20 Hour SAFE Comprehensive: Financing Residential Real Estate

COURSE MANUAL
Part 3

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- Secure and Fair Enforcement for Mortgage Licensing Act – SAFE
- Home Mortgage Disclosure Act-HMDA
- Fair Credit Reporting Act – FCRA
- Fair and Accurate Credit Transactions Act – FACTA
- Privacy Protection/Do Not Call
- Gramm-Leach-Bliley Act - GLBA
- Mortgage Assistance Relief Services Rule - MARS
- Bank Secrecy Act

S.A.F.E. Licensing and Registration Rules

The Housing and Economic Recovery Act (HERA) of 2008, addresses the mortgage crisis by including the Secure and Fair Enforcement for Mortgage Licensing Act - S.A.F.E. or SAFE Act. Under the SAFE Act, individual employees of Agency-regulated institutions must register with the Federal Registry.

The Dodd-Frank Act transferred the authority to develop and maintain the Federal Registry from the Agencies to the CFPB. The SAFE Act statute requires individual mortgage loan originators employed by "Agency-regulated" institutions to be registered with the Nationwide Mortgage Licensing System and Registry, a Federal Registry.

This is a database established previously by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators to support the licensing of mortgage loan originators by the States.

Under SAFE Act, an originator is an individual who:
- Takes a residential loan application, and
- Offers or negotiates terms of a residential mortgage loan for compensation or gain

This definition <u>will not</u> include:
- An individual who performs only administrative or clerical tasks
- Certain individuals who perform real estate brokerage activities
- Individuals who are involved in the extension of credit related solely to time share plans

The SAFE Act is designed to prevent abusive, predatory practices during loan origination and has these provisions for originators:
- Register with the Registry and maintain their registration.
- Obtain a unique identifier through the Registry that will remain with that originator, regardless of employment changes. Mortgage loan originators and their employing institutions must provide MLO unique identifiers to consumers.

Agency-regulated institutions must:
- Require their employees who are mortgage loan originators to comply with these requirements.
- Adopt and follow written policies and procedures to assure compliance with the registration requirements.

The SAFE Act requires all loan originators to be either federally registered or state-licensed
- Registered loan originator - employed by depository institution or subsidiary
- State-licensed loan originator - all others must have state license
- Loan Processor or Underwriter – supervised loan processors and underwriters who do not perform any activities of a loan originator are exempt from licensing

- Registration and licensing is required for independent contractors performing clerical, processor, or underwriter duties
    - Independent Contractors - may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless they are registered and licensed

Real estate agents generally exempt from S.A.F.E. licensing rules [SAFE Act 12 USC §5102 (3)(A)(II)(iii)]

- Must have originator's license if compensated by a lender or mortgage broker for helping to arrange a loan [SAFE Act 12 USC §5102 (3)(A)(II)(iii)]

Other S.A.F.E. Provisions

- Uniform license applications and reporting requirements for states SAFE Act 12 USC § [5101 (I)]
- Improved information tracking across state lines (background checks, fingerprinting, etc.) [SAFE Act 12 USC §5101 (4)]
- Enhanced consumer protection and anti-fraud measures [SAFE Act 12 USC §5101 (6)]
- Fiduciary duties for loan originators [SAFE Act 12 USC §5101 (8)]

Originator's Fiduciary Duties

- Traditionally, mortgage broker:
    - Wasn't buyer's agent
    - Did not have duty to help buyer choose best financing option or to act in buyer's best interests
- Some states have laws giving mortgage brokers fiduciary duties to buyers [SAFE Act 12 USC §5101 (8)]
- S.A.F.E. now imposes fiduciary duties as a matter of federal law in some states

- *Fiduciary means a legal or ethical relationship of trust between two or more parties*

Home Mortgage Disclosure Act-HMDA

The Home Mortgage Disclosure Act, or HMDA, helps government spot redlining and predatory lending.

HMDA applies to:

- Financial institutions - [Regulation C, 12 CFR §203.2 (e)(1)(i)(ii)(iii)(iv)(A)(B)(C)]
- For-profit mortgage lending institutions [Regulation C, 12 CFR §203.2 (i)(ii)(iii)(A)(B)]

Lenders must submit an annual report to government on residential mortgage loans

HMDA has as its purpose:

*"This regulation implements the Home Mortgage Disclosure Act, which is intended to provide the public with loan data that can be used [*Regulation C, 12 CFR §*203.1 (b)(1)]:*

- To help determine whether financial institutions are serving the housing needs of their communities [Regulation C, 12 CFR §203.1 (b)(1)(i)]
- To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed [Regulation C, 12 CFR §203.1 (b)(1)(ii)]
- To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. [Regulation C, 12 CFR §203.1 (b)(1)(iii)]

Neither this act nor this regulation is intended to encourage unsound lending practices or the allocation of credit.

Financial institutions includes banks, savings associations, or credit unions: [Regulation C, 12 CFR §203.2 (e)(1)]

- On preceding Dec. 31 had assets in excess of threshold set forth by the Board [Regulation C, 12 CFR §203.2 (e)(1)(ii)]
- On preceding Dec. 31, had a home or branch in a metropolitan area [Regulation C, 12 CFR §203.2 (e)(1)(ii)]
- In the preceding calendar year, originated at least one purchase or refinance loan [Regulation C, 12 CFR §203.2 (e)(1)(iii)]

Financial institutions meets one or more of the following:

- Institution is federally insured [Regulation C, 12 CFR §203.2 (e)(1)(iv)(A)]
- Mortgage loan was insured, guaranteed or supplemented by a federal agency [Regulation C, 12 CFR §203.2 (e)(1(B)]
- The mortgage loan was intended for sale to FNMA or Freddie Mac [Regulation C, 12 CFR §203.2 (e)(1)(C)]

For-profit mortgage lending institution:
In previous calendar year, either: [Regulation C, 12 CFR §1003.2]

- Banks, savings associations, or credit unions will not be subject to Regulation C and will not be covered by HMDA unless the institution originates at least 25 home purchase loans in the previous two years
    - To determine if the institution is covered by Regulation C the institution must have originated at least:
        - 25 closed-end mortgage loans in each of the two preceding calendar years, or
        - 500 open-end lines of credit in each of the two preceding calendar years

    If the institution meets these two tests, the institution is subject to new HMDA requirements. All covered loans will be included in the coverage test. These will include home equity loans, home improvement loans, purchase loans, refinance loans, etc…

The Lender must also provide data for, and originations and purchases in each calendar year on, the following: [Regulation C, 12 CFR §203.4 (a)]

- Home purchase loans
- Home improvement loans
- Refinances

Data must be collected on requests under a preapproval program [Regulation C, 12 CFR §203.4 (a)].

A request for preapproval is an application if a written commitment is issued to the applicant. [Regulation C, 12 CFR §203.2 (b)(2)]

The Lender must also provide data for, and originations and purchases in each calendar year on, the following: [Regulation C, 12 CFR §203.4 (a)]

- A loan identification number [Regulation C, 12 CFR §203.4 (b)(1)]
- The type of loan or application [Regulation C, 12 CFR §203.4 (b)(2)]
- The purpose of the loan [Regulation C, 12 CFR §203.4 (b)(3)]
- Reason for request and results [Regulation C, 12 CFR §203.4 (b)(4)]
- Property type [Regulation C, 12 CFR §203.4 (b)(5)]
- Occupancy status [Regulation C, 12 CFR §203.4 (b)(6)]
- Amount of loan [Regulation C, 12 CFR §203.4 (b)(7)]

The Lender must also provide data for, and originations and purchases in each calendar year on, the following: [continued]

- Action taken and date [Regulation C, 12 CFR §203.4 (b)(8)]
- Location of property [Regulation C, 12 CFR §203.4 (b)(9)]
- Ethnicity, race and sex of applicant [Regulation C, 12 CFR §203.4 (b)(10)]
- Entity purchasing loan [Regulation C, 12 CFR §203.4 (b)(11)]
- Difference between loan's APR and the yield on Treasury securities [Regulation C, 12 CFR §203.4 (b)(12)]

This information allows the federal government to:

- Monitor lending patterns and analyze them for any evidence of illegal discrimination [Regulation C, 12 CFR §203.1 (b)(1)(iii)]

This information is collected on a Home Mortgage Disclosure Act report or HMDA report.

