
○ Alaska Native Corporation Land

L3. Mortgage Loan Information

Mortgage Type Applied For
○ Conventional ○ USDA-RD
○ FHA ○ VA ○ Other: ____________

Terms of Loan
Note Rate ________%
Loan Term ________ *(months)*

Mortgage Lien Type
○ First Lien
○ Subordinate Lien

Amortization Type
○ Fixed Rate ○ Other *(explain)*: ____________
○ Adjustable Rate

If Adjustable Rate:
Initial Period Prior to First Adjustment ________ *(months)*
Subsequent Adjustment Period ________ *(months)*

Loan Features
☐ Balloon / Balloon Term ______ *(months)*
☐ Interest Only / Interest Only Term ______ *(months)*
☐ Negative Amortization
☐ Prepayment Penalty / Prepayment Penalty Term ______ *(months)*
☐ Temporary Interest Rate Buydown / Initial Buydown Rate_____%
☐ Other *(explain)*: ____________

Proposed Monthly Payment for Property

First Mortgage (P & I)	$________
Subordinate Lien(s) (P & I)	$________
Homeowner's Insurance	$________
Supplemental Property Insurance	$________
Property Taxes	$________
Mortgage Insurance	$________
Association/Project Dues *(Condo, Co-Op, PUD)*	$________
Other	$________
TOTAL	**$________**

L4. Qualifying the Borrower – Minimum Required Funds or Cash Back

DUE FROM BORROWER(S)	
A. Sales Contract Price	$
B. Improvements, Renovations, and Repairs	$
C. Land (if acquired separately)	$
D. For Refinance: Balance of Mortgage Loans on the Property to be paid off in the Transaction *(See Table 3a. Property You Own)*	$
E. Credit Cards and Other Debts Paid Off *(See Table 2c. Liabilities — Credit Cards, Other Debts, and Leases that You Owe)*	$
F. Borrower Closing Costs (including Prepaid and Initial Escrow Payments)	$
G. Discount Points	$
H. TOTAL DUE FROM BORROWER(s) (Total of A thru G)	**$**
TOTAL MORTGAGE LOANS	
I. Loan Amount Loan Amount Excluding Financed Mortgage Insurance (or Mortgage Insurance Equivalent) $________ Financed Mortgage Insurance (or Mortgage Insurance Equivalent) Amount $________	$
J. Other New Mortgage Loans on the Property the Borrower(s) is Buying or Refinancing *(See Table 4b. Other New Mortgage Loans on the Property You are Buying or Refinancing)*	$
K. TOTAL MORTGAGE LOANS (Total of I and J)	**$**
TOTAL CREDITS	
L. Seller Credits	$
M. Other Credits	$
N. TOTAL CREDITS (Total of L and M)	**$**
CALCULATION	
TOTAL DUE FROM BORROWER(s) (Line H)	**$**
LESS TOTAL MORTGAGE LOANS (Line K) AND TOTAL CREDITS (Line N)	**– $**
Cash From/To the Borrower (Line H minus Line K and Line N) **NOTE: This amount does not include reserves or other funds that may be required by the Lender to be verified.**	**$**

L5. Homeownership Education and Housing Counseling

Housing counseling and homeownership education programs are offered by independent third parties to help the Borrower understand the rights and responsibilities of homeownership. A list of HUD-approved housing counseling agencies can be found at: **www.hud.gov** or **www.consumerfinance.gov**.

Has the Borrower(s) completed homeownership education (group or web-based classes) within the last 12 months? ○NO ○YES

If YES: (1) **What format was it in:** (*Check the most recent*) ○Attended Workshop in Person ○Completed Web-Based Workshop

(2) **Who provided it:**

If a HUD-approved agency, provide Housing Counseling Agency ID # ______

If not a HUD-approved agency, or unsure of HUD approval, provide name of Housing Counseling Agency ______

(3) **Date of Completion** ____ /______ *mm/yyyy* **Borrower Name** ______

Has the Borrower(s) completed housing counseling (customized counselor-to-client services) within the last 12 months? ○NO ○YES

If YES: (1) **What format was it in:** (*Check the most recent*) ○Face-to-Face ○Telephone ○Internet

(2) **Who provided it:**

If a HUD-approved agency, provide Housing Counseling Agency ID # ______

If not a HUD-approved agency, or unsure of HUD approval, provide name of Housing Counseling Agency ______

(3) **Date of Completion** ____ /______ *mm/yyyy* **Borrower Name** ______

I. Home Mortgage Disclosure Act Review

A. The Purpose of the Home Mortgage Disclosure Act (HMDA)

The Home Mortgage Disclosure Act (HMDA) was enacted by Congress in 1975 and was implemented by the Federal Reserve Board's Regulation C. On July 21, 2011, the rule-writing authority of Regulation C was transferred to the Consumer Financial Protection Bureau (CFPB). Regulation C requires lending institutions to report public loan data.[2]

HMDA's purposes are to provide the public and public officials with sufficient information to enable them to determine whether institutions are serving the housing needs of the communities and neighborhoods in which they are located, to assist public officials in distributing public sector investments in a manner designed to improve the private investment environment, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[3]

B. The HMDA Adjustment to Asset-Size Exemption Threshold

The definition of "financial institution" in Regulation C provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI-W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest million. For 2016, the threshold was $44 million. During the 12-month period ending in November 2016, the average of the CPI-W increased by 0.8 percent. This results in a change of zero when rounded to the nearest million. Thus, the exemption threshold will remain at $44 million. Therefore, banks, savings associations, and credit unions with assets of $44 million or less as of December 31, 2016, are exempt from collecting data in 2017. An institution's exemption from collecting data in 2017 does not affect its responsibility to report data it was required to collect in 2016.[4]

II. HMDA Updates

A. Definitions

Financial institution means:

[2] Federal Financial Institutions Examination Council, HMDA
[3] 2015 HMDA Rule, pgs 11-12 (http://files.consumerfinance.gov/f/201510_cfpb_final-rule_home-mortgage-disclosure_regulation-c.pdf)
[4] 12 CFR 1003.2, Definitions (https://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-sec1003-2.pdf)

(1) A bank, savings association, or credit union that:

(i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million;

(ii) On the preceding December 31, had a home or branch office in an MSA;

(iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one-to four family dwelling; and

(iv) Meets one or more of the following three criteria:

(A) The institution is Federally insured or regulated;

(B) The mortgage loan referred to in paragraph (1)(iii) of this definition was insured, guaranteed, or supplemented by a Federal agency; or

(C) The mortgage loan referred to in paragraph (1)(iii) of this definition was intended by the institution for sale to Fannie Mae or Freddie Mac; and

(2) A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that:

(i) In the preceding calendar year, either:

(A) Originated home purchase loans, including refinancing of home purchase loans, that equaled at least 10 percent of its loan-origination volume, measured in dollars; or

(B) Originated home purchase loans, including refinancing of home purchase loans, that equaled at least $25 million; and

(ii) On the preceding December 31, had a home or branch office in an MSA; and

(iii) Either:

(A) On the preceding December 31, had total assets of more than $10 million, counting the assets of any parent corporation; or

(B) In the preceding calendar year, originated at least 100 home purchase loans, including refinancing of home purchase loans.[5]

The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect a change in the asset-size exemption threshold for banks,

[5] 12 CFR 1003.2 (https://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/pdf/CFR-2012-title12-vol8-sec1003-2.pdf)

savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The exemption threshold is adjusted to increase to $44 million from $43 million. The adjustment is based on the 1.1 percent increase in the average of the CPI-W for the 12-month period ending in November 2014. Therefore, banks, savings associations, and credit unions with assets of $44 million or less as of December 31, 2014, are exempt from collecting data in 2015.[6]

B. Updates Effective January 1, 2017

The HMDA Rule narrows the scope of depository institutions subject to Regulation C in 2017. A bank, savings association, or credit union will not be subject to Regulation C in 2017 unless it meets the asset-size, location, federally related, and loan activity tests under current Regulation C and it originates at least 25 home purchase loans, including refinancing of home purchase loans, (as those terms are defined in current Regulation C) in both 2015 and 2016.[7]

Effective January 1, 2017, §1003.2 is amended by revising paragraph (1)(iii) and adding paragraph (1)(v) to the definition of "financial institution" to read as follows:

Financial institution means:

1. … (iii) In the preceding calendar year, originated at least one home purchase loan (excluding temporary financing such as a construction loan) or refinancing of a home purchase loan, secured by a first lien on a one- to four-family dwelling; …

… (v) In each of the two preceding calendar years, originated at least 25 home purchase loans, including refinancing of home purchase loans, that are not excluded from this part pursuant to §1003.4(d); and…[8]

C. Updates Effective January 1, 2018

Effective January 1, 2018, the HMDA Rule adopts a uniform loan-volume threshold for all institutions. Beginning in 2018, an institution will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loans in each of the two preceding calendar years or at least 100 covered open-end lines of credit in each of the two preceding calendar years, and it meets other applicable coverage requirements. A bank, savings association, or credit union will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loans or at least 100 covered open-end lines of credit in each of the two preceding calendar years, and it

[6] Federal Register (https://www.federalregister.gov/articles/2014/12/29/2014-30404/home-mortgage-disclosure-regulation-c-adjustment-to-asset-size-exemption-threshold)
[7] CFPB Executive Summary (http://files.consumerfinance.gov/f/201510_cfpb_hmda-executive-summary.pdf)
[8] 2015 HMDA Rule, pg 653

meets current Regulation C's asset-size, location, federally related, and loan activity tests. A for-profit lending institution other than a bank, savings association, or credit union will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loans or at least 100 covered open-end lines of credit in each of the two preceding calendar years and it satisfies the existing location test. [9]

Transactional Coverage[10]

1. The HMDA Rule modifies the types of transactions that are covered under Regulation C. In general, the HMDA Rule adopts a dwelling-secured standard for transactional coverage. Beginning on January 1, 2018, covered loans under the HMDA Rule generally will include closed-end mortgage loans and open-end lines of credit secured by a dwelling. Dwelling-secured business-purpose loans and lines of credit will be covered only if they are home purchase loans, home improvement loans, or refinancing. Covered loans and lines of credit will not include agricultural-purpose transactions or other specifically excluded transactions, even if they are dwelling-secured. Home improvement loans will only be covered loans if they are secured by a dwelling.
2. Beginning January 1, 2018, covered institutions will be required to collect, record, and report information for approved but not accepted preapproval requests for home purchase loans. However, preapproval requests for open-end lines of credit, reverse mortgages, and home purchase loans to be secured by multifamily dwellings will not be covered transactions under the HMDA Rule, effective January 1, 2018.
3. Requires covered institutions to report when they collect information about an applicant's or borrower's ethnicity, race, and sex based on visual observation or surname. Allows applicants and borrowers to self-identify using ethnicity and race subcategories.[11]

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[9] CFPB HMDA Executive Summary

[10] https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201510_cfpb_2018-hmda-transactional-coverage.pdf.pdf

[11] CFPB Compliance Guide, 2.2 Transactional coverage

New / Modified Fields[12]

Effective January 1, 2018

Consumer Financial Protection Bureau

Summary of Reportable HMDA Data – Regulatory Reference Chart[a]

This chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C, as amended by the HMDA Rule issued on October 15, 2015. The relevant regulation and commentary sections are provided for ease of reference. This chart does not provide data fields or enumerations used in preparing the HMDA loan/application register (LAR). For more information on preparing the HMDA LAR, please see http://www.consumerfinance.gov/hmda.

Data Point	Status[b]	Description	Regulation C References
(1) Legal Entity Identifier (LEI)	Modified	Identifier issued to the financial institution (FI) by a utility endorsed by the Global LEI Foundation or LEI Regulatory Oversight Committee	§ 1003.4(a)(1)(i)(A)
(2) Universal Loan Identifier (ULI)	Modified	Identifier assigned to identify and retrieve a loan or application that contains the FI's LEI, an internally generated sequence of characters, and a check digit	§ 1003.4(a)(1)(i), Comments 4(a)(1)(i)-1 through -5, and appendix C
(3) Application Date	Existing	Date the application was received or the date on the application form	§ 1003.4(a)(1)(ii), Comments 4(a)(1)(ii)-1 through -3
(4) Loan Type	Existing	Whether the loan or application is insured by the Federal Housing Administration, guaranteed by the Veterans Administration, Rural Housing Service, or Farm Service Agency	§ 1003.4(a)(2), Comment 4(a)(2)-1
(5) Loan Purpose	Modified	Whether the transaction is for home purchase, home improvement, refinancing, cash-out refinancing, or another purpose	§ 1003.4(a)(3), Comments 4(a)(3)-1 through -5

1 SUMMARY OF REPORTABLE HMDA DATA – VERSION 1.0, 10/15/2015

[12] CFPB Summary of Reportable HMDA Data – Regulatory Reference Chart

Effective January 1, 2018

Consumer Financial Protection Bureau

Data Point	Status[b]	Description	Regulation C References
(6) Preapproval	Modified	Whether the transaction involved a preapproval request for a home purchase loan under a preapproval program	§ 1003.4(a)(4), Comments 4(a)(4)-1 and -2
(7) Construction Method	Modified	Whether the dwelling is site-built or a manufactured home	§ 1003.4(a)(5), Comments 4(a)(5)-1 through -3
(8) Occupancy Type	Modified	Whether the property will be used as a principal residence, second residence, or investment property	§ 1003.4(a)(6), Comments 4(a)(6)-1 through -5
(9) Loan Amount	Modified	Amount of the loan or the amount applied for	§ 1003.4(a)(7), Comments 4(a)(7)-1 through -9
(10) Action Taken and (11) Action Taken Date	Existing	Type and date of action the FI took on the loan, application, or preapproval request	§ 1003.4(a)(8), Comments 4(a)(8)(i)-1 through -14 and 4(a)(8)(ii)-1 through -6
(12) Property Address	New	Address of the property securing the loan (or proposed to secure a loan)	§ 1003.4(a)(9)(i), Comments 4(a)(9)-1 through -5 and 4(a)(9)(i)-1 through -3
(13), (14), and (15) Property Location	Existing	Location of the property securing the loan (or proposed to secure a loan) by state, county, and census tract	§ 1003.4(a)(9)(ii), Comments 4(a)(9)-1 through -5, 4(a)(9)(ii)(B)-1, and 4(a)(9)(ii)(C)-1
(16) Ethnicity, (17) Race, and (18) Sex	Modified	Applicant's or borrower's ethnicity, race, and sex, and if information was collected by visual observation or surname	§ 1003.4(a)(10)(i), Comments 4(a)(10)(i)-1 and -2 and appendix B