Depository and non-depository institutions that meet certain reporting criteria must complete a HMDA Loan Application Register (LAR) [Appendix A to Part 203].

- The LAR contains information from applications for home purchases, refinances, and home improvement loans [Regulation C, 12 CFR §203.4 (a)]
- Data submitted on the HMDA Loan Application Register is used by the Federal Financial Institutions Examination Council (FFIEC) [Regulation C, 12 CFR §203.5 (b)(1)] to create reports for each metropolitan area, also known as, MA>
- These reports are available to the public at central data depositories located in each metropolitan area [Regulation C, 12 CFR §203.5 (b)(2)]

To comply with HMDA:

- First determine if the loan fits into one of the previously listed categories
- If the loan is HMDA reportable, government monitoring information on the loan application must be read or shown to the applicants [Appendix B to Part 203 – II A, B, C, and D]
- If they choose not to disclose the information, the mortgage loan officer must make a visual observation

If a telephone, mail, or internet application takes place [Appendix A to Part 203 – I D 2]:

- The mortgage loan officer is still required to determine if HMDA applies
- You must ask the applicant for this information, but you cannot require the applicant to provide it
- Inform applicant, reason for information is to prohibit discrimination

If applicant declines to provide information, the data need not be provided

- If this is the case, indicate how application received
- Mail, telephone or Internet

Fair Credit Reporting Act – FCRA

The following is the Fair Credit Reporting Act's purpose: [15 U.S.C. § 1681]

Accuracy and fairness of credit reporting. The Congress makes the following findings:

- The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system.
- An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
- Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
- There is a need to ensure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."

The Fair Credit Reporting Act (FCRA) is enforced by the Federal Trade Commission (FTC) and is designed for two purposes:

- To promote accuracy in consumer reports [15 U.S.C. § 1681] [602 (a)(1)]
- To ensure privacy in consumer reports [15 U.S.C. § 1681] [602 (a)(4)]

The FCRA was established to require Credit Reporting Agencies or CRA's to implement reasonable procedures to meet the needs of: [15 U.S.C. § 1681] [602 (b)]

- The banking system
- Employers
- Credit card agencies

Credit Reporting Agency functions include:

- In response to a court order [15 U.S.C. § 1681b] [604 (a)(1)]
- In accordance with written instructions from the consumer [15 U.S.C. § 1681b] [604 (a)(2)]
- To extend credit [15 U.S.C. § 1681b] [604 (a)(3)(A)]
- For assessment of a potential employee by the employer [15 U.S.C. § 1681b] [604 (a)(3)(B)]
- For investor or servicer of an existing credit obligation [15 U.S.C. § 1681b] [604 (a)(3)(E)]

When ordering a credit report, the lender must:

- Disclose intent and purpose to the borrower [15 U.S.C. § 1681b] [604 (2)(A)(i)]
- Obtain written permission from applicant(s) [15 U.S.C. § 1681b] [604 (2)(A)(ii)]
- Counsel consumer regarding their rights under the FCRA

If the consumer is denied credit: [15 U.S.C. § 1681m] [615 (a)(1)(2)(A)]

- Must receive an adverse action letter which includes, but is not limited to: [15 U.S.C. § 1681m] [615 (a)(1)(2)]
- Identifies the CRA [15 U.S.C. § 1681m] [615 (2)(A)]
- Statement the CRA did not make the adverse decision [15 U.S.C. § 1681m] [615 (2)(B)]
- Informs customer of right to a free report [15 U.S.C. § 1681m] [615 (3)(A)]
- Informs customer of right to dispute the accuracy of the report [15 U.S.C. § 1681m] [615 (3)(B)]

Rights of the Consumer

If there is an error on a consumer's report, the consumer has the right to ask Bureau to make a correction: [15 U.S.C. § 1681i] [611 (a)(1)(A)]

- Must do so in writing
- Also send a similar letter to creditor
- Credit reporting agency will contact provider
- Provider must investigate
- Review the supporting data
- Report results to CRA

The Fair Isaac Company Score – FICO

- FICO is a measure of credit risk using a numerical system; a high credit score would offer better loan opportunities for the consumer. According to the Fair Isaac Company website (www.myfico.com/credit-education/whats-in-your-credit-score/), scores are measured as follows:
- 35% - Payment history - Bills paid on time will warrant a better FICO score
- 30% - Outstanding debt - More debt on credit cards could mean a lower FICO
- 15% - Length of credit record - Longer history of different types of debt will improve FICO score
- 10% - Inquiries - Applying for too many credit cards or loans can impair the FICO score
- 10% - Types of credit - History of managing different types of debts can be a benefit

Fair Credit Reporting Act – FCRA (15 U.S.C. § 1681): Credit Reporting Agencies

There are three Major Reporting Agencies:

- Experian
- TransUnion
- Equifax

Information is voluntary
CRA's (Credit Reporting Agencies) play a vital role in the consumer credit profile

Credit Report

The Fair Isaac Corporation states to consumers on their website that credit reports are divided into the following sections (www.myfico.com/crediteducation/in-your-credit-report.aspx):

- Personal information or identifying information
  - *Name, date of birth, current address, previous address and employer details*
- Account History or trade lines
  - *Real estate, installment loans, credit cards, collection accounts, others*
- Public Information
  - *Bankruptcies, judgments, tax liens, foreclosures, garnishments*
- Inquiries
  - *Made by lenders or creditors*
    - *Soft inquiry - made by lenders to check a consumer's profile*
      - *No impact on credit score*
    - *Hard inquiry - based on a consumer's loan application*
      - *Will impact credit score*

Fair Credit Reporting Act – FCRA (Amendments)

Fair and Accurate Credit Transactions Act of 2003 – [Public Law 108-159, 108th Congress]

FACTA has as its statement:

> *To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.*

- Allows consumers to request and obtain a free credit report every 12 months from each credit reporting agency (Equifax, Experian, and TransUnion)
  [211 (a)(1)(A)]
- Also contains revisions to reduce identity theft [112 (a)(1)(A)(B)(2)(A)(B)]

The Red Flags Rule requires businesses to implement a written Identity Theft Prevention Program to warn them of or "red "flag" identity fraud.

Red Flag Rules [114 (1)(A)(B)(C)(i)(ii)(iii)(2)(A)(B)(3)]

- Require agencies to create regulation regarding identity theft prevention
  - Identity Theft Prevention Program
  - Notices of Address Discrepancies
  - Assess validity of a change of address
  - Provide Credit Disclosure Notice

Privacy Protection/Do Not Call

In answer to many complaints received from consumers regarding telemarketers, the Federal Communications Commission (FCC), created the Do-Not-Call Registry. The Federal Trade Commission (FTC) mandates the National Do Not Call Registry. Once the consumer registers their phone number on this registry, telemarketers must stop making calls to that number within 31 days. Telephone numbers on the registry will remain on it permanently and will only be removed if the phone line registered is disconnected and reassigned, or if the consumer decides to remove a number from the registry.