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Data Point	Status[b]	Description	Regulation C References
(19) Age	New	Applicant's or borrower's age	§ 1003.4(a)(10)(ii), Comments 4(a)(10)(ii)-1 through -5
(20) Income	Existing	If credit decision is made, gross annual income relied on in making the credit decision; Or, if a credit decision was not made, the gross annual income relied on in processing the application	§ 1003.4(a)(10)(iii), Comments 4(a)(10)(iii)-1 through -10
(21) Type of Purchaser	Modified	Type of entity that purchased the loan	§ 1003.4(a)(11), Comments 4(a)(11)-1 through -10
(22) Rate Spread	Modified	Difference between the annual percentage rate and average prime offer rate for a comparable transaction	§ 1003.4(a)(12), Comments 4(a)(12)-1 through -8
(23) HOEPA Status	Existing	Whether the loan is a high-cost mortgage under the Home Ownership and Equity Protection Act (HOEPA)	§ 1003.4(a)(13), Comment 4(a)(13)-1
(24) Lien Status	Modified	Whether the property is a first or subordinate lien	§ 1003.4(a)(14), Comments 4(a)(14)-1 and -2
(25) Credit Score	New	Credit score(s) relied on and the name and version of the credit scoring model	§ 1003.4(a)(15), Comments 4(a)(15)-1 through -7
(26) Reason for Denial	Modified	Reason(s) the application was denied	§ 1003.4(a)(16), Comments 4(a)(16)-1 through -4
(27) Total Loan Costs or Total Points and Fees	New	Either total loan costs, or total points and fees charged	§ 1003.4(a)(17), Comments 4(a)(17)(i)-1 through -3 and 4(a)(17)(ii)-1 through -2

3 SUMMARY OF REPORTABLE HMDA DATA – VERSION 1.0, 10/15/2015

Effective January 1, 2018

Data Point	Status[b]	Description	Regulation C References
(28) Origination Charges	New	Total borrower-paid origination charges	§ 1003.4(a)(18), Comments 4(a)(18)-1 through -3
(29) Discount Points	New	Points paid to the creditor to reduce the interest rate	§ 1003.4(a)(19), Comments 4(a)(19)-1 through -3
(30) Lender Credits	New	Amount of lender credits	§ 1003.4(a)(20), Comments 4(a)(20)-1 through -3
(31) Interest Rate	New	Interest rate on the approved application or loan	§ 1003.4(a)(21), Comments 4(a)(21)-1 through -3
(32) Prepayment Penalty Term	New	Term in months of any prepayment penalty	§ 1003.4(a)(22), Comments 4(a)(22)-1 through -2
(33) Debt-to-Income Ratio	New	Ratio of the applicant's or borrower's total monthly debt to total monthly income relied on	§ 1003.4(a)(23), Comments 4(a)(23)-1 through -7
(34) Combined Loan-to-Value Ratio	New	Ratio of the total amount of debt that is secured by the property to the value of the property that was relied on	§ 1003.4(a)(24), Comments 4(a)(24)-1 through -5
(35) Loan Term	New	Number of months after which the legal obligation will mature or terminate	§ 1003.4(a)(25), Comments 4(a)(25)-1 through -5
(36) Introductory Rate Period	New	Number of months until the first date the interest rate may change	§ 1003.4(a)(26), Comments 4(a)(26)-1 through -4
(37) Non-Amortizing Features	New	Whether the transaction involves a balloon payment, interest-only payments, negative amortization, or any other type of non-amortizing feature	§ 1003.4(a)(27), Comment 4(a)(27)-1

Effective January 1, 2018

Consumer Financial Protection Bureau

Data Point	Status[b]	Description	Regulation C References
(38) Property Value	New	Value of the property relied on that secures the loan	§ 1003.4(a)(28), Comments 4(a)(28)-1 through -4
(39) Manufactured Home Secured Property Type	New	Whether the covered loan is secured by a manufactured home and land or a manufactured home and not land	§ 1003.4(a)(29), Comments 4(a)(29)-1 through -4
(40) Manufactured Home Land Property Interest	New	Information about the applicant's or borrower's ownership or leasehold interest in the land where the manufactured home is located	§ 1003.4(a)(30), Comments 4(a)(30)-1 through -6
(41) Total Units	New	Number of individual dwelling units related to the property	§ 1003.4(a)(31), Comments 4(a)(31)-1 through -4
(42) Multifamily Affordable Units	New	Number of individual dwelling units related to the property that are income-restricted under federal, state, or local affordable housing programs	§ 1003.4(a)(32), Comments 4(a)(32)-1 through -6
(43) Application Channel (Submission of Application and Initially Payable to Your Institution)	New	Indicators of whether the application was submitted directly to the FI, and whether the obligation was initially payable to the FI	§ 1003.4(a)(33), Comments 4(a)(33)-1, 4(a)(33)(i)-1, and 4(a)(33)(ii)-1 through -2
(44) Mortgage Loan Originator NMLSR Identifier	New	National Mortgage Licensing System & Registry (NMLSR) identifier for the mortgage loan originator	§ 1003.4(a)(34), Comments 4(a)(34)-1 through -3
(45) Automated Underwriting System	New	Name of the automated underwriting system used by the FI to evaluate the application and the result generated by that system	§ 1003.4(a)(35), Comments 4(a)(35)-1 through -6

5 SUMMARY OF REPORTABLE HMDA DATA – VERSION 1.0, 10/15/2015

Effective January 1, 2018

Consumer Financial Protection Bureau

Data Point	Status[b]	Description	Regulation C References
(46) Reverse Mortgage	New	Indicator of whether the transaction is for a reverse mortgage	§ 1003.4(a)(36)
(47) Open-End Line of Credit	New	Indicator of whether the transaction is for an open-end line of credit	§ 1003.4(a)(37), Comment 4(a)(37)-1
(48) Business or Commercial Purpose	New	Indicator of whether the transaction is primarily for a business or commercial purpose	§ 1003.4(a)(38), Comment 4(a)(38)-1

[a] This chart does not contain information about the submission process or procedures, nor does it contain any of the exceptions that are found in the HMDA Rule, such as when a particular data point is not reportable for a particular loan or application.

[b] The "Status" column indicates whether the data point required to be collected, recorded, and reported under the HMDA Rule is new or modified as compared to what was previously collected, recorded, and reported under Regulation C. "New" data refers to data points that were not previously required to be collected, recorded, or reported under Regulation C.

This chart summarizes requirements under HMDA and Regulation C, and does not itself establish any binding obligations. It is intended only to act as a quick reference and not as a substitute for the regulation or its official commentary. Always consult the regulation text and official commentary for a complete understanding of the law.

6 SUMMARY OF REPORTABLE HMDA DATA – VERSION 1.0, 10/15/2015

D. Reporting

Compilation of loan data[13]

(a) *Data format and itemization.* A financial institution shall collect data regarding applications for, and originations and purchases of, home purchase loans, home improvement loans, and refinancing for each calendar year. An institution is required to collect data regarding requests under a preapproval program (as defined in § 1003.2) only if the preapproval request is denied or results in the origination of a home purchase loan. All reportable transactions shall be recorded, within thirty calendar days after the end of the calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application), on a register in the format prescribed in appendix A of this part. The data recorded shall include the following items:

[13] 12 CFR 1003.4 (a)(10); 12 CFR 1003.4(a)(14)(b)(1) and (2)

(10) The ethnicity, race, and sex of the applicant or borrower, and the gross annual income relied on in processing the application.

(14)…

(b) *Collection of data on ethnicity, race, sex, and income.* (1) A financial institution shall collect data about the ethnicity, race, and sex of the applicant or borrower as prescribed in Appendix B of this part.

(2) Ethnicity, race, sex, and income data may but need not be collected for loans purchased by the financial institution.

Sample Data Collection Form[14]

SAMPLE DATA COLLECTION FORM
DEMOGRAPHIC INFORMATION OF APPLICANT AND CO-APPLICANT

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, Federal law requires that we ask applicants for their demographic information (ethnicity, race, and sex) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. You may select one or more "Hispanic or Latino" origins, and one or more designations for "Race."

The law provides that we may not discriminate on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, Federal regulations require us to note your ethnicity, race, and sex on the basis of visual observation or surname. If you do not wish to provide some or all of this information, please check below.

Applicant:

Ethnicity:
☐ Hispanic or Latino – *Check one or more*
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Cuban
- ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race: *Check one or more*
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

Co-Applicant:

Ethnicity:
☐ Hispanic or Latino
- ☐ Mexican
- ☐ Puerto Rican
- ☐ Cuban
- ☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*

☐ Not Hispanic or Latino

☐ I do not wish to provide this information

Race:
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*

☐ Asian
- ☐ Asian Indian
- ☐ Chinese
- ☐ Filipino
- ☐ Japanese
- ☐ Korean
- ☐ Vietnamese
- ☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*

☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
- ☐ Native Hawaiian
- ☐ Guamanian or Chamorro
- ☐ Samoan
- ☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*

☐ White

☐ I do not wish to provide this information

Sex:
☐ Female
☐ Male

☐ I do not wish to provide this information

To Be Completed by Financial Institution (for an application taken in person):

Was the ethnicity of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the race of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the sex of the applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the ethnicity of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the race of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Was the sex of the co-applicant collected on the basis of visual observation or surname?
☐ Yes
☐ No

Data Submission Process[15]

The Bureau is developing a new web-based submission tool for reporting HMDA data. Covered institutions will report data using the new web-based submission tool beginning in 2018. Appendix A, which provides instructions for completing and submitting the HMDA loan/application register (LAR), is amended effective January 1, 2018 to include new transition requirements for data collected in 2017 and reported in 2018. In particular, amended appendix

[14] CFPB Compliance Guide
[15] CFPB HMDA Executive Summary

A requires that a covered institution electronically submit its LAR. In 2018, covered institutions will report 2017 data required under current Regulation C, but will use the new electronic submission tool and will submit data in accordance with amended appendix A and procedures that will be available at http://www.consumerfinance.gov/hmda.

Effective January 1, 2019, appendix A is removed from Regulation C. Beginning in 2019, covered institutions will report the new dataset required by the HMDA Rule, using the new electronic submission tool and revised procedures that will be available at http://www.consumerfinance.gov/hmda.

Quarterly Reporting[16]

Beginning in 2020, the HMDA Rule requires quarterly reporting for covered institutions that reported a combined total of at least 60,000 applications and covered loans in the preceding calendar year. When determining whether it is required to report on a quarterly basis, an institution will not count covered loans that it purchased in the preceding calendar year. In addition to their annual data submission, these larger-volume reporters will submit HMDA data for the first three quarters of the year on a quarterly basis.

The first quarterly submission will be due by May 30, 2020.

Disclosure Requirements[17]

Beginning in 2018, covered institutions will no longer be required to provide a disclosure statement or a modified LAR to the public upon request. Instead, in response to a request, a covered institution will provide a notice that its disclosure statement and modified LAR are available on the Bureau's website.

The HMDA Rule includes sample language that covered institutions can use for these purposes. These revised disclosure requirements will apply to data collected on or after January 1, 2017 and reported in or after 2018.

For data collected in or after 2018 and reported in or after 2019, the Bureau will use a balancing test to determine whether and, if so, how HMDA data should be modified prior to its disclosure in order to protect applicant and borrower privacy while also fulfilling HMDA's disclosure purposes. At a later date, the Bureau will provide a process for the public to provide input regarding the application of this balancing test to determine the HMDA data to be publicly disclosed.

[16] http://files.consumerfinance.gov/f/201510_cfpb_hmda-executive-summary.pdf
[17] http://files.consumerfinance.gov/f/201510_cfpb_hmda-executive-summary.pdf

III. HMDA Related Risks

A. Data Integrity

Reporting Errors

Enforcement[18]

(a) ***Administrative enforcement.*** A violation of the Act or this part is subject to administrative sanctions as provided in section 305 of the Act, including the imposition of civil money penalties, where applicable. Compliance is enforced by the agencies listed in section 305 of the Act (12 U.S.C. 2804).

(b) ***Bona fide errors.***

- **(1)** An error in compiling or recording loan data is not a violation of the act or this part if the error was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors.
- **(2)** An incorrect entry for a census tract number is deemed a *bona fide* error, and is not a violation of the act or this part, provided that the institution maintains procedures reasonably adapted to avoid such errors.
- **(3)** If an institution makes a good-faith effort to record all data concerning covered transactions fully and accurately within thirty calendar days after the end of each calendar quarter, and some data are nevertheless inaccurate or incomplete, the error or omission is not a violation of the act or this part provided that the institution corrects or completes the information prior to submitting the loan/application register to its regulatory agency.

If a Financial Institution makes a good-faith effort to record all data fully and accurately within 30 calendar days after the end of the calendar quarter as required under the 2015 HMDA Rule, but some data are inaccurate or incomplete, the inaccuracy or omission is not a violation of HMDA or Regulation C if the Financial Institution corrects or completes the data prior to submitting its annual LAR.[19]

If a Financial Institution that is required to submit quarterly data makes a good-faith effort to report all data fully and accurately within 60 calendar days as required under the 2015 HMDA Rule, but some data are inaccurate or incomplete, the inaccuracy or omission is not a violation

[18] 12 CFR 1003.6
[19] 12 CFS 1003.6(c)(1)

of HMDA or Regulation C if the Financial Institution corrects or completes the data prior to submitting its annual LAR.[20]

B. Identifying Impacts / Changes Needed[21]

Identifying affected institutions, products, departments, and staff

When planning, institutions should first determine if they are likely to be subject to the 2015 HMDA Rule and, if so, identify their affected products, departments, and staff. The effects on these products, departments, and staff may vary greatly depending on the institution's size, organizational structure, and the complexity of its operations and systems.

First, an institution should assess whether or not it will be a Financial Institution subject to the 2015 HMDA Rule. This assessment can be done by reviewing the 2015 HMDA Rule's effective dates and criteria for institutional coverage. It is important to note that the coverage criteria for depository institutions change in 2017, and the coverage criteria for all institutions change effective January 1, 2018. A bank, savings association, or credit union should review both the 2017 and 2018 changes. A non-depository institution will need to review only the 2018 changes. For more information on which institutions are subject to the 2015 HMDA Rule, see Section 3 of this guide. An institution can also use the HMDA Institutional Coverage Charts to help it determine if it is subject to Regulation C, as amended by the 2015 HMDA Rule. However, the HMDA Institutional Coverage Charts and this guide are not substitutes for the 2015 HMDA Rule.

Second, a Financial Institution must assess which of its products and services involve Covered Loans and reportable activity under the 2015 HMDA Rule. For more information on which transactions relate to Covered Loans and reportable activity, see Section 4 of this guide.

It is important to note that the 2015 HMDA Rule may not require a Financial Institution to report Open-End Lines of Credit. A Financial Institution is not required to report Open-End Lines of Credit if it originated fewer than 100 Open-End Lines of Credit in each of the preceding two calendar years. For more information on Open-End Lines of Credit, Covered Loans, and Excluded Transactions, see Section 4.1 of this guide.

After determining which of its products and services involve transactions that must be reported, a Financial Institution can begin to assess which of its departments, systems, and staff will be affected.

[20] 12 CFR 1003.6(c)(2)
[21] CFPB Compliance Guide, 9.1

Third, the Financial Institution should determine what information it must report and how it will collect this information. The information that a Financial Institution must report might vary depending on the type of transaction being reported. For example, a Financial Institution may not be required to collect and report the same information for a purchased Covered Loan as for an originated Covered Loan. It might not be required to report the same information for a business-purpose loan as for a consumer-purpose loan. For more information on the reportable data points, see Section 5 of this guide and the HMDA Rule: Reporting Not Applicable chart.

After determining what information must be collected and reported for reportable transactions, a Financial Institution can refine its assessment regarding which of its systems, departments, and staff will be affected by the 2015 HMDA Rule.

Identifying changes to business processes, policies, and systems

The requirements of the 2015 HMDA Rule may affect a number of a Financial Institution's business systems, processes, and policies. A review should be conducted of existing business processes, policies, and systems that the Financial Institution, its agents, and other business partners use. Identifying impacts early will allow the Financial Institution to understand what changes will be needed to support ongoing compliance.

When reviewing its existing processes, policies, and systems, a Financial Institution should consider the 2015 HMDA Rule's requirement to submit data electronically beginning in 2018. Beginning in 2018, Financial Institutions will not be able to use paper-based submissions for HMDA data. The Bureau is creating a web-based tool for submission of HMDA data. Financial Institutions should become familiar with the new web-based submission tool and be able to use it to submit data beginning in 2018. For more information on the web-based submission tool, see http://www.consumerfinance.gov/hmda/.

Financial Institutions may need to revise or develop processes and policies to comply with the changes to transactional coverage. For example, a Financial Institution may need to develop new processes and policies to comply with the reporting requirements for Open-End Lines of Credit.

Identifying impacts to key service providers or business partners

Financial Institutions should review their arrangements and agreements with third parties engaged for services related to mortgage or other support activities. Close coordination and discussion of implementation plans with these vendors and business partners is critical to ensure that the services for which they are engaged will continue to support the Financial Institution's business needs and comply with all regulatory and legal obligations.

Third-party relationships may need to be reviewed and adjusted to satisfy requirements for collecting, recording, or reporting required HMDA data, updating compliance and quality control systems and processes, and ensuring record management requirements are in place. If the Financial Institution seeks the assistance of vendors or business partners, it is responsible for understanding the extent of the assistance that they provide. Also, the data collection and reporting requirements in the 2015 HMDA Rule reinforce the need to assess current integrations between the Financial Institution's technology platforms and those of its third-party providers to determine what updates are necessary.

Software providers, other vendors, and business partners may offer compliance solutions that can assist with any necessary changes. Identifying these key partners will depend on the Financial Institution's business model. For example, Financial Institutions may find it helpful to coordinate and discuss potential implementation issues with their correspondents, secondary market partners, and technology vendors. In some cases, institutions may need to negotiate revised or new contracts with these parties, or seek a different set of services.

The Bureau expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. For more information, see CFPB Bulletin 2012-03 at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.

IV. Additional Resources

A. Consumer Finance Protection Bureau[22]

The Bureau is developing a new web-based submission tool for reporting HMDA data. Covered institutions will report data using the new web-based submission tool beginning in 2018.

Appendix A, which provides instructions for completing and submitting the HMDA loan/application register (LAR), is amended effective January 1, 2018 to include new transition requirements for data collected in 2017 and reported in 2018. In particular, amended appendix A requires that a covered institution electronically submit its LAR. In 2018, covered institutions will report 2017 data required under current Regulation C, but will use the new electronic submission tool and will submit data in accordance with amended appendix A and procedures that will be available at http://www.consumerfinance.gov/hmda.

Effective January 1, 2019, appendix A is removed from Regulation C. Beginning in 2019, covered institutions will report the new dataset required by the HMDA Rule, using the new electronic

[22] CFPB HMDA Executive Summary

submission tool and revised procedures that will be available at http://www.consumerfinance.gov/hmda.

B. Federal Register[23]

More information regarding the HMDA (Reg C) Adjust to Asset-Size Exemption Threshold may be found on the Federal Register website.

Learning about the new Home Mortgage Disclosure Act reporting rules and data sets leads to a question about privacy and theft of non-public personal information. How are we going to keep this information safe, how can we do the best we can to protect our clients and customers? Next we are going to talk about our Federal privacy and identity theft laws and rules. We will discuss the requirements then talk about ways that we can not only follow the law but "go the distance" to help protect our customer's information and identity.

[23] Federal Register website (https://federalregister.gov/a/2015-32285)

Chapter II: Ethics

I. Introduction and Overview

A. Why are There Laws and Regulations?

Laws and regulations are important to any functioning society as they provide structure to everyday life, business transactions, and societal behaviors. They are the rules that bind all people living in a society or a community. Laws and regulations protect our general safety and ensure our rights as members of society against abuses by other people, by organizations, businesses, and possibly by the government itself. An appropriate law will help maintain order, reduce conflict, and stipulate the mode of punishment for each violation therefore ensuring equity.

B. How Laws Help/ Ethical Actions

Ethics is the study of standards of behavior which promotes human welfare and "the good". It is a set of standards of right and wrong established by a particular group and imposed on members of that group as a means of regulating and setting limits on their behavior. A code of Ethics is commonly described as the topic, idea, study, analysis, and discussion of the criteria for assessing the appropriateness of behaviors, decisions, actions and/or positions.

Business ethics is the study of business behavior which promotes human welfare and positive outcomes for all participants. How we structure our business "society" and therefore the laws that affect our business and our systems. How we act as individual practitioners and how we structure our policies are all connected to ethical behavior.

> It is your responsibility to know the law! *Remember you must not only fulfill the letter of the law but the intent of the law as well.*

The point of understanding and being comfortable with your ethics and your company's ethics is to help guide you in your mortgage practice and maintain your reputation in the industry.

Why bother refreshing our understanding of ethics?

In order to fully recognize mortgage bankers and brokers as professionals, the industry is charged with clearly and distinctly defining the ethical commitments that each of us has to the public, to the profession, to clients, and to our competitors. We are faced with situations every day in the mortgage lending industry that force us to acknowledge that there is a definite distinction between professionals and non-professionals as a result of the degree of ethical responsibility demonstrated by each individual. Professionals act with a fiduciary duty to each of their borrowers, companies and lenders and provide an important value-added service. A non-professional will put their personal needs ahead of their borrower, company, and others.

Knowledge Check:

Discuss the ethical rules pertaining to conduct that your company sets as a standard of practice.

- Are the ethical behaviors, moral and value systems written?
- Implied?
- Passed down orally?
- Please be detailed in your response.
- Can you recognize what law(s) this is in reference to?

Knowledge Check:

Laws and Regulations are meant to:

A: Protect our general safety and ensure our rights

B: Help people who want to take advantage of others

C: Keep people from taking advantage of others

D: Serve no purpose

Answer: A: Laws and regulations are important to any functioning society as they provide structure to everyday life, business transactions, and societal behaviors. They are the rules that bind all people living in a society or a community. Laws and regulations protect our general safety and ensure our rights as members of society against abuses by other people, by organizations, businesses, and possibly by the government itself.

We are going to take a deeper look at two areas where ethics and ethical behavior separate the professional from the non-professionals, discrimination and fraud.

II: Fair Lending and Discrimination

Discrimination is the unjust or prejudicial treatment of different categories of people or things, especially on the grounds of race, age, gender, or sexual identity. The effects of discrimination in housing are widespread. The Fair Housing Act sets clear standards for the legal treatment of consumers in real estate related transactions, including mortgage lending. Treating people equally and fairly is the cornerstone of a good mortgage business. Fair Housing Laws and Fair Lending Laws combine to create strong protections in our financial markets.

The Fair Housing Act (FHA) protects borrowers against discrimination when they apply for a mortgage loan. The Equal Credit Opportunity Act prohibits discrimination in all credit transactions, and the Fair Housing Act prohibits discrimination in all residential real estate transactions.

Let's review the prohibitions in Fair Housing Laws as they relate to mortgage lending (Fair Lending).

Section § 100.120(a) states that any person engaged in residential real estate-related transactions may not discriminate against any person "in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling" because they are in a protected class.[24]

Prohibitions include but are not limited to:

- Refusing to make a mortgage loan;
- Refusing to provide information regarding loans;
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees;
- Discriminating when appraising property;
- Refusing to purchase a loan; or
- Setting different terms or conditions for purchasing a loan.

To use the fact that someone is in a protected class to impose different policies, practices, or procedures in evaluating or in determining creditworthiness of any person regarding a loan or financial assistance for a dwelling is also a prohibited practice.

The underwriting guidelines established by the agency and the lender must be analyzed to fairly determine loan approval or denial. To ensure that a loan application gets fair consideration, an MLO must examine and provide all of the information that supports the application, including providing sufficient documentation to support the application and loan decision.

HUD's FHA Office of Fair Housing and Equal Opportunity in the U.S. Department of Housing and Urban Development (HUD) enforces Fair Housing Act violations. An individual has up to one year to file a complaint with HUD. HUD notifies the alleged violator of a complaint and permits

[24] http://www.ecfr.gov/cgi-bin/text-idx?SID=ba945c83c88bea657a160e6e90c0f6d1&mc=true&node=pt24.1.100&rgn=div5 PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT §100.120. Discrimination in the making of loans and in the provision of other financial assistance.

the loan officer and/or broker to respond. HUD then investigates the complaint and determines whether or not there is a reasonable cause to believe the Fair Housing Act has been violated. This process can take 90 days or more.

Disparate Impact and Discriminatory Effects

> The Consumer Financial Protection Bureau, HUD and other federal agencies take discrimination seriously. Discrimination is treating some people less fairly than others because of their race, color, national origin, religion, sex, familial status, religion, marital status, or age.

One specific type of discrimination is known as 'disparate impact.' Disparate impact focuses not on discriminatory intent, but instead on discriminatory consequences. A disparate impact occurs when a lender applies a facially-neutral pattern of practice equally to all credit applicants but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis. Without nondiscriminatory access to credit, consumers face obstacles in obtaining equal access to housing. Remember a policy or practice can be facially neutral and non-discriminatory in its intention but, nonetheless, disproportionately affects individuals in a Fair Housing protected class.

The National Fair Housing Alliance Disparate Impact Media Articles define disparate impact as:

> Disparate Impact is a legal doctrine under the Fair Housing Act which states that a policy may be considered discriminatory if it has a disproportionate "adverse impact" against any group based on race, national origin, color, religion, sex, familial status, or disability when there is no legitimate, non-discriminatory business need for the policy. In a disparate impact case, a person can challenge practices that have a "disproportionately adverse effect" on those protected by the Fair Housing Act and are "otherwise unjustified by a legitimate rationale." [25]

Let's take a look at the **Fair Lending Report of the Consumer Financial Protection Bureau, April 2017,** published 06/01/2017.[26] The CFPB has used its statutory mandate *to provide "oversight and enforcement" of the fair lending laws under our jurisdiction* over the last five years.

Using a data driven approach to prioritizing areas of potential risk, the priority for the CFPB for the next year include:

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[25] http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact/tabid/4264/Default.aspx.

[26] https://www.federalregister.gov/documents/2017/06/01/2017-11318/fair-lending-report-of-the-consumer-financial-protection-bureau-april-2017

Redlining. "*We will continue to evaluate whether lenders have intentionally discouraged prospective applicants in minority neighborhoods from applying for credit.*"

Mortgage and Student Loan Servicing. "*We will evaluate whether some borrowers who are behind on their mortgage or student loan payments may have more difficulty working out a new solution with the servicer because of their race, ethnicity, sex, or age.*"

Small Business Lending.

How do they prioritize this information? According to the report: "*The fair lending prioritization process incorporates a number of additional factors as well, including; consumer complaints; tips and leads from advocacy groups, whistleblowers, and government agencies; supervisory and enforcement history; and results from analysis of HMDA and other data.*"

Redlining

Redlining is a form of unlawful lending discrimination under ECOA. In the 1960's when the term was first used, actual red lines were drawn on maps around neighborhoods to which credit would not be provided, giving this practice its name. The FFIEC prudential banking regulators have collectively defined redlining as *"a form of illegal disparate treatment in which a lender provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located."* [27]

The CFPB is committed in 2017 to increase the focus in areas of redlining and mortgage servicing to be sure qualified applicants have equal access to mortgage loans as well as appropriate options when they have trouble paying back their loans. How will they accomplish this goal?

The Bureau considers various factors, as appropriate, in assessing redlining risk in its supervisory activity. These factors, and the scoping process, are described in detail in the Interagency Fair Lending Examination Procedures. These factors generally include (but are not limited to):

Strength of an institution's CMS, including underwriting guidelines and policies;

- Unique attributes of relevant geographic areas (population demographics, credit profiles, housing market);
- Lending patterns (applications and originations, with and without purchased loans);

[27] https://www.ffiec.gov/pdf/fairlend.pdf

- Peer and market comparisons;
- Physical presence (full service branches, ATM-only branches, brokers, correspondents, loan production offices), including consideration of services offered;
- Marketing;
- Mapping;
- Community Reinvestment Act (CRA) assessment area and market area more generally;
- An institution's lending policies and procedures record;
- Additional evidence (whistleblower tips, loan officer diversity, testing evidence, comparative file reviews); and
- An institution's explanations for apparent differences in treatment.[28]

The CFPB will conduct investigations of ECOA or HMDA violations and if they feel a violation has occurred they can file a complaint. The CFPB may file a complaint with the Department of Justice if they feel they have reason to believe that a creditor has engaged in a pattern or practice of lending discrimination. Even if the CFPB refers to the DOJ, they can also take their own independent action to address the violation.

Knowledge Check:

Disparate Impact is:

A: The impact on a community when loans are made without considering Ability to Repay
B: A disparity between qualified applicants and unqualified applicants
C: A form of illegal lending under ECOA
D: A focus not on discriminatory intent, but instead on discriminatory consequences

Answer: D: Disparate impact focuses not on discriminatory intent, but instead on discriminatory consequences. A disparate impact occurs when a lender applies a facially-neutral pattern of practice equally to all credit applicants but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis.

[28] https://www.federalregister.gov/documents/2017/06/01/2017-11318/fair-lending-report-of-the-consumer-financial-protection-bureau-april-2017#footnote-35-p25255 2.1.6 ASSESSING REDLINING RISKS

Fair Lending Enforcement Actions

BANCORPSOUTH BANK[29]

On June 29, 2016, the CFPB and the DOJ announced a joint action against BancorpSouth Bank (BancorpSouth) for discriminatory mortgage lending practices that harmed African Americans and other minorities. The complaint filed by the CFPB and DOJ alleged that BancorpSouth engaged in numerous discriminatory practices, including illegal redlining in Memphis; denying certain African Americans mortgage loans more often than similarly situated non-Hispanic White applicants; charging African-American borrowers more for certain mortgage loans than non-Hispanic White borrowers with similar loan qualifications; and implementing an explicitly discriminatory loan denial policy. The consent order, which was entered by the court on July 25, 2016, requires BancorpSouth to pay $4 million in direct loan subsidies in minority neighborhoods in Memphis, at least $800,000 for community programs, advertising, outreach, and credit repair, $2.78 million to African-American consumers who were unlawfully denied or overcharged for loans, and a $3 million penalty.

The consent order requires a number of remedial actions including:

- Pay $4 million dollars to a loan subsidy program to increase access to affordable credit by offering qualified applicants in majority-minority neighborhoods in Memphis mortgage loans on a more affordable basis than otherwise available from BancorpSouth.
- Pay $2.78 million to African American consumers who were improperly denied or charged higher rates.
- Spend $500,000 to partner with community based or governmental organizations that provide education, credit repair, and other assistance in minority neighborhoods in Memphis.
- Spend at least $300,000 on a targeted advertising and outreach campaign to generate applications for mortgage loans from qualified consumers in majority-minority neighborhoods in Memphis
- Pay $3 million dollars to the CFPB's Civil Penalty Fund.