The registry does not cover:

- Calls from political organizations, charities, and people conducting surveys
- Calls from companies wherein the consumer has an existing business relationship.
- A company can call up to 18 months after a purchase has been made by the consumer or for three months after an inquiry is made or an application has been submitted.
- Calls from companies in which the consumer has given the company permission to call them

Privacy Rules – Gramm-Leach-Bliley Act (GLBA)

The GLBA is composed of two parts:

- The Privacy Rule (Title 16 CFR 313)
- The Safeguards Rule (Title 16 CFR 314)

GLBA requires financial institutions to ensure the security and confidentiality of consumer's personal information. [GLBA, Title 16, §314.1 (b)]

- Name
- Address
- Phone Number
- Income
- Bank account numbers
- Credit card numbers
- Credit History
- Social Security number

The Federal Trade Commission (FTC) implemented the GLB Act and issued the Safeguards Rule requiring financial institutions to have measures in place to keep their customer information secure.

Definition of financial institution: Any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act

(Title 12 USC §1843(k) and § 6809 (3)(A))
Under the Final Rule promulgated by the Federal Trade Commission (FTC), an institution must be *significantly engaged* in financial activities to be considered a "financial institution." These entities would include:

- Check-cashing businesses
- Pay-day lender
- Mortgage brokers
- Non-bank lenders
- Credit counseling service and other financial advisors
- Retailer that issues its own credit card
- Auto dealers that lease and/or finance

- Collection agency services
- Relocation service that assists individuals with financing for moving expenses and/or mortgages
- Sale of money orders, savings bonds, or traveler's checks
- Real estate appraisers

To be in compliance a company must develop a written information security plan describing their customer information protection programs each company must: [GLBA, Title 16, 314.3 (a) and 314.4(a)(b)(1)(2)(3)(c)(d)(1)(2)e]

- Designate one or more employees to coordinate its information security program
- Identify and assess the risks to customer information in each relevant area of the company's operation, and evaluate the effectiveness of the current safeguards for controlling these risks
- Design and implement a safeguards program, and regularly monitor and test it
- Select service providers that can maintain appropriate safeguards, make sure your contract requires them to maintain safeguards, and oversee their handling of customer information
- Evaluate and adjust the program in light of relevant circumstances, including changes in the firm's business or operations, or the results of security testing and monitoring

Gramm-Leach-Bliley Act – History

The Glass-Steagall Act was formed in 1933 as a result of the financial failures due to the Great Depression. This act prohibited national and state banks from any affiliation with securities companies. In the mid -fifties, Congress passed the Bank Holding Company Act, this prohibited a bank from controlling a non-bank company; it was amended in 1982 forbidding banks from conducting general insurance underwriting or agency activities.

The Glass-Steagall Act was gradually undermined and eventually repealed in 1999 by the Financial Services Modernization Act, also called the Gramm-Leach-Bliley Act (GLBA). It is now legal for holding company to have a bank, securities firm, and insurance company as subsidiaries.

With these mergers came privacy risks; some banks began selling consumer information with adverse consequences. Needless to say, the consumers were concerned with how well they were protected against the sharing of their personal information.

Privacy protection under the Gramm-Leach-Bliley Act (GLBA) requires financial institutions to develop measures to protect the consumer's records and information

Note: The GLBA requires financial institutions to protect information collected from individuals, this does not include business or commercial activities.

The GLBA permits the disclosure of consumer's information to credit reporting agencies, financial regulatory agencies, as part of the sale of a business, to comply with any other laws or regulations, or as necessary for a transaction requested by the consumer.

The consumer must be provided with: [GLBA, 15 USC §6803(a)(1)(2)(3)(b)(c)(1)(A)(B)(2)(3)(4)]

- An initial (or "short-form") notice about the availability of the privacy policy if the financial institution shares information outside the permitted exceptions.
    - Privacy notice must be clear, conspicuous and accurate statement of the company's privacy practices.
        - Provide an opt-out notice, with the initial notice or separately, prior to a financial institution sharing nonpublic personal information with nonaffiliated 3rd parties.
    - Consumers have the right to say "no" to having their information shared [GLBA, 15 USC §6802 (b)(1)(A)(B)(C)]
        - Provide consumers with a "reasonable opportunity" to opt out
        - If a consumer opt outs of all or certain disclosures, a financial institution must immediately honor that opt-out

Mortgage Assistance Relief Services Rule – MARS

Here is a segment from a report on FTC.org regarding The Mortgage Assistance Relief Services Rule (MAR)s and a ban on the collection of up-front fees:

"As of January 31, 2011, companies that offer to help homeowners get their loans modified or sell them other types of mortgage assistance relief services are no longer allowed to charge up-front fees. Under the rule, a mortgage assistance relief company may not collect a fee until the consumer has signed a written agreement with the lender that includes the relief obtained by the company. When the company presents the consumer with that relief, it must inform the consumer, in writing, that the consumer can reject the offer without obligation and, if the consumer accepts, the total fee due. Before the consumer agrees to accept the mortgage relief, the company must also provide a written notice from the lender or servicer showing how the relief will change the terms of the consumer's loan (including any limitations on a trial loan modification)."

In this same report, FTC Chairman Jon Leibowitz had this to say:

> *"Banning the collection of up-front fees will protect homeowners from being victimized. This is especially important at a time when so many people are behind on their mortgages or facing foreclosure."*

If applicant declines to provide information, the data need not be provided

- If this is the case, indicate how application received
- Mail, telephone or Internet

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The Mortgage Assistance Relief Services program (MARS) has the following perimeters:

FTC rule banning providers of mortgage foreclosure rescue and loan modifications from:

- Collecting fees until homeowners have a written offer the homeowner decides is acceptable [Regulation 0, 12 CFR 1015.5 (a)]

Highlights of MARS

The following information must be clearly and prominently disclosed upfront: [Regulation 0, 12 CFR 1015.3(a)(b)(1)(2)(3)(i-vi)(2)(d)(1)(2)]

- The total cost
- That they can stop using services at any time
- There is no association with government or lender
- Homeowner's lender may not agree to change terms of their mortgage
- Homeowner should not be advised to stop communicating with their lender
- No advance fees until homeowner has an offer in writing that is acceptable
- Homeowner has right to reject offer
- And no fee will be charged

Various disclosures included in initial contact and throughout process: [Regulation 0, 12 CFR 1015.2(a) and 1015.5(a)(b)(c)(1)(i-vii)(2)(d)(1)(2)

- Must be in writing
- Designed to protect the homeowner
- Must describe all material differences between the terms of the offer and the customer's current lender
- Homeowner has the right to stop doing business with the provider at any time
- No fee will be involved
- False or misleading claims are prohibited in advertising or communication about services or performance
- If homeowner is advised not to pay their mortgage, homeowner must be informed that this may damage their credit rating
- And they could lose their home

Bank Secrecy Act/Anti-Money Laundering - (BSA/AML)

FDIC Law, Regulations, Related Acts - 8000-Miscellaneous Statutes and Regulations, Title 31-Money and Finance, Subtitle IV - Money, Chapter 5-Monetary Transactions, Subchapter II-Records on Monetary Instruments Transactions

The Bank Secrecy Act, also known as the Anti-Money Laundering Act, requires financial institutions to assist U.S. government agencies to detect and prevent money laundering.

The FDIC has this definition for money laundering: Money Laundering involves transactions intended to disguise the true source of funds; disguise the ultimate disposition of the funds; eliminate any audit trail and make it appear as though the funds came through legitimate sources; and evade income taxes.