PROVIDENT FUNDING ASSOCIATES

[29] https://www.federalregister.gov/documents/2017/06/01/2017-11318/fair-lending-report-of-the-consumer-financial-protection-bureau-april-2017#footnote-35-p25255 3.1.1 MORTGAGE

On May 28, 2015, the CFPB and the DOJ filed a joint complaint against Provident Funding Associations (Provident) for discrimination in mortgage lending, along with a proposed order to settle the complaint in the United States District Court for the Northern District of California. The complaint alleged that from 2006 to 2011, Provident discriminated in violation of ECOA by charging over 14,000 African-American and Hispanic borrowers more in brokers' fees than similarly situated non-Hispanic White borrowers on the basis of race and national origin. The consent order, which the court entered on June 18, 2015, requires Provident to pay $9 million in damages to harmed borrowers, to hire a settlement administrator to distribute funds to the harmed borrowers identified by the CFPB and DOJ, and not to discriminate against borrowers in assessing total broker fees.

Interesting to note that in the BancorpSouth action the CFPB used "testers" for the first time. The Complaint described that the CFPB sent a white tester and an African American tester to inquire about mortgage loans available at various branches. The CFPB relied on the testers interactions with bank employees in their action against the bank.

Even though various agencies including the DOJ and the Department of Housing and Urban Development, as well as fair housing organizations, have used testers for decades as a method of identifying discrimination this is the first time the CFPB has used testers in an investigation.

Knowledge Check #1: Review the two cases above. Is this a case of disparate impact? Why or why not?

Answer: Yes, it could be disparate impact. Disparate impact focuses not on discriminatory intent, but instead on discriminatory consequences. A disparate impact occurs when a lender applies a facially-neutral pattern of practice equally to all credit applicants but the policy or practice disproportionately excludes or burdens certain persons on a prohibited basis. In these cases their policy led to discrimination between their customers.

Knowledge Check #2: Compare and contrast Redlining to Reverse Redlining:

Answer: Redlining is the practice of denying a creditworthy applicant a loan for housing in a certain neighborhood even though the applicant may otherwise be eligible for the loan. The term refers to the presumed practice of mortgage lenders of drawing red lines around portions of a map to indicate areas or neighborhoods in which they do not want to make loans. Reverse Redlining is targeting a particular and extending credit on unfair terms on a discriminatory basis.

Knowledge Check #3: What is *an explicitly discriminatory loan denial policy?* How might this lender have perpetrated this?

Answer: The complaint alleges that BancorpSouth required its employees to deny applications from minorities and other "protected class" applicants more quickly than those from other applicants and not to provide credit assistance to "borderline" applicants, which may have improved their chances of getting a loan. The bank generally permitted loan officers to assist marginal applicants, but the explicitly race-based denial policy departed from that practice.

ECOA

A federal law enacted in 1974 that requires lenders and other creditors to make credit equally available without discrimination based on race, color, religion, national origin, age, sex, marital status, the receipt by an applicant of income from public assistance programs, or the exercise by an applicant in good faith of any right under the Consumer Credit Protection Act. ECOA applies to loans for property purchases, refinancing purposes or home improvement purposes.

The Equal Credit Opportunity Act (Regulation B) prohibits discrimination in all credit transactions including mortgage lending. ECOA is the basis for our Federal Fair Lending Laws along with Regulation C, HMDA. ECOA requires notice to the applicant within 30 days of the lender's receipt of an application. If the lender takes adverse action, he must notify the applicant of the reasons for his decision and the sources used for the credit information; he must also advise the applicant how to request a free copy of his credit report. Any counter-offer of credit from the lender must be withdrawn if not accepted by the applicant within 90 days. The lender must provide the applicant with a copy of the appraisal report, or at least inform him of his right to obtain a copy.

Knowledge Check:
ECOA protected class are:
A: Race, age, national origin, sex, religion, marital status, the receipt by an applicant of income from public assistance programs, or the exercise by an applicant in good faith of any right under the Consumer Credit Protection Act
B: Race, color, religion, national origin, age, sex, marital status the exercise by an applicant in good faith of any right under the Consumer Credit Protection Act
C: Race, color, religion, national origin, age, sex, marital status, the receipt by an applicant of income from public assistance programs, or the exercise by an applicant in good faith of any right under the Consumer Credit Protection Act

D: Race, color, religion, national origin, marital status, the receipt by an applicant of income from public assistance programs, or the exercise by an applicant in good faith of any right under the Consumer Credit Protection Act

Answer C: A federal law enacted in 1974 that requires lenders and other creditors to make credit equally available without discrimination based on race, color, religion, national origin, age, sex, marital status, the receipt by an applicant of income from public assistance programs, or the exercise by an applicant in good faith of any right under the Consumer Credit Protection Act. ECOA applies to loans for property purchases, refinancing purposes or home improvement purposes.

EQUAL CREDIT OPPORTUNITY ACT ENFORCEMENT[30]

There are various regulatory agencies that help to enforce ECOA: The FRB, the FDIC, the OCC, and the NCUA (collectively, the FFIEC agencies); the FTC, the Farm Credit Administration (FCA), the Department of Transportation (DOT), the Securities and Exchange Commission (SEC), the Small Business Administration (SBA), and the Grain Inspection, Packers and Stockyards Administration (GIPSA) of the Department of Agriculture.

Here are some of the biggest areas of violation in 2016:

- Discrimination on a prohibited basis in a credit transaction.
- Improperly considering age, receipt of public assistance, certain other income, or another prohibited basis in a system of evaluating applicant creditworthiness.
- Improperly requiring the signature of an applicant's spouse or another person.
- Failure to timely notify an applicant when an application is denied; failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons the application was denied; failure to timely and/or appropriately notify an applicant of either action taken or of incompleteness after receiving an application that is incomplete.
- Failure to preserve records on actions taken on an application or of incompleteness.
- Failure to request information on an application pertaining to an applicant's ethnicity.
- Failure to routinely provide an applicant with a copy of all appraisals and other written valuations developed in connection with an application for credit that is

[30] https://www.federalregister.gov/documents/2017/06/01/2017-11318/fair-lending-report-of-the-consumer-financial-protection-bureau-april-2017#footnote-41-p25257 7.1 EQUAL CREDIT OPPORTUNITY ACT ENFORCEMENT

to be secured by a first lien on a dwelling, and/or failure to provide an applicant with a notice in writing of the applicant's right to receive a copy of all written appraisals developed in connection with the application.

The CFPB referred eight matters to the DOJ during 2016, finding discrimination in credit transactions on the following prohibited bases: Race, national origin, age, receipt of public assistance income, sex, and marital status.

To summarize the Fair Lending Report of the CFPB, April 2017:

"In the coming years, we will increase our focus on markets or products where we see significant or emerging fair lending risk to consumers, including redlining, mortgage loan servicing, student loan servicing, and small business lending. Discrimination on prohibited grounds in the financial marketplace, though squarely against the law, is by no means a thing of the past. The Consumer Bureau will continue to enforce existing fair lending laws at a steady and vigorous pace, taking care to ensure broad-based industry engagement and consistent oversight."[31]

Activity:

Think about it!

Review the seven biggest ECOA violations of 2016. Choose at least two violations and describe real life examples of how this may have occurred. It might be actual discrimination, meaning purposely violating ECOA. Or, it may have been a case of disparate impact, a possibly legal policy that causes an unintentional violation of ECOA. Please give detailed responses.

[31] https://www.federalregister.gov/documents/2017/06/01/2017-11318/fair-lending-report-of-the-consumer-financial-protection-bureau-april-2017#footnote-41-p25257

III: Fraud

Mortgage Loan Fraud is defined as the intention to materially misrepresent or omit information on a mortgage loan application in order to obtain a loan or to obtain a larger loan than could have been obtained had the lender or borrower known the truth. Mortgage fraud continues to be one of the fastest growing crimes in the United States and is generally classified into one of three categories:

- Fraud for housing or property
- Fraud for profit
- Fraud for criminal enterprise

Fraud for Housing

Fraud for housing, also known as fraud for property, is mainly committed by borrowers. Fraud schemes in this category often entail a borrower providing false information about employment, income or assets in order to qualify for a loan. A borrower, wanting to purchase a property that they know they cannot afford, may fabricate income and/or falsify assets in the mortgage application documents to qualify for a larger loan amount.

Common themes of fraud for housing schemes:

- Perpetrators may include the borrower and/or loan officer
- Normally involves a single loan
- Contains loan-level misrepresentations to qualify
- Borrower intends to repay – the loan usually does not default
- The appraised value is not typically inflated at origination[32]

Fraud for Profit

Fraud for profit, also known as "industry insider fraud", is the costliest type of fraud. These schemes often involve a group of people who play multiple roles in the fraud. The initiators often receive a larger percentage of the profit while others may be paid several thousand dollars for their part in the misrepresentation. For example, a mortgage broker may partner with a loan processor to create a fictitious credit profile and collude with an appraiser to inflate the property value.

- Common themes of fraud for profit schemes:
- Often involves multiple industry professionals/insiders
- Fraud is committed throughout multiple transactions
- Includes numerous misrepresentations and omissions
- The borrowers involved may be unaware of the scheme
- Participants are often well compensated for the role they played

32 http://www.freddiemac.com/singlefamily/preventfraud/types.html

- Property appraisals contain misrepresentations or value issues
- Participants may include straw borrowers who do not intend to repay the loan[33]

Fraud for Criminal Enterprise

Fraud for criminal enterprise is a growing trend involving participants attracted by the opportunity for greater profits, fewer dangers than commonly associated with violent crime, and reduced sentencing or jail time.

Common themes of fraud for criminal enterprise schemes:

- Perpetrators of this type of fraud often include members of crime organizations who temporarily conceal the identity, source and/or destination of money by laundering it through real estate transactions. This includes three basic steps of money laundering:
- Placement – placing large amounts of illegally obtained funds into the financial system by virtue of mortgage fraud
- Layering – buying properties with "dirty" money and reselling them without intent to inflate value
- Integration – requesting the refund of principal reduction payments
- Property flipping is the fraud scheme commonly employed[34]

Fannie Mae Misrepresentation data:

The chart below shows Fannie Mae loans that were identified as containing some form of misrepresentation.[35] This information is based on reviews of loan data made by Fannie Mae through July 2017: It is important to note types of fraud that were committed in 2017:

A snapshot is below with the full report to follow:

[33] http://www.freddiemac.com/singlefamily/preventfraud/types.html
[34] http://www.freddiemac.com/singlefamily/preventfraud/types.html
[35] https://www.fanniemae.com/content/fact_sheet/misrepresentation-data-062017.pdf

Types of Misrepresentation Findings

Credit = The borrower's identity and/or credit history was/were misrepresented.
SSN = There is a significant discrepancy in the SSN(s) used to qualify the borrower(s).
Liabilities = The borrower's liabilities were misrepresented.
Value = The property value was inflated and there was non-property-related misrepresentation in the loan transaction.
Property = A specific material fact about the property and/or the comparable sales was misrepresented.
Assets = The borrower's asset information was inflated or fabricated.
Income = The borrower's income/employment information was inflated or fabricated.
Occupancy = The borrower's intent to occupy the subject property was materially misrepresented.

Activity:

Think about it:

Have you seen evidence of these types of misrepresentation? Take a few minutes and review the chart above. Describe any encounters with misrepresentation and how you and or your company resolved the issues.

Knowledge Check:
Types of misrepresentation include:
A: Credit, SSN, Value, Property, Assets, Income, Occupancy, Employment
B: Credit, SSN, Liabilities, Value, Property, Assets, Income, Occupancy
C: Credit, SSN, Liabilities, Value, Property, Assets, Income, Occupancy, Employment
D: Credit, Liabilities, Value, Property, Assets, Income, Occupancy, Employment

Answer: Credit, SSN, Liabilities, Value, Property, Assets, Income, Occupancy

Fannie Mae

Mortgage Fraud Program

Misrepresentation Data

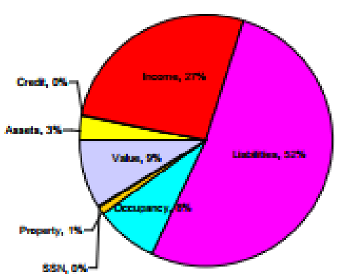
Based on Fannie Mae loan reviews completed through the end of June 2017

The following charts categorize loans identified by Fannie Mae as containing misrepresentation. The information reflected here is identified through a variety of processes, and consequently this information is not reflective of Fannie Mae's book of business.

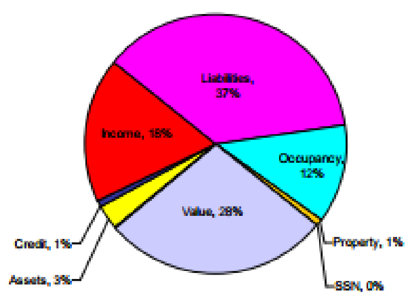
Distribution of Misrepresentation Findings by Type

The following pie charts depict the distribution of significant misrepresentation findings by type.

2016+ Originations



2015 Originations



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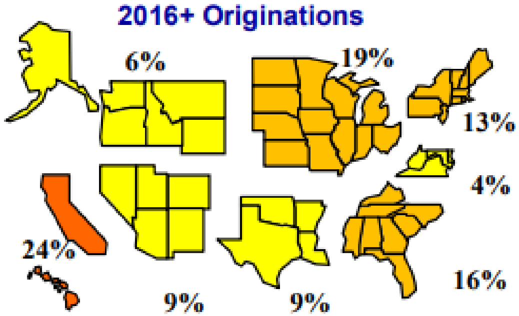
Assets = The borrower's asset information was inflated or fabricated.
Income = The borrower's income/employment information was inflated or fabricated.
Occupancy = The borrower's intent to occupy the subject property was materially misrepresented.

Distribution of Misrepresentation Findings by Geography

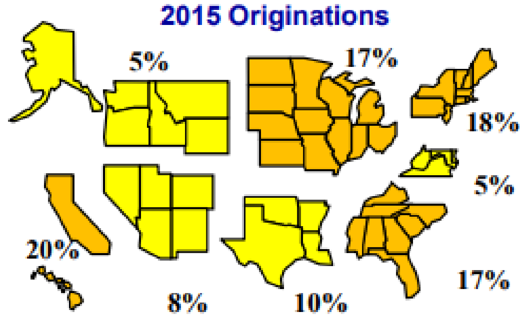
The following maps and charts depict the distribution of loans with significant misrepresentation findings by region, and by the top ten states.

2016+ Originations



1.	California
2.	Texas
3.	Florida
4.	New York
5.	Illinois
6.	Washington
7.	Georgia
8.	New Jersey
9.	Michigan
10.	Colorado

2015 Originations



1.	California
2.	New York
3.	Texas
4.	Florida
5.	Illinois
6.	Virginia
7.	Georgia
8.	New Jersey
9.	Colorado
10.	Pennsylvania

For More Fraud Findings Information

Please consult the Fannie Mae Preventing Mortgage Fraud website at https://www.fanniemae.com/singlefamily/mortgage-fraud-prevention

[36]

[36] https://www.fanniemae.com/content/fact_sheet/misrepresentation-data-072017.pdf

Chapter lll. Non-Traditional Mortgages

Introduction

The SAFE Act defines a Nontraditional Mortgage Product as a mortgage loan that differs from a 30-year fixed-rate mortgage, what we will call an "FRM." Generally, the differentiating factor will be either (a) interest rate, (b) monthly or periodic payments, and/or (c) the terms of repayment. Please note: Under the SAFE ACT, the nontraditional definition would also include 40, 25, 20, 15, and or 10/year fixed rate mortgage products.

Some of these types of loans became popular in the early 1980s, when high interest rates put buying a home beyond the reach of many first-time homeowners. In response, banks and savings institutions quickly introduced a variety of alternative mortgages, all designed to reduce the homebuyer's mortgage payment or to allow the buyer to finance a larger home. These new mortgage types included Adjustable rate mortgages (ARMs), Interest Only mortgages (IOs) and Negative Amortization mortgages. These mortgages tend to carry additional risk compared to regular 30-year FRMs, including interest rate risk, market risk (of home value) and refinance risk.

Under the right economic environment, lending these mortgages to borrowers who can afford to take additional financial risks can lead to real savings for homebuyers. This is true considering the mortgages that allow borrowers to pay only the interest for the first few years or have a more flexible payment options that tend to be lower than a 30-year fixed mortgage.

It is important to consider that with this flexibility and these lower payment options, there is also the increased risk in the later years of the mortgage. These include, the risk of interest rate uncertainty when the rate is not fixed, the value of the home declining or even remaining stable though the principal balance is increasing with each mortgage billing cycle, and the risk of not being able to refinance as needed due to credit eligibility for these stated reasons. For the rest of the lesson, it would be useful to remember the concept of "Higher Risk, Higher Possible Return." Although some of these alternative mortgage types can potentially generate higher return, homebuyers must be made aware that they are also riskier than a standard FRM.

Now, if we "fast forward" 20 years into the current era, where interest rates are much lower, than in the early '80's, many of these same loans were still available and even more risky. When mortgage interest rates in the years 2001 to 2005 declined to the lowest rates (5-6% in the end of 2002 and rates stayed below 7% until 2005) in forty years, home sales (and home values) soared to record levels. Financial institutions responded to soaring home values with an even greater supply of alternative mortgage loans.

Many of these loans were made to borrowers who could either not afford to take the risk, or were not aware of the risk. For example, when an ARM interest rate went up, some homeowners found they couldn't pay the newly adjusted monthly payment. Combined with a slowdown in housing prices, borrowers found that they could not sell or refinance their house, and many suffered a significant loss in equity value and defaults began. When borrowers defaulted, foreclosures ensued, leading to lower housing prices, which then lead to even more foreclosures. The result was a downward spiral.

Ability to Repay

A mortgage loan originator has the moral, ethical and legal responsibility to help borrowers understand what type of and how large of a mortgage they can afford and to determine that a borrower has a reasonable ability to repay the loan. To this end the Consumer Financial Protection Bureau enacted rules to ensure creditors and lenders obtain and verify information that will help them determine if the borrower can repay the mortgage loan as well as other mortgage related obligations.

These rules amended both Regulation Z, which implements the Truth in Lending Act (TILA) and also "sections 1411 and 1412 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[37]. Both laws generally require creditors to make a reasonable, good faith determination of a consumer's ability to repay any consumer credit transaction secured by a dwelling (excluding an open-end credit plan, timeshare plan, reverse mortgage, or temporary loan)."

Under the Ability-to-Repay Rule, there are certain requirements lenders must follow to determine whether a borrower has the ability-to-repay principal and interest of the mortgage over the long term. The rule does not set particular underwriting models but requires an underwriter, mortgage originator, creditor or lender to review and verify financial documents and records. At a minimum, a lender must consider these eight underwriting standards:

1. Current income or assets
2. Current employment status
3. Credit history
4. The monthly payment for the mortgage
5. The monthly payments on any other loans associated with the property
6. The monthly payment for other mortgage related obligations (such as property taxes)
7. Other debt obligations, including Alimony and Child Support
8. The monthly debt-to-income ratio (DTI) or residual income the borrower would be taking on with the mortgage. (Debt-to-income ratio is a consumer's total monthly debt divided by their total monthly gross income).

An underwriter will look at current or reasonably expected income and assets to support the income that is used on the application using documents such as paystubs, W2's, 1099's and award letters. The underwriter may also need an additional verification of employment immediately before the transaction closes. Verifying and documenting the assets used to qualify

[37] § 1026.43(e)(2)(v)(B)

for the mortgage may be required just before closing as well. They will take into consideration the payment for this mortgage and other loans against the property using the highest payment that will apply in the first five years of the loan(s).

The underwriter will also consider property taxes, homeowners' insurance, homeowners' association dues and any other mortgage related obligations. Other obligations that may not show up on a credit report such as alimony or child support will be considered. Lenders must generally use reasonably reliable third party records to verify the information they use to evaluate the eight categories above, such as a credit report, bank statement, award letter or other official document.

Qualified Mortgage

In order for a lender or creditor to prove that they have taken the consumer's situation into consideration while qualifying them for a loan, TILA offers a safe harbor or rebuttable presumption of compliance with the Ability-to-Repay rule by creating loans called Qualified Mortgages. If a creditor or lender issues a Qualified Mortgage they will have certain protections from legal action in the future if a consumer defaults on their loan.

Specifically, the statutory definition of qualified mortgage requires the creditor to: (1) Verify and document the income and financial resources relied upon to qualify the obligors on the loan; and (2) Underwrite the loan based on a fully amortizing payment schedule and the maximum interest rate during the first five years, taking into account all applicable taxes, insurance, and assessments.

Qualified Mortgages may be prime loans or higher-priced loans and they must meet certain requirements which prohibit or limit the risky features of a loan. These features include:

- No interest only loans.
- No loans where the principle can increase such as negative amortization loans.
- No loan terms over 30 years.
- No balloon payment loans except by smaller creditors in rural or underserved areas.
- No excess upfront points and fees. Fees paid by the creditor or consumer may not exceed three percent (3%) of the total loan amount, although certain "bona fide discount points" are excluded for prime loans.
- Debt-to-income ratios must be 43% or less with one exception. For a temporary transitional period, loans meeting government affordability or other standards such as being eligible for purchase by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (Freddie Mac) will be considered Qualified Mortgages.

Section 1026.43(e)(1)(i) provides a safe harbor for qualified mortgages that are not higher-priced covered transactions. These are lower-priced loans that are typically made to borrowers who pose fewer risks. If the loan goes south, the lender will be considered to have legally satisfied the ability-to-repay requirements.

For qualified mortgages that are higher-priced loans, § 1026.43(e)(1)(ii)(A) provides a rebuttable presumption of compliance with the repayment ability requirements. These higher-priced loans are typically made to consumers with insufficient or weak credit history. If the loan goes into default, the consumer can rebut the presumption that the creditor properly took into account their ability to repay the loan.

Interest only Mortgages

Features

IO loans are mortgage loans that allow the borrower to pay only interest on the mortgage for a certain initial term, called the "IO Period." At the end of the IO Period, typically 5-7 years, (though it can range from 3 to 10 years), the mortgage payment begins to include both interest and principal. The payment of principal and interest is called a fully-amortized payment, meaning that the payment will cover all outstanding interest and allocate the remaining payment to reduce the principal balance. Some IO loans offer teaser rates in an initial introductory period which can last up to 5 years (Note that most IO mortgages also have adjustable interest rates. See the section on ARMs for more information).

IO mortgages have what is called a Payment Shock. This means that at the end of the IO Period, a borrower's mortgage payment can become significantly higher than the initial payments for two reasons:

1. Interest is calculated based on a high loan outstanding amount. For example, if the loan principal is $300,000 and the borrower has only paid interest in the first 5 years, the principal remains $300,000. Even if the new, adjusted interest rate is the same as an equivalent FRM, the borrower will be paying out a higher dollar amount of interest.
2. The principal needs to be repaid in fewer years than in an FRM. For example, if the IO period of a 30-year loan is 5 years, then the principal amount of $300,000 has to be paid back over 25 years. Whereas, in a 30 year FRM, the principal amount has to be paid back over 30 years, so that the principal amount to be repaid each year is lower in the case of an FRM.

IO Mortgages Pros and Cons

IO Mortgage: The Good

The ability for the loan to recast. The formula to determine the payment on an IO loan is Fully Indexed Rate x Remaining loan balance = new payment. Each time a borrower makes a principal reduction payment on the IO loan the required payment is reduced accordingly. Every time they make the same level principal reduction payment the required payment is further reduced. This makes the recasting feature of the IO loan a very good financial planning tool for the "savvy" homeowner.

- Employees with "Lumpy" Compensation. Historically, IO loans were offered for affluent borrowers. The most typical scenario is a person whose main source of income is paid once or twice a year. This can apply to bonus-compensated employees such as a sales manager, a senior executive or other affluent borrowers with fluctuating income.

- Small Business Owners. Small business owners with unpredictable income can use their IO loan part of their business' working capital management solution – during the months when the business needs working capital, the owner can choose to pay the lower mortgage interest.

- Savvy Investors. Some people, instead of paying off their IO loan principal, invest in alternative investments, such as business ventures, stock markets, their own business…etc. This strategy makes sense for those who are savvy about investments and are in high tax brackets because their tax-effected mortgage interest rate is lower than that of an average borrower. For example, when interest rates were 4%, homeowners may have invested the savings in the stock market if they believed that the stock market return is above 4%.

- Fast Track Employees. Some companies might provide IO loans to borrowers whom they believe are on a career fast track also if these borrowers are eager to take advantage of a housing market dislocation. These borrowers intend to buy a small house and then trade up in later years, but this strategy entails higher transaction cost. They might opt to take the risk and buy a bigger house from the get go.

- Homeowner's Investment. In some cases, borrowers who believe that their house value is highly unlikely to depreciate, they might want to pay low interest for a few years and then sell the house to recuperate the principal.

- To manage the Payment Shock after the IO period, homeowners can either:

- ***Prepay.*** Pay down principal in a lump sum before the end of the interest only period. In most of the IO loans, borrowers can pay down their mortgage principal anytime they want. In most IO loans, if homebuyers prepay their principal in the same amount as the equity portion of an FRM, then the interest payment over the life of the loan would be no different than a regular FRM if the interest rate is the same. An IO loan just gives the borrower an OPTION not to pay a predetermined amount of principal. However, to provide this option to the borrower, the lender is going to charge the borrower a higher interest rate. Unless the borrower intends to use this option, it is better to use a regular FRM or a regular adjustable rate mortgage. (Note that some IO loans have prepayment penalties, so make sure to explain the loan payoff to the borrower.)

- ***Pay at the end of IO period.*** Some homeowners who use the extra savings in the initial period to invest in other ventures may liquidate their alternative investments to pay down a bulk of the principal at the end of the initial period.

- ***Refinance into an FRM.***

- Some homeowners simply predict or bet on rising house prices and home values, increasing their equity. If the house rises from $300,000 to $400,000, then the homeowners hope that they can sell the house to make a profit of $100,000 or that they can refinance the house into a lower rate FRM as the lenders offer lower rates for mortgage with greater homebuyer equity and lower LTV.

- Some homeowners want to take a bet on lower interest rates in the future. They hope to refinance the mortgage from an IO mortgage to a traditional fixed rate mortgage or another adjustable rate mortgage with lower prevailing interest rates.

IO Mortgage: The bad and the ugly

Even for the affluent borrowers, there is always a risk of losing a well-paid job or suffering other financial setbacks. Therefore, it is important for those who borrow an IO loan to focus on paying down the principal with their bonus or savings when available. It is also important to note that a borrower losing a well-paid job or suffering other financial setbacks is likely to have similar payment concerns with a fixed rate mortgage as a borrower with an ARM or IO mortgage.

Investors who vowed to take advantage of lower mortgage rates to invest the savings into alternative investments with higher potential return or who planned to use their home as an investment vehicle, should be disciplined and be aware of the risk they are taking.

As described above, some IO borrowers who intend to manage their payment shock by praying that interest rate will go down or that home values would go up and they could either sell their house or withdraw equity in a refinancing, might find themselves in foreclosure if rates go up or values decline. That's why lenders should make sure that IO applicants have the resources to take these market risks.

Adjustable Rate Mortgage (ARM)

An Adjustable Rate Mortgage (ARM) is a mortgage that changes its rate over a given period of time. ARMs first appeared in the 1960's, but did not gain legislative or regulatory approval until the early 1980's when volatile interest rates made it unwise for lenders to make 30 year amortized mortgages at fixed rates of interest.

With a fixed-rate mortgage, the interest rate stays the same during the life of the loan. But with an ARM, the interest rate changes periodically, usually in relation to an index. The interest payment is calculated with the fully-indexed rate. The fully indexed rate is sum of the lender-set margin on top of index, with margin being usually 1-2%, therefore interest payments may go up or down according to the index.

Remember the concept of "Higher Risk, Higher Return"? Adjustable rates often offer mortgagors lower mortgage payments than a comparable FRM; however, this is only true IF interest rates remain the same over the next 30 years. If interest rates rise in the future and if the mortgagor cannot refinance, then the mortgagor might end up with higher total mortgage payments than the original FRM offered. The higher return comes from lower mortgage payments, and the higher risk comes from the risk of rising interest rates.

Lenders are happy to let the mortgagors take this interest risk. To entice the borrower, lenders generally charge lower APRs for ARMs than for comparable fixed-rate mortgages. In a low rates environment, the APRs of ARMs are usually about 1% lower than an FRM, but the differential can go up to 5% for non-conforming mortgages. This makes the ARM easier on a borrower's pocketbook at first than a fixed-rate mortgage for the same amount.

APRs of ARMs are lower because the interest rate is lower and the lenders package the loan with different discount points to further lower the APR. Lender's pricing includes different levels of discount points. Loans may be offered with options of no points, 1 point, 1.25 points, 2 points and maybe even more. The more points paid, the lower the interest rate offered.

Whenever a rate is offered that is above the par rate, it increases the lender's opportunity to sell this loan with an increased return in the secondary market and therefore the lender offers a rebate or yield spread to compensate for this potential advantage. The par rate represents the observable measure or reference point for lending and purchasing mortgage loans at the current market value or yield in an open market. The higher the note interest rate is above par, the greater advantage the lender has to receive more value for that loan to investors, and the lower the note interest rate is below the par rate the lesser value for investors and therefore a need for the borrower to pay points directly to the lender.

Adjustable rates increase the opportunity for lenders and investors to receive a greater return at later times in the mortgage term. For this potential, lenders are willing to offer a lower initial note rate as an incentive for borrowers to choose this option. However, both the lender and the borrower are assuming a reasonable measure of risk with no true knowledge of how rates will later adjust. Against these advantages, you have to weigh the risk that an increase in interest rates would lead to higher monthly payments in the future. It's a trade-off. The borrower gets a lower rate with an ARM in exchange for assuming more risk. Again, this result falls in line with the theme of "higher risk, higher return."

ARM Features

MLOs must be very familiar with margins, payments caps and with reading indices even though the lender will communicate the index rate is on a moment-to-moment basis, as well as the rates.

Index:

The interest rate charged to homeowners in an ARM is tied to an underlying index. When the index rate goes up, the ARM rate goes up. When the index rate goes down, the ARM rate goes down. The typical indices used are:

- MTA (12-month Treasury Average Index)
- CMT (Constant Maturity Treasury)
- CD rate
- LIBOR (London Interbank Offered Rate)
- Prime Rate

Margin:

The rate the borrower pays is Index plus Margin, which is sometimes called Full Indexed Rate. Roughly speaking, the lender borrows money from the market at the Index Rate. Then, they lend the money to the mortgagor at the Index Rate + Margin. Therefore, the Margin represents the lender's profit. Margin usually stays the same throughout the life of the loan.