Financial institutions must:

- Keep records of cash purchases of negotiable instruments [Title 31, CFR, Subpart C §1010.310]
- File reports of cash purchases exceeding $10,000 a day [Title 31, CFR, Subpart C §1010.311 and §1010.410 (all), Subpart D §1020.310]
- Report suspicious activity that might signify money laundering, tax evasion, or other criminal activities [Title 31, CFR, Subpart C §1010.320 and Subpart C, §1012.320 (a)(1)(b)(1)(2)(i)(ii)(iii)(b)(1)(2)(3)]

Types of transactions affected:

- A Currency Transaction Report (CTR) must be used to report cash transactions in excess of $10,000 during the same business day. An amount over $10,000 can be either in one transaction or a combination thereof. [Title 31, CFR, Subpart C §1010.310 through §1010.314 and §1010.330 (all)]

    NOTE: Authorities are usually not concerned with one CTR being filed for a consumer's account; although multiple CTR's from different institutions suggest suspicious activity.
- The Monetary Instrument Log (MIL) must indicate cash purchases of monetary instruments in value totaling $3,000 - $10,000, such as: [Title 31, CFR, Subpart D §1010.415 (all)]
    - Money orders
    - Cashier's checks
    - Traveler's checks
        - The MIL is required to be kept on record at the financial institution and readily available for an examiner's review
- The Suspicious Activity Report (SAR) will report any cash transaction where the customer appears to be avoiding the Bank Secrecy Act (BSA) reporting. The SAR is also used if the customer's actions suggest they are: [Title 31, CFR, Subpart C §1010.320 and Subpart C, §1012.320 (a) (1)(b)(1)(2)(i)(ii)(iii)(b)(1)(2)(3)]
    - Laundering money
    - Violating federal criminal laws
    - Committing wire transfer fraud
    - Committing check fraud
    - Involved in mysterious disappearances

    NOTE: The customer is not to have knowledge of the SAR being filed.

<u>LESSON SUMMARY</u>

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    - Takes a residential loan application, and
    - Offers or negotiates terms of a residential mortgage loan for compensation or gain
  - Does NOT include:
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    - Persons who perform real estate brokerage activities
    - Individuals providing credit to time-share plans
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  - The SAFE Act is designed to prevent abusive, predatory practices during loan origination and has these provisions for originators:
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  - Independent Contractors - may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless they are registered and licensed
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- Originator's Fiduciary Duties
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  - Some states have laws giving mortgage brokers fiduciary duties to buyers
  - S.A.F.E. now imposes fiduciary duties as a matter of federal law in some states

Home Mortgage Disclosure Act-HMDA: The Home Mortgage Disclosure Act, or HMDA, helps government spot redlining and predatory lending.

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  - For-profit mortgage lending institutions
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    - To help determine whether financial institutions are serving the housing needs of their communities
    - To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed
    - To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

- Who it affects
    - Financial institutions include banks, savings associations, or credit unions that:
        - On preceding Dec. 31 had assets in excess of threshold set forth by the Board
        - On preceding Dec. 31, had a home or branch in a metropolitan area
        - In the preceding calendar year, originated at least one purchase or refinance loan
    - Financial institutions meet one or more of the following:
        - Institution is federally insured
        - Mortgage loan was insured, guaranteed or supplemented by a federal agency
        - The mortgage loan was intended for sale to FNMA or Freddie Mac
    - For profit mortgage lending institution:
        - In previous calendar year, either:
            - Originated home loans that equal 10% of its loan origination volume
            - Originated home purchase loans that equaled at $25 million

          Either:
            - On the preceding Dec. 31 had total assets of more than 10 million
            - In the preceding year originated at least 100 purchase loans
- Other provisions
    - The Lender must also provide data for, and originations and purchases in each calendar year on, the following:
        - Home purchase loans
        - Home improvement loans
        - Refinances
    - Data must be collected on requests under a preapproval program
    - A request for preapproval is an application if a written commitment is issued to the applicant.
    - The Lender must also provide data for, and originations and purchases in each calendar year on, the following:
        - A loan identification number
        - The type of loan or application
        - The purpose of the loan
        - Reason for request and results
        - Property type
        - Occupancy status
        - Amount of loan
        - Action taken and date
        - Location of property
        - Ethnicity, race and sex of applicant
        - Entity purchasing loan
        - Difference between loan's APR and the yield on Treasury securities
- HMDA Report
    - This information is collected on a Home Mortgage Disclosure Act report or HMDA report. Depository and non-depository institutions that meet certain reporting criteria must complete a HMDA Loan Application Register (LAR)
    - The LAR contains information from applications for home purchases, refinances, and home improvement loans
    - Data submitted on the HMDA Loan Application Register is used by the Federal Financial Institutions Examination Council
    - These reports are available to the public at central data depositories located in each metropolitan area
- HMDA Compliance
    - Determine if the loan fits into one of the listed categories
        - If the loan is HMDA reportable, government monitoring information on the loan application must be read or shown to the applicants
        - If they choose not to disclose the information, the mortgage loan officer must make a visual observation
    - If a telephone, mail, or internet application takes place
        - The mortgage loan officer is still required to determine if HMDA applies
        - You must ask the applicant for this information, but you cannot require the applicant to provide it
        - Inform applicant, reason for information is to prohibit discrimination
        - If applicant declines to provide information, the data need not be provided. If this is the case, indicate how application received Mail, telephone or Internet

Fair Credit Reporting Act - FCRA

- Purpose of FCRA
  - Accuracy and fairness of credit reporting. The Congress makes the following findings:
    - The banking system is dependent upon fair and accurate credit reporting.
    - An elaborate mechanism has been developed for investigating and evaluating the credit worthiness
    - Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit
    - Insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.
  - The Fair Credit Reporting Act (FCRA) is enforced by the Federal Trade Commission (FTC) and is designed to:
  - To promote accuracy and privacy in consumer reports
  - The FCRA was established to require Credit Reporting Agencies or CRA's to implement reasonable procedures to meet the needs of: The banking system, Employers, Credit card agencies
- Functions
  - Credit Reporting Agency functions include:
    - In response to a court order
    - In accordance with written instructions from the consumer
    - To extend credit
    - For assessment of a potential employee by the employer
    - For investor or servicer of an existing credit obligation
- Provisions
  - When ordering a credit report, the lender must:
    - Disclose intent and purpose to the borrower
    - Obtain written permission from applicant(s)
    - Counsel consumer regarding their rights under the FCRA
  - If the consumer is denied credit:
    - Must receive an adverse action letter which includes, but is not limited to:
    - Identifies the CRA
    - Statement the CRA did not make the adverse decision
    - Informs customer of right to a free report
    - Informs customer of right to dispute the accuracy of the report
- Consumer Rights
  - If there is an error on a consumer's report, the consumer has the right to ask Bureau to make a correction:
    - Must do so in writing and send a similar letter to creditor
    - Credit reporting agency will contact provider
    - Provider must investigate
    - Review the supporting data
    - Report results to CRA
- FICO Score
  - The Fair Isaac Company Score – FICO – is a measure of credit risk using a numerical system; a high credit score would offer better loan opportunities for the consumer.
    - 35% - Payment history - Bills paid on time will warrant a better FICO score
    - 30% - Outstanding debt - More debt on credit cards could mean a lower FICO
    - 15% - Length of credit record - Longer history of different types of debt will improve FICO score
    - 10% - Inquiries - Applying for too many credit cards or loans can impair the FICO score
    - 10% - Types of credit - History of managing different types of debts can be a benefit
- Credit Reporting Agencies
  - There are three Major Reporting Agencies:
    - Experian, TransUnion & Equifax
  - Information is voluntary
  - CRA's (Credit Reporting Agencies) play a vital role in the consumer credit profile