More precisely, the lenders might borrow the money at one Index Rate, but lend out the money at another Index Rate + Margin. The Prime Rate index is usually lower than LIBOR by a few % points in the current markets. For example, when Prime Rate is 2.0%, LIBOR might be 1.0%. If the lender's profit is 3.5%, the lender might borrow at LIBOR and charge the borrower 3.5% + LIBOR or 0.5% + Prime.

Teaser Rates:

Most ARMs comes with a lower fixed interest rate for the first few years. Terms such as 5/1 or 7/1 indicate the ARM loan initial rate will stay the same for 5 or 7 years and then adjust annually after the initial period. The term 5/25 indicates that the ARM has an initial 5 years of fixed interest rate period and then 25 years of adjustable rate mortgage. Many times, the initial interest rate is substantially lower than the comparable FRM rate, which is why the initial interest rates are sometimes referred to as "Teaser Rates". Besides the lenders, sometimes sellers might offer to reduce initial rates to help people move into their new homes. Because the lenders reduce initial rates in the first few years of an ARM to reduce the overall APR, the benefit of having an ARM is mostly concentrated in the first few years. For homebuyers who intend to stay in their house for only a few years, ARMs have additional appeal to them.

After this period, not only does the teaser rate period end and interest rates go higher, but also, if the prevailing index is higher than before, the interest payment due can be substantially higher than the original teaser rate.

Rate Cap:

A Rate Cap is the amount of rate change that can take place in a given year or a given period. The LIBOR or other index may go up (or down), one, two, three or four percent. Usually the Periodic Rate Cap is 1-2%. It might look like this 5/2/6 which means the initial rate can adjust up to 5% over the start rate at the first adjustment, 2% each subsequent adjustment and 6% for the life of the loan.

There's also a Life or Overall Rate Cap, meaning the loan cannot go more than a certain percentage higher than where it starts through the life of the loan. This cap is usually expressed as an absolute percentage value. For example, the contractual terms of the mortgage may state that the maximum interest rate may never exceed 15%.

Carryovers / Neg Am

ARM caps with specific clauses may produce negative amortization and allow adjustments even when there is no change to the index value. These are known as carryover and NegAm clauses.

Payment Caps may produce negative amortization. If ever the payment cap causes the required Interest Payment Due to fall below the Interest Due the difference in the amount of Interest Payment Due below the actual Interest Due can be added to the principal balance. This would produce negative amortization as the principal balance would increase by this difference with each mortgage billing cycle.

For example, a payment cap limits the payment to a specific dollar amount; let's say $900. This dollar amount does not represent the true amortized payment using the fully-indexed rate with the current outstanding principal balance, which should reflect $1000. The difference of $100 would be added to the principal balance. Each billing cycle would increase the variance with the $900 capped payment and the calculated interest due plus applicable principal payment, considering that interest compounds as the principal balance continues to grow thus producing negative amortization.

Some ARMs have interest-rate caps with clauses where the payment amount may increase even though the index rate has stayed the same or declined. This clause is known as a carryover. A carryover happens when an interest-rate cap restricts an interest rate adjustment below the fully-indexed rate. Carryovers allow an increase to the interest rate on the next or subsequent adjustment though the index value may not have changed. Since the adjustment was not imposed because of the rate cap, the adjustment may carry-over to future rate adjustments.

For example, if the interest rate cap is 1% for each periodic adjustment, a loan with a current interest rate of 5%, where the index changes such that the increase is equivalent to a 7% fully-indexed rate, could not be fully imposed as the cap would limit that change. The most the interest rate could adjust to in this example is 6%. A carryover clause would allow the 1% that was not applied or imposed in this adjustment period, to be applied to at a later adjustment period. Even if the next periodic adjustment period does not indicate a change to the index value, the previous 1% that could not be imposed is now allowable. The 1% carried over will now cause the fully-indexed rate to increase from 6% to 7% (which is also in line with the 1% periodic adjustment cap) though no change occurred to the index value.

Qualifying Rate:

The qualifying rate is a rate at which a client must qualify. To qualify for an ARM, the MLO cannot qualify a borrower on the initial rate with teaser rates. If the adjustable rate is, say 3%, then a borrower must qualify at 3% plus a certain number of points.

Lenders will qualify the applicant's income with the worst case interest rate that can occur within the first 5 years of the loan. See below section for discussion of the pitfalls of ARMs.

Refinance from an ARM to Fixed Rate:

Sometimes a borrower may have an ARM and wants to refinance to an FRM. This process can often result in an increase in the rate because the fixed interest rate risk is less volatile and lender pricing may reflect a much higher interest rate. It's very unusual to find an adjustable rate higher than a fixed rate, although rates vary by lender and may be impacted by the economic environment.

Nevertheless, the borrower's ability to refinance would be based on the lender's credit underwriting guidelines, the current market value of the home, and their ability to meet current DTI, LTV, and any cash or reserve requirements. These standard risks for eligibility are always applicable and could hinder a borrower from refinancing if these eligibility factors are not met.

It's also possible that the borrower at first opted for an ARM because the borrower was unsure as to how long he or she would stay in the home. Remember that an ARM tends to have a lower rate initially, so for homeowners who don't intend to stay in the home for many years, they might want an ARM for the additional savings on the mortgage payment. If, however, later on, the borrower later decides to stay in the home for many more years to come, it may be beneficial to swap that fluctuating adjustable rate for a fixed one.

The good news is that a fixed rate mortgage helps a borrower to lock in the prevailing interest rate in order to feel more secure knowing that the monthly payment will remain steady for years to come regardless of the current market environment. Remember, the purpose of doing a refinance is to benefit the borrower.

Benefits of Arms:

- Lower APRs. As discussed above, ARMs usually have lower APRs than FRMs. The savings in the first few years are especially significant. ARMs can represent real savings for borrowers. If you are comfortable that a borrower can take the interest rate risk of the ARM, then why not try to save some money?
- In general, if the borrower knows he will be living in the house for five years or less, an ARM might be a wise choice because the monthly payments will be less. Make sure the borrower has a fixed rate for the first few years and a low Periodic Payment Cap.

ARM Considerations:

The risks associated with an ARM can be very dangerous for the wrong borrower and must be highlighted. In order to increase the awareness of these risks, Regulation Z requires that every lender provide a copy of the Consumer Handbook on Adjustable-Rate Mortgages (known as the CHARM booklet) or a suitable substitute to ARM applicants.
Unfortunately, many consumers fail to realize that the traditional mortgage type, while requiring a higher payment, is potentially in their best interest. Many consumers are overly focused on looking for a lower monthly payment. That's just human nature.
Risks associated with ARMs versus FRMs include:
Risk of the interest rate increasing: The biggest detriment to an ARM is that there is an unknown, given that rates may change. If rates are 8% at the moment, but rise to 12% in the future, then

an ARM interest can become higher than a fixed rate loan. Though the probably of this happening is low, the risk exists, which is not the case in an FRM. This problem is to some extent alleviated by the installation of a maximum rate cap. To be safe, prudent borrowers would want to make sure that they can still afford to pay the interest at the maximum rate cap.

If ARMs were issued when interest rates were very low, then in the course of the 30 years, interest rates are bound to increase. At that time, the borrower of an ARM will be paying more interest than an FRM. The probably of this happening can be quite high depending on how low was the index rate at that time.

Note that a low interest rate scenario poses much more risk to borrowers than high interest rate scenario above because rates in a low interest rate environment are likely to go up at some point in time. For example, transplanting a mortgage type relatively appropriate in the 1970s, where interest rates were very high, to the 2004 environment, made this mortgage type much riskier than in the 70s. The interest rate environment was different (much higher), meaning that investors in 2004 were assuming much more interest rate risk.

One reason why interest rates go up is inflation. So, an ARM offers less inflation protection to homebuyers than a regular FRM. The mitigating factor to interest rate risk is that there is a Periodic and Overall Payment Cap. Unfortunately, the Periodic Payment Cap from private lenders tends to be quite high, at around 2%.

Hidden Program Features. As discussed earlier, NegAm clauses may be included in an ARM loan terms. In some ARMs, Periodic Payment Caps limit the amount of increases to the Interest Payment Due, and not only the amount of increase in Interest Due on the mortgage based on these periodic rate caps. In these situations, the borrower might be paying the full Interest Payment Due, but does not realize that the Interest Payment is less than the actual Interest Due. This means that the interest shortage is automatically added to the principal and interest will also be charged on the amount that's now added to the principal. This is due to compounding interest. The borrower might therefore owe the lender more principal later in the loan term than at the start. As mentioned in the NegAm section, though an increase in the value of the home may make up for the NegAm, this situation increases the risk of default and should be carefully explained to any customer.

Prepayment Penalties. Often times, ARMs have prepayment penalties. A prepayment penalty is a clause in a mortgage loan's terms that stating if the mortgage is prepaid within a certain time period, a penalty will be assessed. The penalty can be based on a percentage of the principal balance or a certain number of months of interest. When it applies to both the sale of a home and a refinance transaction it's often referred to as a "hard" prepayment penalty. A prepayment penalty that applies only to refinance transactions is called a "soft" prepayment penalty.

Lenders write prepayment penalties into mortgage loan terms to compensate for prepayment risk. The incentive is great for a borrower to prepay as a way to avoid payment shock with an increase in the interest rate. When the payment terms change like with fully amortizing payments and increasing interest rates, lenders recognize that borrowers will look for ways to lessen their payment and remove the uncertainty of payment adjustments, so many loans including alternative mortgages and even conventional mortgage loans may have prepayment penalties.

Borrower Considerations:

Whether an ARM is suitable for a borrower depends on whether the borrower is capable of taking the risk of a fluctuating interest rate. For a borrower whose income is sufficient to make the payment on the ARM at the maximum cap rate, then an ARM can offer real savings. For example, if a borrower enters into an ARM with 2% interest rates, they can derive significant savings as compared to a FRM of say 6%.

An ARM could be unsuitable for a borrower if the borrower's income is not enough to pay off the ARM at the maximum cap rate. It is highly risky if the borrower needs to finance the home purchase with an ARM's lower initial rate just to afford the house purchase. They can't afford the FRM rate, let alone the Max Cap Rate.

Borrowers must be urged to consider these additional risks carefully before choosing ARM over FRM. The bottom line is that some homebuyers use ARMs to buy a house that is more expensive than what they can prudently afford. These homebuyers ought to be advised to opt for a cheaper house, take more time to save for a larger down payment and consider all the risks of using an ARM as listed above to avoid financial difficulties down the road. Back when President Jimmy Carter was in office and prime rates were at 19 and 19.5 percent, adjustable rates at that time were 7.5 and 8 percent. It was very difficult to qualify people under those terms. Nobody was taking a fixed rate mortgage; everyone was going for the adjustable rates. That was back in the days when we had a lot of negative amortization loans and they were horrible.

To fully take advantage and avoid pitfalls of an ARM, borrowers should look for those with -

- Periodic Rate Cap
- Overall Rate Cap
- No prepayment penalty
- Monthly payment reduction if interest drops

The right to convert to a fixed-rate mortgage.

Option ARM:

An Option ARM is an ARM that combines the features of an ARM, IO, and NegAm. The borrower has a choice of making a fully-amortizing payment, an interest-only payment, or a "minimum" payment that did not cover the interest.

Like in a regular ARM, in the first few years, the borrower of Option ARM typically pays a fixed interest rate, which is lower than comparable FRM.

The pros and cons of Option ARMs are the same as that of IO, ARM and NegAm loans. The benefit of Option ARMs is that it gives borrower many OPTIONS.

The downside of the Option ARM is that it gives borrowers more risk and significantly increases risk from a lender standpoint. The Payment Shock is greater. The loss from a decline in housing prices is also greater because no equity was built up before. Interest rate risk is even higher. Because the principal of the loan may not have been paid down in the initial few years, rising interest rates further increased the dollar amount of interest payments.

There is also the consideration for recasting a loan that may contribute to a much larger or significant payment shock for a borrower with an Option ARM. Recasting occurs when after a specified number of years, or if a loan reaches a certain negative amortization cap (like 110%, 115% or 125% LTV), or maybe even after an interest only period the required monthly payment amount is "recast" to require payments that will fully amortize the outstanding balance over the remaining loan term. So if a borrower was accustomed to choosing a minimum payment with a teaser rate which could only increase by a certain percent (typically around 7%) annually and then is suddenly faced with a payment with amortized over a shorter period of time, based on current interest rates and a much larger principal balance, it could be a significant payment shock that may be difficult for the borrower to make. This could inevitably lead to foreclosure due to non-payment. This is a huge risk factor of loan with negative amortization.

Borrowers who cannot afford a mortgage might take on a loan with IO, NegAm and ARM features without realizing that the initial low monthly payment will not last. In some predatory lending situations, borrowers were convinced that an Option ARM was a suitable loan for them, but did not realize that they could also afford a traditional FRM with less risk. It is very important to note that the options tied to a loan come with a cost. The risk factors a loan with more options could mean higher interest rates with future rate adjustments, potential recasting, and increasing principal balances coupled with a need to refinance and the costs associated with a new mortgage transaction may mean that some borrowers might save more money by choosing a FRM from the start.

Summary

In this session we've discussed various alternative mortgages types. These mortgages have features different from traditional mortgages, which have a fixed payment amount due each year for 30 years. Alternative mortgages mostly have maturity dates that are shorter, fluctuation in the interest rate, and varying repayment terms. It is very important to understand their intended use.

Alternative mortgages have mortgage payments that change through time. Mortgage payments might initially be lower, for example ARMs, NegAms and IOs. Other loans might depend on a changing index, as is the case with ARMs. When the mortgage payments increase, mortgagors would experience Payment Shock. The determination of the tangible benefit for the borrower with these types of mortgage loans is based on their ability to handle the risks. We have discussed the important topic of "High Risk, Higher Potential Return". The reason why these alternative loans are less expressive and allow a lower mortgage payment than FRMs is that the mortgagor takes on greater risks than with a FRM. The risks associated with these loans include increasing interest rate risk, eligibility for refinance risk, and sustaining property market value risk (home price value). For each borrower, the impact of this risk exposure will be different.

Chapter IV: California DBO

Introduction

Welcome to the California State Law component of your SAFE training. Upon completion of this course, you will have met the minimum education requirements of the State of California the Department of Business Oversight (DBO) for an individual seeking to maintain their license as a mortgage loan originator doing business in California

This course focuses on License Maintenance, the Powers of the Commissioner and the Attorney General, Required Conduct as well as the Homeowner's Bill of Rights

The course covers the CA Finance Lenders Law (CA Fin. Code §22000 - §22780) and the CA Residential Mortgage Lending Act (CA Fin. Code §50000 - §50706).

The **California Residential Mortgage Lending Act** governs a number of lending activities and applies to those involved in making or servicing mortgage loans on one- to four-family dwellings.