- Credit report
  - Divided into these sections:
  - Personal information
  - Account History
  - Public Information
  - Inquiries

Fair and Accurate Credit Transactions Act - FACTA

- Purpose: To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.
  - Allows consumers to request and obtain a free credit report every 12 months from each credit reporting agency (Equifax, Experian, and TransUnion)
  - Also contains revisions to reduce identity theft
- Red Flag Rules
  - Require agencies to create regulation regarding identity theft prevention
    - Identity Theft Prevention Program
    - Notices of Address Discrepancies
    - Assess validity of a change of address
    - Provide Credit Disclosure Notice

Privacy Protection/Do Not Call

- Purpose: In answer to many complaints received from consumers regarding telemarketers, the Federal Communications Commission (FCC), created the Do-Not-Call Registry. The Federal Trade Commission (FTC) mandates the National Do Not Call Registry. Once the consumer registers their phone number on this registry, telemarketers must stop making calls to that number within 31 days. Telephone numbers on the registry will remain on it permanently and will only be removed if the phone line registered is disconnected and reassigned, or if the consumer decides to remove a number from the registry.
- Exemptions
  - The registry does not cover:
    - Calls from political organizations, charities, and people conducting surveys
    - Calls from companies wherein the consumer has an existing business relationship.
    - A company can call up to 18 months after a purchase has been made by the consumer or for three months after an inquiry is made or an application has been submitted.
    - Calls from companies in which the consumer has given the company permission to call them

Gramm-Leach-Bliley Act

- The GLBA is composed of two parts:
  - The Privacy Rule (16 CFR 313)
  - The Safeguards Rule (16 CFR 314)
- Privacy Rules
  - GLBA requires financial institutions to ensure the security and confidentiality of consumer's personal information.
    - Name
    - Address
    - Phone Number
    - Income
    - Bank account numbers
    - Credit card numbers
    - Credit History
    - Social Security number
  - The Federal Trade Commission (FTC) implemented the GLB Act and issued the Safeguards Rule requiring financial institutions to have measures in place to keep their customer information secure.
  - Under the Final Rule promulgated by the Federal Trade Commission (FTC), an institution must be significantly engaged in financial activities to be considered a "financial institution." These entities would include:
    - Check-cashing businesses
    - Pay-day lender
    - Mortgage brokers
    - Non-bank lenders
    - Credit counseling service and other financial advisors
    - Retailer that issues its own credit card
    - Auto dealers that lease and/or finance
    - Collection agency services
    - Relocation services
    - Sale of money orders, savings bonds, or traveler checks
    - Real estate appraisers

- To be in compliance a company must develop a written information security plan:
  - Designate one or more employees to coordinate its information security program
  - Identify and assess the risks to customer information in each relevant area of the company's operation
  - Design, implement and maintain a safeguards program
  - Select service providers that can maintain appropriate safeguards
  - Evaluate and adjust the program in light of relevant circumstances
- Disclosures
  - The GLBA permits the disclosure of consumer's information to credit reporting agencies, financial regulatory agencies, as part of the sale of a business, to comply with any other laws or regulations, or as necessary for a transaction requested by the consumer.
  - The consumer must be provided with:
    - An initial (or "short-form") notice about the availability of the privacy policy if the financial institution shares information outside the permitted exceptions.
      - Privacy notice must be clear, conspicuous and accurate statement of the company's privacy practices.
      - Provide an opt-out notice, with the initial notice or separately, prior to a financial institution sharing non-public personal information with nonaffiliated 3rd parties.
    - Consumers have the right to say "no" to having their information shared
      - Provide consumers with a "reasonable opportunity" to opt out
      - If a consumer opt outs of all or certain disclosures, a financial institution must immediately honor that opt-out

Mortgage Assistance Relief Services Rule - MARS

- The Mortgage Assistance Relief Services program (MARS) includes the FTC rule banning providers of mortgage foreclosure rescue and loan modifications from collecting fees until homeowners have an acceptable written offer.
  - FTC Chairman Jon Leibowitz stated:

    "Banning the collection of up-front fees will protect homeowners from being victimized. This is especially important at a time when so many people are behind on their mortgages or facing foreclosure."
- Provisions
  - The following information must be clearly and prominently disclosed upfront:
    - The total cost
    - That they can stop using services at any time
    - There is no association with government or lender
    - Homeowner's lender may not agree to change terms of their mortgage
    - Homeowner should not be advised to stop communicating with their lender
    - No advance fees until homeowner has an offer in writing that is acceptable
    - Homeowner has right to reject offer and no fee will be charged
    - Must be in writing
    - Designed to protect the homeowner
    - Must describe all material differences between the terms of the offer and the customer's current lender
    - Homeowner has the right to stop doing business with the provider at any time and no fee will be involved
    - False or misleading claims are prohibited in advertising or communication about services or performance
    - If homeowner is advised not to pay their mortgage, homeowner must be informed that this may damage their credit rating and they could lose their home

Bank Secrecy Act/Anti-Money Laundering (BSA/AML)

- The Bank Secrecy Act, also known as the Anti-Money Laundering Act, requires financial institutions to assist U.S. government agencies to detect and prevent money laundering.
  - The FDIC has this definition for money laundering: Money Laundering involves transactions intended to disguise the true source of funds; disguise the ultimate disposition of the funds; eliminate any audit trail and make it appear as though the funds came through legitimate sources; and evade income taxes.

- Financial institutions must:
  - Keep records of cash purchases of negotiable instruments
  - File reports of cash purchases exceeding $10,000 a day
  - Report suspicious activity that might signify money laundering, tax evasion, or other criminal activities
- Currency Transaction Report
  - A Currency Transaction Report (CTR) must be used to report cash transactions in excess of $10,000 during the same business day. An amount over $10,000 can be either in one transaction or a combination thereof.

  NOTE: Authorities are usually not concerned with one CTR being filed for a consumer's account; although multiple CTR's from different institutions suggest suspicious activity.

- Monetary Instrument Log
  - The Monetary Instrument Log (MIL) must indicate cash purchases of monetary instruments in value totaling $3,000 - $10,000, such as:
    - Money orders, Cashier's checks, Traveler's checks
    - The MIL is required to be kept on record at the financial institution and readily available for an examiner's review
- Currency Transaction Report
  - The Suspicious Activity Report (SAR) will report any cash transaction where the customer appears to be avoiding the Bank Secrecy Act (BSA) reporting. The SAR is also used if the customer's actions suggest they are:
    - Laundering money
    - Violating federal criminal laws
    - Committing wire transfer fraud
    - Committing check fraud
    - Involved in mysterious disappearances

      NOTE: The customer is not to have knowledge of the SAR being filed.

Ethics Overview

- Ethics and Federal Lending Laws
  - RESPA
  - GRAMM-LEACH-BLILEY
  - TILA
  - ECOA
  - HOEPA
- Ethics in Appraisals
- Fraud in Lending
- Ethical Behavior
- Business Prospecting
- Terms used in the Mortgage Industry

Ethics

Wikipedia describes **ethics** as: A moral philosophy

Ethics addresses questions about morality

Concepts of:

- Good and evil
- Right and wrong
- Virtue and vice

Albert Schweitzer believed ethics was our concern for good behavior and we should all consider the concept of *The Golden Rule.*

Do Unto Others…

Question should be, had that action been done to me, would it have been acceptable to me? If not, then the action is probably not ethical.

The only thing you will ever control in the mortgage industry is your own reputation.