The **California Finance Lenders Law** (Division 9) will be liberally construed and applied to promote its underlying purposes and policies, which are:

i. To ensure an adequate supply of credit to borrowers in this state.
ii. To simplify, clarify, and modernize the law governing loans made by finance lenders.
iii. To foster competition among finance lenders.
iv. To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.
v. To permit and encourage the development of fair and economically sound lending practices.
vi. To encourage and foster a sound economic climate in this state.[38]

Definitions

Borrower: means the loan applicant.[39]

Commissioner: means the Commissioner of Business Oversight.[40] [41]

[38] California Financial Code §22001(a)
[39] California Financial Code §50003(b)
[40] California Financial Code §22005
[41] California Financial Code §50003(d)

Lender: means a person that

- is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation;
- directly makes residential mortgage loans; and
- makes the credit decision in the loan transactions.[42]

Licensee: means any finance lender or broker who receives a license in accordance with Division 9.[43]

Makes or making residential mortgage loans or **mortgage lending**: means processing, underwriting, or as a lender using or advancing one's own funds, or making a commitment to advance one's own funds, to a loan applicant for a residential mortgage loan.[44]

Mortgage loan, **residential mortgage loan**, or **home mortgage loan**: means a federally related mortgage loan or a loan made to finance construction of a one-to-four family dwelling.[45]

Mortgage loan originator: means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.[46] **Mortgage loan originator** does **NOT** include any of the following:

- An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator. The terms 'administrative' or 'clerical' tasks mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.[47]
- An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of

[42] California Financial Code §50003(m)
[43] California Financial Code §22007
[44] California Financial Code §50003(o)
[45] California Financial Code §50003(p)
[46] California Financial Code §22013(a)
[47] California Financial Code §50003.5(b)(1)

competent jurisdiction determines that the SAFE Act requires that employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.[48]

- An individual that is solely involved in extensions of credit relating to timeshare plans.[49]
- An individual licensed as a mortgage loan originator pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.[50]
- An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.[51]

Mortgage servicer or **residential mortgage loan servicer**: means a person that

- is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; and
- directly services or offers to service mortgage loans.[52]

Nationwide Mortgage Licensing System and Registry (NMLS): means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.[53] [54]

Person: means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.[55]

Residential mortgage loan: means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling. **Dwelling** means a residential structure that contains one to four units, whether or not

48 California Financial Code §50003.5(b)(2)
49 California Financial Code §50003.5(b)(3)
50 California Financial Code §50003.5(b)(4)
51 California Financial Code §50003.5(b)(5)
52 California Financial Code §50003(q)
53 California Financial Code §22012(d)
54 California Financial Code §50003(r)
55 California Financial Code §22008

that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence.[56]

Residential real property or **residential real estate**: means real property located in this state that is improved by a one-to-four family dwelling.[57]

License Renewal

A mortgage loan originator wishing to renew his/her license must, at a minimum:

- Continue to meet the minimum requirements contained under §50141[58] or §22109.1[59]
- Have paid all the required fees (if the mortgage loan originator is employed by a residential mortgage lender or servicer, the latter should have settled the fees)[60] [61]
- Continue to meet the annual continuing education requirements[62] [63]

If the minimum standards required to renew the mortgage loan originator license have not been met by the last day of December, then the license will expire at midnight on that day. The commissioner may put in place procedures to permit the reinstatement of licenses which have lapsed provided those procedures are in keeping with the standards established by the NMLS.[64] [65]

Educational Requirements

A licensed mortgage loan originator wishing to renew their license must complete at least eight hours of continuing education which must include at least the following:

- Three hours of instruction on federal laws and regulations;
- Two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues;
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace;
- One hour of CA-BDO defined electives.[66] [67]

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[56] California Financial Code §22012(e)
[57] California Financial Code §50003(v)
[58] California Financial Code §50144(b)(1)
[59] California Financial Code §22109.4(b)(1)
[60] California Financial Code §50144(b)(3)
[61] California Financial Code §22109.4(b)(3)
[62] California Financial Code §50144(b)(2)
[63] California Financial Code §22109.4(b)(2)
[64] California Financial Code §50144(b)(4)
[65] California Financial Code §22109.4(c)
[66] California Financial Code §22109.5(a)
[67] California Financial Code §50145(a)

Continuing education courses will be reviewed and approved by the NMLS. Review and approval of a continuing education course will include review and approval of the course provider.[68] [69]

Nothing in §22109.5 and §50145 will preclude any continuing education course approved by the NMLS that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.[70] [71]

Continuing education courses may be offered in a classroom, online, and by any other means approved by the NMLS.[72] [73]

Except as provided in §22109.5(i) or in §50145(i), a licensed mortgage loan originator:

- May only receive credit for a continuing education course in the year in which the course is taken
- May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.[74] [75]

A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours' credit for every one hour taught.[76] [77]

Any individual who has successfully completed continuing education requirements approved by the NMLS for any state other than California will be granted credit toward completion of continuing education requirements in California.[78] [79]

A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.[80] [81]

[68] California Financial Code §22109.5(b)
[69] California Financial Code §50145(b)
[70] California Financial Code §22109.5(c)
[71] California Financial Code §50145(c)
[72] California Financial Code §22109.5(d)
[73] California Financial Code §50145(d)
[74] California Financial Code §22109.5(e)
[75] California Financial Code §50145(e)
[76] California Financial Code §22109.5(f)
[77] California Financial Code §50145(f)
[78] California Financial Code §22109.5(g)
[79] California Financial Code §50145(g)
[80] California Financial Code §22109.5(h)
[81] California Financial Code §50145(h)

If an individual was previously licensed under Division 9 as a mortgage loan originator, they must, when applying to be licensed again, prove that they have completed all of the continuing education requirements for the year in which a license was last held.[82] [83]

If a licensed mortgage loan originator fails to maintain a valid license for 5 years or more, they will be required to retake the test. The five-year period does not include any time during which the individual is a registered mortgage loan originator.[84] [85]

A person meeting the requirements of paragraphs (1) and (3) of §22109.4(b) and §50144(b) may correct any deficiency in continuing education as established by rule or regulation of the commissioner.[86] [87]

Record Keeping

Licensed mortgage loan originators must keep and use in the conduct of their business books, accounts, and records in order to enable the commissioner to establish if they are complying with the provisions of Division 9 as well as with the rules and regulations made by the commissioner.[88]

These books, accounts, and records, including cards used in the card system, if any, should be retained for at least three years after the final entry on any loan recorded on them has been made.[89]

Licensed mortgage loan originators are not required to maintain or preserve original records. However, they should be able to provide any information requested by the commissioner within 48 hours – excluding Saturdays, Sundays, and holidays – of a request.[90]

A licensed mortgage loan originator may not knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of Division 9.[91] [92]

[82] California Financial Code §22109.2(f)
[83] California Financial Code §50142(f)
[84] California Financial Code §22109.3(g)
[85] California Financial Code §50143(d)(4)
[86] California Financial Code §22109.5(i)
[87] California Financial Code §50145(i)
[88] California Financial Code §22156
[89] California Financial Code §22157
[90] California Financial Code §22158
[91] California Financial Code §22170(a)
[92] California Financial Code §50512(a)

The commissioner may require a licensed mortgage loan originator to maintain a file of all advertising copy for a period of two years from the date of its use. The file must be available to the commissioner upon request.[93]

Surety Bond

A mortgage loan originator must maintain a surety bond in a minimum amount of $25,000. The bond will be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, will be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond will be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with Division 9 or for losses or damages incurred by borrowers or consumers as a result of a licensee's noncompliance with the requirements of Division 9.[94]

When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee must file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.[95]

The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee will be covered by the surety bond.[96]

Surrender, Revocation or Suspension of License

A license issued to a mortgage loan originator must be renewed annually. Once renewed, it will remain in effect until it is surrendered, revoked, or suspended.[97]

"Surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time that the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after

[93] California Financial Code §22166
[94] California Financial Code §22112(a)
[95] California Financial Code §22112(b)
[96] California Financial Code §22112(c)
[97] California Financial Code §22700(b)

the application is filed. If a proceeding is pending or instituted, surrender of a license becomes effective at the time and upon the conditions that the commissioner determines."[98]

A mortgage loan originator may surrender a license by delivering to the commissioner written notice that they wish to surrender their license. Surrender of the license does not affect the licensee's civil or criminal liability for acts committed prior to the surrender of the license.[99]

The commissioner will suspend or revoke the license of a mortgage loan originator, upon notice and reasonable opportunity to be heard, if the commissioner finds that:

- The mortgage loan originator has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of Division 9.[100]
- The mortgage loan originator has violated any provision of Division 9 or any rule or regulation made by the commissioner under and within the authority of Division 9.[101]
- A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license in the first instance.[102]

A master license may not be suspended or revoked pursuant to this section as a result of any action or failure to act by a subsidiary licensee unless grounds exist for the suspension or revocation of the master license pursuant to this section. An order suspending or revoking a license or imposing sanctions against a licensee will not affect other licensed locations unless expressly stated in the order.[103]

The commissioner may immediately revoke the license of a mortgage loan originator if the licensee fails to comply with any order issued under §§50318, 50319, 50321, 50322, or 50503. The commissioner may not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.[104]

The commissioner may by order summarily suspend or revoke the license of a mortgage loan originator if that person fails to file the report required by §22159 within 10 days after notice by the commissioner that the report is due and not filed. If, after an order is made, a request for a hearing is filed in writing within 30 days and the hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date.[105]

98 California Financial Code §22700(c)
99 California Financial Code §22711
100 California Financial Code §22714(a)(1)
101 California Financial Code §22714(a)(2)
102 California Financial Code §22714(a)(3)
103 California Financial Code §22714(b)
104 California Financial Code §50325
105 California Financial Code §22715

The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license issued by him or her.[106]

III. Powers of the Commissioner and the Attorney General / Required Conduct

Definitions

Broker: includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.[107]

Depository institution: has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.[108] [109]

Engage in the business: means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. **Engage in the business** also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.[110]

Federal banking agencies: means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.[111]

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106 California Financial Code §22704

107 California Financial Code §22004
108 California Financial Code §22012(b)
109 California Financial Code §50003(f)
110 California Financial Code §50003(g)
111 California Financial Code §50003(h)

Finance lender: includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission. The definition of finance lender must be interpreted to include a personal property broker.[112] **Finance lender** and **broker** do not include employees regularly employed at the location specified in the license of the finance lender or broker, except that an employee, when acting within the scope of his or her employment, will be exempt from any other law from which his or her employer is exempt.[113]

Service or **servicing**: means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

Powers of the Commissioner

The commissioner is authorized to establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.[114]

For the purpose of participating in the NMLS, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the NMLS.[115]

The commissioner may use the NMLS as a channelling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.[116]

The commissioner may use the NMLS as a channelling agent for requesting and distributing information to and from any source so directed by the commissioner.[117]

[112] California Financial Code §22009
[113] California Financial Code §22010
[114] California Financial Code §50150(a)
[115] California Financial Code §50150(b)
[116] California Financial Code §50150(c)
[117] California Financial Code §50150(d)

The commissioner will establish a process where applicants and licensees may challenge information entered into the NMLS by the commissioner.[118]

The commissioner will establish the timelines, fees, and assessments applicable to individuals applying for mortgage loan originator license renewals and license changes.[119]

The commissioner may require mortgage loan originator licensees to pay assessments through the NMLS.[120]

The license issued will state the name of the mortgage loan originator. If the licensee is a partnership, the license will show the names of its general partners. If the licensee is a corporation or an association, the license will indicate the date and place of the corporation's incorporation or organization and the address of the licensee's principal business location. The license will also state that the licensee is licensed as a mortgage loan originator.[121]

The commissioner may:

- Suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of Division 9, or any rules or regulations adopted there under.[122] [123]
- Suspend, revoke, condition, or decline to renew a mortgage loan originator license if a licensee fails at any time to meet the requirements of §22109.1, §50141, §22109.4 or §50144 or withholds information or makes a material misstatement in an application for a license renewal.[124] [125]
- Order restitution against a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator for a violation of Divisions 9 and/or 20.[126] [127]
- Impose fines on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d) of §22172 or §50513.[128] [129]
- Issue orders or directives to mortgage loan originators under Divisions 9 and/or 20 as follows:
    - Order or direct a mortgage loan originator or any finance lender or broker licensee, or any residential mortgage lender or servicer licensee employing a mortgage loan

[118] California Financial Code §50150(e)
[119] California Financial Code §50140(c)
[120] California Financial Code §50140(d)
[121] California Financial Code §50208
[122] California Financial Code §22172(a)(1)
[123] California Financial Code §50513(a)(1)
[124] California Financial Code §22172(a)(2)
[125] California Financial Code §50513(a)(2)
[126] California Financial Code §22172(a)(3)
[127] California Financial Code §50513(a)(3)
[128] California Financial Code §22172(a)(4)
[129] California Financial Code §50513(a)(4)

originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.[130] [131]

- Order or direct a mortgage loan originator or any finance lender or broker licensee, or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of Divisions 9 and/or 20, including immediate temporary orders to desist and refrain.[132] [133]
- Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under §22100 or §50002 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of Divisions 9 and/or 20.[134] [135]
- Order or direct any other affirmative action as the commissioner deems necessary.[136] [137]

The commissioner may impose a civil penalty on a mortgage loan, or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for a hearing, that the mortgage loan originator, or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of Divisions 9 and/or 20 or any regulation prescribed by the commissioner under these divisions or order issued under authority of these divisions.[138] [139]

The maximum amount of penalty for each act or omission described in §22172(b) and §50513(b) will be $25,000.[140] [141]

Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.[142] [143]

Whenever, in the opinion of the commissioner, any person is engaged in the business as a mortgage loan originator without a license, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating Division 9. If, within 30

[130] California Financial Code §22172(a)(5)(A)
[131] California Financial Code §50513(a)(5)(A)
[132] California Financial Code §22172(a)(5)(B)
[133] California Financial Code §50513(a)(5)(B)
[134] California Financial Code §22172(a)(5)(C)
[135] California Financial Code §50513(a)(5)(C)
[136] California Financial Code §22172(a)(5)(D)
[137] California Financial Code §50513(a)(5)(D)
[138] California Financial Code §22172(b)
[139] California Financial Code §50513(b)
[140] California Financial Code §22172(c)
[141] California Financial Code §50513(c)
[142] California Financial Code §22172(d)
[143] California Financial Code §50513(d)

days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.[144]

Notwithstanding §22712(a), if, after an investigation, the commissioner has reasonable grounds to believe that a person is conducting business in an unsafe or injurious manner, the commissioner will, by written order addressed to that person, direct the discontinuance of the unsafe or injurious practices. The order will become effective immediately, but will not become final except in accordance with the provisions of §22717.[145]

The commissioner may, pursuant to §50321, order a residential mortgage loan servicer or a residential mortgage lender licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage servicer/lender license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.[146] [147]

The commissioner may, at his discretion, issue a loan servicer or a mortgage lender license for a business located outside this state. However, this will constitute an agreement by the mortgage servicer/lender to either:

1. make his/her books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state within 10 calendar days of a request from the commissioner or[148] [149]
2. pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during an investigation or examination made at the licensee's location outside this state.[150] [151]

The commissioner may, after appropriate notice and opportunity for a hearing, by order censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any mortgage loan originator, or any other person, if the commissioner finds that the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of Division 20 or rule or order of the commissioner, and:

- The violation was either known or should have been known by the person committing or causing it; or

[144] California Financial Code §22712(a)
[145] California Financial Code §22712(b)
[146] California Financial Code §50130(d)
[147] California Financial Code §50120(d)
[148] California Financial Code §50130(e)(1)
[149] California Financial Code §50120(e)(1)
[150] California Financial Code §50130(e)(2)
[151] California Financial Code §50120(e)(2)

- The violation has caused material damage to the mortgage loan originator or to the public.[152]

Persons suspended or barred under §50318 are prohibited from participating in any business activity of a mortgage loan originator and from engaging in any business activity on the premises where a licensed mortgage loan originator is conducting its business. This subdivision will not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensed mortgage loan originator.[153]

Powers of the Attorney General

Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, direct the grand jury to convene for the investigation and consideration of those matters of a criminal nature that he or she desires to submit to it. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.[154]

Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, petition the court to impanel a special grand jury to investigate, consider, or issue indictments for any of the activities subject to fine, imprisonment, or asset forfeiture under §14107 of the Welfare and Institutions Code. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do. If the evidence presented to the grand jury shows the commission of an offense or offenses for which venue would be in a county other than the county where the grand jury is impaneled, the Attorney General, with or without the concurrence of the district attorney in the county with jurisdiction over the offense or offenses, may petition the court to impanel a special grand jury in that county.[155]

Required Conduct

Mortgage loan originators employed and compensated by a licensee who engages in making or brokering residential mortgage loans must maintain a mortgage loan originator license from the

[152] California Financial Code §50318(a)(1)
[153] California Financial Code §50318(d)
[154] California Penal Code §923(a)
[155] California Penal Code §923(b)

commissioner or have obtained a license endorsement from the Commissioner of Business Oversight.[156]

A mortgage loan originator employed or compensated by a residential mortgage lender who engages in the business of making, servicing, or making and servicing residential mortgage loans must maintain a mortgage loan originator license from the commissioner.[157]

Licensed mortgage loan originators must maintain a valid unique identifier issued by the NMLS.[158] [159]

Before engaging in the business of a mortgage loan originator with respect to any dwelling located in this state, an individual should first obtain and maintain a license.[160] [161]

However, a registered mortgage loan originator is exempt from licensure if they are employed by:

- A depository institution
- A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency
- An institution regulated by the Farm Credit Administration.[162]

It is a violation of Division 9 for a mortgage loan originator to do any of the following:

- Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.[163]
- Engage in any unfair or deceptive practice toward any person.[164]
- Obtain property by fraud or misrepresentation.[165]
- Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower.[166]
- Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.[167]

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[156] California Financial Code §22100(b)
[157] California Financial Code §50002.5(a)
[158] California Financial Code §22100(e)
[159] California Financial Code §50146
[160] California Financial Code §22100(f)
[161] California Financial Code §50146
[162] California Financial Code §22100(g)
[163] California Financial Code §22755(a)
[164] California Financial Code §22755(b)
[165] California Financial Code §22755(c)
[166] California Financial Code §22755(d)
[167] California Financial Code §22755(e)

- Conduct any business covered by Division 9 without holding a valid license as required under Division 9, or assist or aid and abet any person in the conduct of business under Division 9 without a valid license as required under Division 9.[168]
- Fail to make disclosures as required by Division 9 and any other applicable state or federal law, including regulations there under.[169]
- Fail to comply with Division 9 or rules or regulations promulgated under Division 9, or fail to comply with any other state or federal law, including the rules and regulations there under, applicable to any business authorized or conducted under Division 9.[170]
- Make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.[171]
- Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the NMLS or in connection with any investigation conducted by the commissioner or another governmental agency.[172]
- Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.[173]
- Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by Division 9.[174]
- Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.[175]
- Fail to truthfully account for moneys belonging to a party of a residential mortgage loan transaction.[176]

A mortgage loan originator licensed under Division 9 may not pay any commission, fee, or other compensation to an unlicensed individual for conducting activities that require a license, unless that unlicensed individual is exempt from licensure pursuant to Division 9.[177]

[168] California Financial Code §22755(f)
[169] California Financial Code §22755(g)
[170] California Financial Code §22755(h)
[171] California Financial Code §22755(i)
[172] California Financial Code §22755(j)
[173] California Financial Code §22755(k)
[174] California Financial Code §22755(l)
[175] California Financial Code §22755(m)
[176] California Financial Code §22755(n)
[177] California Financial Code §22757

A residential mortgage lender, or a person or employee acting under the authority of a residential mortgage lender's license, including a mortgage loan originator, may not provide brokerage services to a borrower, except as provided in §50700(c) below.[178]

A mortgage loan originator employed by a residential mortgage lender may provide brokerage services under the authority of the lender's license if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of §50701.[179]

A mortgage loan originator may only provide brokerage services as an employee of a licensed residential mortgage lender.[180]

IV. THE HOMEOWNER'S BILL OF RIGHTS

The Homeowner Bill of Rights (HBOR) complements existing laws by adding new protections to help prevent avoidable foreclosures. It calls for enhanced notifications to ensure that borrowers know their rights and know how to contact their loan servicer to pursue a loan modification or some other form of relief. It limits the ability of loan servicers to advance the foreclosure process when loan modification applications are under consideration. It promotes better communication between borrower and loan servicer by requiring loan servicers to provide an accountable, consistent point of contact to assist the homeowner through the loan modification and/or foreclosure process. The Homeowner Bill of Rights requires lenders to provide borrowers with proper documentation before the foreclose process can take place. It also gives borrowers tools to enforce their rights.

Applicability of the Law

The Homeowner's Bill of Rights, which came into effect on January 1, 2013, applies to first trust deeds which are secured by owner-occupied properties consisting of one-to-four residential units.

[178] California Financial Code §50700(a)
[179] California Financial Code §50700(c)
[180] California Financial Code §50700(e)

Definitions

An '**owner-occupied**' property is the principal residence of a borrower. It is secured by a personal, family, or household loan made for personal, family, or household purposes.[181]

A '**borrower**' is a natural person who may be eligible for a foreclosure prevention alternative program offered by the mortgage servicer. A '**borrower**' may not be someone who has filed bankruptcy, surrendered the secured property, or contracted with an organization which mainly advises the public on ways to extend the foreclosure process and avoid fulfilling contractual obligations.[182]

'**Foreclosure prevention alternative**' may refer to a first lien loan modification or to a loss mitigation program (including short sales).[183] Some sections of the Homeowner's Bill of Rights only apply to banks which foreclosed on more than 175 one-to-four residential units in the preceding annual reporting period.[184]

No Dual Tracking during Short Sale

Until December 31, 2017, when a foreclosure prevention alternative has been approved in writing by all parties (first lien investor, junior lienholder, mortgage insurer etc.) and proof of funds or financing has been provided to the servicer, the servicer or lender may not:

- Record a notice of default;
- Record a notice of sale; or
- Conduct a trustee's sale

From January 1, 2018, a lender or mortgage servicer will not be allowed to record a notice of sale or conduct a trustee's sale:

- If the borrower's complete application for a foreclosure prevention alternative is pending; and
- Until the borrower has been given a written determination by the mortgage servicer.

From January 1, 2018, this legislation will also apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period.[185]

[181] California Civil Code §2924.15
[182] California Civil Code §2920.5(c)
[183] California Civil Code §2920.5(b)
[184] California Civil Code §2924.18(b)
[185] California Civil Code §2924.11

Cancelling a Pending Trustee's Sale

A mortgage servicer must rescind a pending trustee's sale when:

- A short sale has been approved by all parties (first lien investor, junior lienholder, mortgage insurer etc.); and
- Proof of funds or financing has been provided to the lender / authorized agent.

For all other forms of foreclosure prevention alternatives, a lender is either required to record a rescission of a notice of default or cancel a pending trustee's sale if a borrower executes a permanent foreclosure prevention alternative.

Such requirements, which do not apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period, will be phased out on January 1, 2018.[186]

Single Point of Contact

A direct means of communication with a single point of contact must promptly be made available to borrowers who request a foreclosure prevention alternative. This single point of contact must remain in place until:

- All loss mitigation options offered are exhausted; or
- The borrower's account becomes current.

The responsibilities of the single point of contact, who may be an individual or a team, will include:

- Managing the application for the foreclosure prevention alternative
- Providing status reports in a timely and accurate manner
- Coordinating with those able and authorized to suspend the foreclosure proceedings
- Referring the borrower to a manager upon the borrower's request

When the single point of contact is a team, each team member should be aware of the borrower's circumstances and should know their status in the foreclosure alternative process.

[186] California Civil Code §2924.11

Banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period are exempt from such requirements.[187]

No Dual Tracking during Loan Modification

As a rule, a mortgage servicer may not conduct a trustee's sale or record a notice of default or a notice of sale in cases of a nonjudicial foreclosure if:

- The borrower's application for a first lien loan modification is still pending; or
- The borrower has fully complied with the terms of:
  - a written trial;
  - a permanent loan modification;
  - a forbearance; or
  - a repayment plan

In cases where a loan modification application is rejected, the borrower will be given the opportunity to appeal. However, they must do so within 30 days of the denial.[188] A mortgage servicer may not foreclose on a property during that 30-day period.[189]

N.B.: A mortgage servicer is NOT required to evaluate a first lien loan modification application if:

- The borrower was assessed prior to 2013
- The borrower was given a fair opportunity to be assessed
- The borrower does not submit documented material changes in their financial circumstances[190]

Such requirements will expire on December 31, 2017. From January 1, 2018, lenders and mortgage servicers will not be allowed to record a notice of sale or conduct a trustee's sale:

- If the borrower's complete application for a foreclosure prevention alternative is pending; and
- Until the borrower has been given a written determination by the mortgage servicer.

[187] California Civil Code §2923.7
[188] California Civil Code §2923.6(d)
[189] California Civil Code §2923.6(e)
[190] California Civil Code §2923.6(g)

Banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period will remain exempt from these requirements until January 1, 2018.[191]

No Late Fees or Application Fees

A mortgage servicer may not collect late fees while:

- A first lien loan modification application is being considered;
- An appeal for a loan modification is ongoing;
- The borrower is up to date with their modification payments; or
- The evaluation or exercise of a foreclosure prevention alternative is ongoing

A mortgage servicer may not levy a fee for the application or the processing of a first lien loan modification or other foreclosure prevention alternative.

Such requirements, which do not apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period, will be phased out on January 1, 2018.[192]

Additional Loan Modification Safeguards

Mortgage servicers must, within five business days, acknowledge receipt, in writing, of a borrower's submission of a complete first lien modification application (or of any other document in connection with a first lien modification application). Such requirements will remain in place until December 31, 2017.

The acknowledgement of receipt must, among other things:

- Describe the loan modification process;
- State when the mortgage servicer is expected to make a decision;
- Include any other relevant timeframes; and
- Highlight deficiencies, if any, in the borrower's application.[193]

[191] California Civil Code §2924.11
[192] California Civil Code §2924.11
[193] California Civil Code §2924.10(a)

When a first lien loan modification is denied, a mortgage servicer is required to provide the borrower with a written notice explaining the reasons behind the denial as well as other relevant information.

Such requirements will not apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period until January 1, 2018.[194] [195]

Binding if Loan is Transferred

Once a foreclosure prevention alternative has been approved in writing, it must be honored by any subsequent mortgage servicer should the borrower's loan be sold or transferred. Such a requirement, which does not apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period, will be phased out on January 1, 2018.[196]

Review of Foreclosure Documents

The recording of a notice of default or the initiation of the foreclosure process can only be performed by:

- The holder of the beneficial interest under the deed of trust;
- An authorized designated agent of the holder of the beneficial interest; or
- The original or substituted trustee under the deed of trust.

Mortgage servicers must verify the accuracy and completeness of the following foreclosure documents:

- Initial contact declaration
- Notice of default
- Notice of sale
- Assignment of deed of trust
- Substitution of trustee
- Declarations and affidavits filed in the judicial foreclosure proceeding.

[194] California Civil Code §2923.6
[195] California Civil Code §2924.11
[196] California Civil Code §2924.11

Mortgage servicers must also ensure that these documents are supported by competent and reliable evidence to substantiate a borrower's default and their right to foreclose.

Mortgage servicers who repeatedly fail in their obligation to review foreclosure documents will be liable for a civil penalty of up to $7,500 per deed of trust should any action be brought by the Attorney General, the district attorney, or the city attorney. Mortgage servicers may be faced with the same penalty in an administrative proceeding brought by the Department of Business Oversight (DBO), the Department of Corporations (DOC) or the Department of Financial Institutions (DFI).

Such provisions apply to all trust deeds irrespective of occupancy or number of units.[197] [198]

Extending Initial Contact Requirements

A mortgage servicer or lender must contact a borrower in person of by telephone to assess their financial situation and discuss potential avenues to avoid foreclosure. A notice of default may only be recorded 30 days after this initial contact, in which the borrower must:

- Be advised of their right to request an additional meeting within 14 days; and
- Be provided with a toll-free number to identify a HUD-certified housing counseling agency.

Any notice of default must either confirm that the initial contact has taken place or that the mortgage servicer is exempt from making such a contact.

This legislation applies to first trust deeds secured by owner-occupied residential properties consisting of one-to-four units.[199] [200]

Notifying Borrowers After Notice of Default

As a rule, a mortgage servicer is required to provide the borrower with a written notice detailing the manner in which they can apply for the mortgage servicer's foreclosure prevention alternatives, if any are available. The written notice should be provided within 5 business days following the recording of the notice of default.

[197] California Civil Code §2924(a)(6)
[198] California Civil Code §2924.17(c)
[199] California Civil Code §2923.5
[200] California Civil Code §2923.55

However, this requirement does not apply if the borrower has already exhausted the first lien loan modification process offered by the mortgage servicer.

This requirement, which does not apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period, is due to be phased out on January 1, 2018.[201]

Postponing a Trustee's Sale

In cases where a trustee's sale is postponed for more than 10 business days, the lender or authorized agent will write to the borrower to confirm the new date and time of the sale. This written notice must be provided within 5 business days of the postponement.

However, failure to comply with this requirement will in no way invalidate any trustee's sale that is otherwise valid.

This requirement, which applies to all trust deeds irrespective of occupancy or number of units, will be phased out on January 1, 2018.[202]

Legal Remedies for borrowers

Borrowers are generally provided with a private right of action to enjoin or stop a trustee's sale while the mortgage servicer corrects some of the material violations of this law.

In cases where the recording of the trustee's deed has already taken place, the borrower may be entitled to monetary damages as a result of these violations.

If these violations are found to have been intentional and reckless, the mortgage servicer may be liable for 3 times actual damages or $50,000, whichever is greater. Any borrower who receives compensation may also be awarded reasonable attorney's fees and costs.

From January 1, 2018, this legislation will also apply to banks which foreclosed on fewer than 175 one-to-four residential units in the preceding annual reporting period.[203]

[201] California Civil Code §2924.9
[202] California Civil Code §2924(a)(5)
[203] California Civil Code §2924.12

Lenders' Standard of Care to Investors

The goal of this legislation is to ensure that mortgage servicers provide borrowers with loan modifications or workout plans which meet their contractual or other authority.

A mortgage servicer's duty to maximize net present value under a pooling and servicing agreement should benefit all investors.

A mortgage servicer will be deemed to have acted in the best interest of all investors if the loan modifications or workout plans were set up in keeping with a number of specific parameters.[204]

[204] California Civil Code §2923.6