One of the major reasons for the mortgage industry meltdown can be directly tied to the greed of MLOs.

Nationally speaking, the industry has lost over 400 mortgage companies. There is no substitute for integrity.

In establishing moral guidelines you are responsible to:

- Ensure employees conduct themselves properly
- Make sure every consumer is treated fairly
- Be self-disciplined

Mortgage originators should assist and educate consumers in the home loan process.

Help them to pursue their homeownership dreams

There are those in the lending industry who choose not to follow guidelines or laws; fraudulent acts are considered a felony and could result in:

- Payment of fines and/or make financial restitution
- Serve time in prison
- Suspension or loss of professional license
- Have personal property seized

Several Federal lending laws are in place to protect the consumer:

- RESPA: Real Estate Settlement Procedures Act (Regulation X)
- ECOA: Equal Credit Opportunity Act (Regulation B)
- HOEPA: Home Ownership and Equity Protection Act (Regulation Z)
- TILA: Truth in Lending Act (Regulation Z)
- HMDA: Home Mortgage Disclosure Act (Regulation C)

Real Estate Settlement Procedures Act (RESPA) - Regulation X

- Consumer must receive certain disclosures in a timely manner
- Does not allow kickbacks that increase the cost of settlement services
- This act helps buyers be better shoppers in the home buying process

Equal Credit Opportunity Act (ECOA) - Regulation B

- Cannot discriminate based on race, color, religion, sex, national origin, disability, handicap, marital status, age, public assistance and familial status

Home Ownership and Equity Protection Act (HOEPA) - Regulation Z

- Will not allow abusive practices in refinances
- Closed-end home equity loans with high interest rates or high fees

Truth in Lending Act (TILA) - Regulation Z

- Disclose fees/costs associated with loan in a straightforward method
- Must provide disclosures within permissible time frame with truthful estimates/final figures
- Document must show: Annual Percentage Rate (APR), terms of the loan and total costs to borrower
- Must follow advertising rules

Home Mortgage Disclosure Act (HMDA) - Regulation C

- Prohibits redlining
- E - Appraisal

Ethics in Appraisals

Valuation Independence Rule [12 CFR 1026.42]- This rule applies to covered persons, including appraisers, mortgage brokers, title insurers, and real estate agents. The rule was created with the following purpose:

- Prohibit coercion and similar actions designed to cause persons who perform property valuations (appraisals) to base the appraised value of properties on factors other than independent judgment
- Prohibit persons who perform valuations and valuation management companies hired by lenders from having financial interest in the properties or the credit transactions
- Prohibit creditors from extending credit based on a valuation if the creditor has prior knowledge of any violations involving coercion or conflicts of interest
- Requires creditors or settlement service providers to file reports if they have knowledge regarding appraiser misconduct
- Requires the payment of a reasonable and customary compensation to appraisers who are not employees of the creditors or the appraisal management companies hired by the creditors.

Accurate appraisal is essential element of loan underwriting

- If property is overvalued, loan amount will be larger than it should be and lender's risk of loss is greater

In 1989, Congress passed Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)

- Provisions prompted states to pass licensing and certification legislation for appraisers

Appraisals used in “federally related” loan transactions must be:
- Prepared by state-licensed or certified appraisers
- In accordance with uniform standards of professional appraisal practice

Fraud in Lending

Fraud is a deception against another person. Shams come in the form of:
- An act
- An expression
- An omission
- A concealment
- A misrepresentation

The FBI lists two type of categories of mortgage fraud:
- Fraud for profit
- Fraud for housing

The FBI report shows the FBI’s interest in mortgage fraud schemes and enforcement measures to locate and convict those responsible for these illegal acts

Fraud in Lending: **Fraud for Profit**

Involves criminals with intent to deceive
- Individuals who do not intend to pay back loan
- Objective is to inflate the value of property
- Provide false income and credit info
- Remove the equity
- Abandon the home and payments

The fraud could involve:
- Seller
- Buyer
- Loan officer
- Appraiser
- Real estate agent
- Processor
- Underwriter

Fraud in Lending: **Fraud for Housing**

Borrower is the perpetrator
- Owns home under false pretenses
- Falsifies supporting loan documents

Four categories of Fraud for Housing
- Occupancy
- Cash to close
- Income to qualify
- Appraisal

Fraud in Lending: Straw Borrower

Imposter
- Acts like real borrower
- Allows the use of their name
- Allows the use of their credit history
- Real borrower kept secret to gain loan approval

Used in situations where the actual borrower may:
- Not have the income or credit history

- Not intend to occupy the home as a principal residence
- Not a legal alien
- Not be eligible for a special purpose loan
- Intend to use the property for flipping

Fraud in Lending: Identity Theft

Occurs when a person steals personal info from an individual to use for financial gain

- Can be used on a mortgage loan application
- Used by underhanded spouse to refi to pay off debt
- Spouse may use to finance a secret second life

Fraud in Lending: Builder Bailout

Builder has trouble moving property

- May use a relative to secure fake sale
- Could offer bargains like no money down or a silent second
- Red flags would be if the borrower:
    - Barely qualifies
    - Source of funds is questionable
    - Is affiliated with the builder

Flips

Consists of property being purchased at an inflated appraised value

- Purpose to obtain a larger loan and skim the equity off of the property
- Mislead a buyer into thinking home is worth more
- Appraiser inflates the value
- Borrowers have negative equity

<u>Loan Application Fraud</u>

Certain sections to search for fraud

- Employment information
- Years on job is consistent with age
- Assets column
- Substantial assets = ample credit
- Home sized for occupants
- Debts listed match credit report
- Property purchased from landlord or employer

Investigate any questionable items

Fraud in Lending - Income Fraud

Verification of Employment (VOE)

- If borrower is related to employer or is employer, further investigation is required
- Investigate W-2
- Lists exact earnings
- Form should be the borrower/employee copy
- A consistent font

Self-employed borrowers

- 25% or more ownership
- Ensure tax returns are signed and dated
- Address or profession is consistent with info on application
- Handwriting or font throughout return is the same
- No evidence of whiteouts
- Check stub should be checked for:
    - Company name and/or employer name is not handwritten
    - Income is listed in exact figures

- Social security number matches information on application documents
- Verify employment information by:
  - Contacting employer via telephone
  - Check telephone book for employer listing
  - Confirm tax returns via form 882

On VOD, be aware of:

- Available cash is not adequate funds to close loan
- Dollar amounts are rounded
- Significant changes in balances in short periods of time
- Borrower's name not listed on account
- Crossed out information
- Fees collected for insufficient funds

Fraud in Lending: Sales Contract Fraud

- Sales agreement should be checked by lender for validity
- Sales agreement should be specific:
  - Borrower different from purchaser
  - Sales price way below market value
  - No realtors involved
  - A second mortgage is shown
- One or more realtors handle transactions

Fraud in Lending: Appraisal Fraud

Appraisal fraud occurs when pressure is placed on appraiser to inflate values.
Sometimes individuals in the real estate industry "convince" the appraiser to embellish a value with promises of:

- Continued appraisal requests
- Cut of the illegal profits

The Valuation Independence Rule was implemented in order to further the integrity of real estate appraisals used in closed-end mortgages. Therefore, the rule prohibits coercion, mischaracterization of value, and conflicts of interest.

Inflated Appraisals

- Are used to increase the size of the loan
- Increase the risk of default to the lender
- Make it much more difficult for the borrower to refinance in the future
- Aid in equity stripping and both practices are illegal.

Fraud in Lending: Credit Report Fraud

Credit report is good source for detection of fraud:

- Social security number and all personal information should be consistent with all loan documents
- Items of concern on a credit report:
- Social Security Number is not valid
- Employment date is inconsistent
- Zero balances on all account

Fraud in Lending: Quality Control

Quality control tactics

- Personnel trained to detect and prevent fraud
- Quality control program
- Updates on compliance info
- Document checklist
- Fraud detection practices
- Red flag situations

Freddie Mac has established practices for fraud prevention on their website

- Includes a mortgage screening checklist
- FBI – Financial Crimes Report, details their focus on fraud crimes
- Financial Institution Fraud Unit identifies mortgage fraud as a principal target
- Separate forms for reporting "Origination" and "Servicing" fraud

Ethical Behavior – Consumers

- Should give true and accurate info on application
- Supply supporting docs/exact duplicates

Ethical Behavior – Appraisers

- Give "fair market value"
- Never be persuaded to give fraudulent value

Ethical Behavior – Underwriters *should assure that*

- Borrower - Unlikely to default
- Property - has enough value for loan

Ethical Behavior – Investors *should avoid*

- Straw Borrowers
- Appraisers who give false values
- Bogus supporting documents

Ethical Behavior –Warehouse Lenders *should*

- Maintain a strong screening process
- Fund only legitimate loans
- Control funds from investors

Ethical Behavior –Real Estate Licensees

- Should show honesty regarding buyer/seller
- Do not practice "money under the table"
- Document all items on the Closing Disclosure, which is provided to the borrower.

Ethical Behavior –Closing Agent

- Review documents for loan with borrower
- Ensure all charges are legitimate

Ethical Behavior –Employers

- Provide honest information regarding wages and expenses
- Self-employed borrower should provide accurate supporting documents

Ethical Behavior –Employers

National Association of Realtors®

- Strict code of Ethics & Standards of Practice
- Realtors should keep personal info regarding consumers private

  Example - 2 different relationships in a financed transaction
  - *Real estate agent/buyer*
  - *Buyer/lender*

    - *Information should only travel between each individual in that particular group*

- Realtors must take steps to ensure the privacy, security and confidentiality of customer files

Prospecting for business

The Holy Grail for mortgage loan officers is truly the consistent supply of qualified prospects.

Until the late 1990's, loan officers were allowed to, and in many settings, also required to cold call on real estate agents. By delivering donuts or daily rate sheets, mortgage loan officers associated with brokers and mortgage companies would garner the attention of realtors. They could pitch their ability to pre-qualify, price, process, and ultimately close loans within the time table established by the agents on their contracts.

Mortgage loan officers employed by the banks rarely made appearances outside of their designated work places. They relied upon the name of the bank to drive business to their desks. This is not uncommon today.

Into the late 1990's many small real estate brokers were integrated into fewer mega-brokers.

Many of the mega brokers opened mortgage broker operations within their realtor's branches. As such, the policies of open competition were discontinued in favor of "one-stop shopping". This restricted the consumer's exposure to open competition for their business and rate shopping.

The one-stop shops still limit mortgage loan officers from calling on agents in their offices. We are currently experiencing a reversal in the trend from mega real estate brokers back to a proliferation of smaller, even boutique, real estate brokerages. The smaller real estate brokers tend to have a better reputation for personalized and customized service to individuals.

Employers of new people in just about every sales position begin by asking them to put a list together of names from family and friends.

These are the cornerstone of any salesperson. Contacting them through e-mail, post, or phone is the first stop in communicating that you are looking for business and seeking to become a trusted advisor. This list should eventually incorporate previous clients and realtors. It will become the focus of advertising.

While Facebook and other social networking opportunities should not be discounted, a customized newsletter helps set you apart. A well-developed web site is complemented by a newsletter.

Personal web sites can be a very effective marketing tool in this industry.

Be sure to include your photo, information about your company, your most current newsletter, and links to past newsletters. Organize the site so that you are the focus of the page; include your biography, mission statement, and a contract for commitment to your clients; have a section on the first page to link employers' web sites, mortgage calculations, on-line applications, and current rates. There are numerous companies that can help posture your site to drive in hits and traffic that will increase business.

Strategic partners such as CPA's, investment counselors, financial planners, and attorneys are great sources of business.

By developing these relationships, you will find clients that come to you with a pre-dispositional positive attitude towards your credibility. Some of them will be instant good business while others will require additional leg work to become lendable.

By positioning yourself as a trusted and respected professional, you become a source for reliable information. These strategic partners will expect you to do your own research and they will know if you do not. An original issue to be researched frequently generates additional questions based upon facts not initially revealed or subsequently discovered. Those loan officers who do their own research rather than ask someone for a quick fix will find that their ability to give reliable advice continues to grow. As this confidence increases, so does the quality of their answers, their files, and their closings.

Many things that are considered "old school" are new again if you look for them.

There will never be a replacement for personalized service, integrity, and commitment. Don't forget that all prospecting is wasted without follow-up.

Most loan originators obtain any measure of volume through agents and the personal relationships developed by providing service. As a result, the service you sell through marketing, cold calling, and bull dog determination must be as ready, willing, and able as you are.

Advertising in Today's World

We have gone over some of the important daily activities a mortgage loan originator conducts in this business, such as completing an application, qualifying the borrower, providing certain disclosures, informing the borrower of the many costs and fees associated with obtaining a mortgage, calculating those costs and fees, understanding what is needed in order to close a mortgage loan and fund the loan, and knowing how to lawfully conduct these activities. We should also review an important part of what a mortgage loan originator can do in order to acquire business: advertising. This is a current issue that affects all mortgage loan originators, no matter the state.

Advertising can be a very important avenue for the acquisition of clientele; therefore we must discuss some of the rules in place involving advertising as a mortgage loan originator. There are numerous laws that affect advertising: SAFE Act, Equal Credit Opportunity Act, Regulation B, Truth In Lending Act, Fair Housing Act, Real Estate Settlement Procedures Act, Dodd-Frank, Consumer Protection Act, Telemarketing Sale Rule, Fair Credit Reporting Act, Gramm-Leach Bliley Act, etc…We have already discussed some of the above laws regarding advertising in other lessons; however there are certain specifics that we have not covered yet that are important considering the differing ways one can advertise as a loan originator.

There are various venues by which one can advertise. Aside from print media, online media has become increasingly popular, if not, necessary. Advertising via online media can be an easy, fast, and important tool in advertising for business in the real estate industry. To give you an idea of how many options one has for online media marketing, here is a list of some of the platforms available:

Facebook
LinkedIn
Twitter
Google +
Instagram
YouTube
Pinterest
Tumblr
Flickr
Reddit
Snapchat
Vine
Periscope
WhatsApp
Quora
StumbleUpon
Viber

This list isn't even all-inclusive. As time goes by, more platforms become available and popularized. Considering that online media, particularly social media, have become popularized in more recent years, and all sites are different with regards to how one publishes and what one publishes within them, the mortgage industry has had somewhat of a delay in determining clear guidelines for using these media for the purposes of gaining borrowers' business. For that reason, most of the regulation or rules providing guidance on how to advertise appropriately using social media or online platforms are provided at the state level rather than the federal level. That said, some federal guidance on the subject does exist.

The Equal Credit Opportunity Act prohibits creditors from discriminating based on any of the protected classes. These rules apply when advertising as well as when extending credit. Regulation N, or Mortgage Acts and Practices, issued in 2009 and enforced by the CFPB starting in 2011, provides an Advertising Final Rule that applies to those under FTC jurisdiction for advertising mortgages. The Rule states specific deceptive acts and practices that are prohibited and expresses that misrepresentation in any commercial communication is prohibited. This includes making misrepresentations of:

- the existence, number, amount or timing of minimum or required payments,
- the right of a consumer to reside in the dwelling that is subject of the mortgage credit product,

- the potential for default under the mortgage,
- the effectiveness of the mortgage in helping pay down debts,
- that the mortgage is or relates to a government benefit, endorsed, or sponsored by, or affiliated with any government program.

These rules apply to any commercial message in any medium that promotes directly or indirectly, a credit transaction. These include messages on Internet websites and social media. Regulation N expands the definition of a commercial communication to include any written or oral statement, illustration, or depiction designed to result in a sale or create interest in purchasing goods or services, whether it appears on or in certain media. Again, the term media here includes Internet network or social media application.

Regulation Z also provides rules regarding the advertisement of the extension of credit. This particular regulation imposes additional disclosures when certain trigger terms are included in the advertisement for closed-end credit [12 CFR §1026.24(d)]. Trigger terms include:

- the amount or percentage of down payment,
- the number of payments or period of repayment,
- the amount of any payment, the amount of any finance charge, and
- the annual percentage rate.

For open-end credit, Regulation Z denotes the following trigger terms:

- any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening a plan, stated as a single dollar amount or a reasonable range;
- any periodic rate used to compute the finance charge, expressed as an APR;
- the maximum annual percentage rate that may be imposed in a variable-rate plan.

Specifically regarding multiple-page advertisements and electronic advertisements, Regulation Z states that if information is provided in a table or schedule, it must be in sufficient detail and is considered a single advertisement if:

- the table or schedule is clearly and conspicuously set forth; and
- any statement of the credit terms appear anywhere else in the advertisement clearly refers the consumer to the page where the table or schedule begins. [12 CFR §1026.24(e)].

Therefore, when creating an advertisement, it is important to review for trigger terms and make sure that the proper disclosures are made available. The legal requirements regarding trigger terms relate to the "One-Click Away" Rule, which is located in the Commentary section of Regulation Z. The rule provides that additional disclosures relating to trigger terms must be located one-click away from the triggering term. Aside from providing a link to additional disclosures, the FFIEC's Section on Unfair, Deceptive, or Abusive Practice, states that messages published on social media must not be deemed unfair or misleading to the consumer. Advertisements must always be clear and never fraudulent or misleading in any way.

It is important to keep these rules in mind when advertising for business. The Consumer Financial Protection Bureau does not take a violation of the law lightly. Also important to remember is the fact that some products can be trickier to advertise than others. For instance, reverse mortgages happen to be very different from other traditional mortgage products. Though ECOA prohibits any discrimination based on age, reverse mortgages are products that solely focus on consumers 62 years of age or older. This does not mean that ECOA is being violated by offering the product, but caution must be practiced when selling and advertising such a product. Unfortunately, because of the nature of the product, it is easy to misrepresent information about it in an advertisement. So much so that within the last year the CFPB has taken action against three reverse mortgage companies for having used deceptive advertisements. The CFPB feels strongly that a mortgage product that focuses on a population of a certain age, as well as any other type of product, must be advertised clearly and honestly so as not to mislead the consumer.

As mentioned earlier, individual states are mostly responsible for providing guidance regarding how to appropriately advertise mortgage products and services via online social media sites. This guidance is valuable as mortgage loan originators are held liable for what they post online as advertisements. There are a few guidelines provided by state commissions and legislatures that are common amongst most states. For example, any advertisement should include the loan originator's NMLS ID. This guidance goes hand in hand with the federal regulation stating that advertisements cannot have the name of a different lender other than the one that has sent or created the advertisement itself [12 CFR §1026.24(i)(4)(i)(ii)]. A consumer should always know the name and license number of the licensee publishing the

advertisement. When advertising a product from a particular mortgage institution, the institution's NMLS ID should also be provided.

Where it gets a little more complicated with regards to compliance and guidance is the way in which this required information is provided in different social media platforms. On Facebook, the loan originator can simply attach their NMLS ID to the user page they use to post advertisements for their business, as all posts always include the name or title of the page where the advertisement has been published. However, Twitter is a platform that has limits on how much one post can include. Since the limit is for 140 characters, it could pose a space problem to have to include the licensee's name and NMLS ID within the post. Therefore, in some states, such as Alabama, guidelines suggest that a licensee can provide the required information outside of the advertisement so as to save space, but must include it within one click on the person's name on the account on Twitter. In other words, similar to the one-click away rule, the consumer must be able to arrive at the required information through a link via one click on the account holders' name.

Among other examples of state specific guidance on social media advertising is Vermont's provision that if an address is provided in the advertisement, it must be a licensed location. Additionally, the institution employing the individual mortgage loan originator should be responsible for overseeing any advertisements created by its employees. In most cases, appropriate oversight by the employing institution includes the establishment of a social media advertisement policy that provides guidance for advertising online. Furthermore, there should be a review of all advertisements prior to publication in order to make sure that the advertisements are in compliance with the law, whether national or state law.

Generally speaking, the FTC, the CFPB and state authorities have the right to investigate compliance regarding mortgage advertisements. It is critical that licensees practice caution in what they include in their advertisements, as they will be held liable for noncompliance with the law. Any violation could result in license suspension, revocation, and/or fines. Mortgage lending institutions should have a social media policy. It is a good idea for a licensee to become familiar with the policy governing their employer institution to avoid further risk in their advertising. The policy will include any legal disclaimers required. Furthermore, a visit to the state legislature website and a search under licensing law will enable the licensee information regarding rules and regulations provided by the individual state regarding appropriate advertising. Overall, the licensee should always be honest and clear in what they state in any advertisement. Any misrepresentation will result in disciplinary action.

TERMS USED IN MORTGAGE LENDING

Mortgage Loan Originator

- An individual who takes a residential mortgage loan application, and,
- Offers, or negotiates the terms of a residential mortgage loan for compensation or gain

Residential Mortgage Loan

- Any loan primarily for personal, family, or household use
- Secured by a mortgage, deed of trust, or other type of security interest on a dwelling

Retail lending:

- The traditional way
- Buyer applies to Acme Bank
- Loan originator who works with buyer is a loan officer employed by Acme
- Loan officer submits application to Acme's underwriting department
- If approved, Acme funds loan

Wholesale lending:

- Buyer applies to Zenith Mortgage
- Zenith, acting as an intermediary, may be:
- A loan correspondent processing the loan on behalf of a large national lender, MegaBank
- A mortgage broker submitting the application to one or more lenders, including MegaBank
- By lending indirectly, through local loan correspondents or mortgage brokers, wholesale lenders reduce their overhead
- They don't have to pay for office space or have employees in every place they make loans

Loan correspondents

- Make loans for large investors, such as life insurance companies, pension funds, or wholesale lenders

- Correspondent may handle entire origination process and underwriting, but loan funds ultimately come from the investor or wholesale lender
- Local lending institutions and mortgage companies often act as loan correspondents

Mortgage broker:
- Only a go-between, not a lender
- Brings borrowers and lenders together in exchange for a commission
- Helps home buyer choose lender(s) and submit application(s)
- May provide preliminary approval based on lender's underwriting rules
- But doesn't actually underwrite, approve, or fund loan, as a general rule

Table funded loan
- Creates the impression that the mortgage broker is the lender
- Mortgage broker designated as originating lender in loan documents
- Loan actually funded by wholesale lender "at the closing table"
- At closing, broker assigns loan rights to true lender, receives service release premium
- Raises consumer protection issues

Adverse action: Rejection or denial usually influenced by a consumer report or when an unfavorable credit decision is made.

Aliases: Other names a person is known by or has gone by

Amortization: The paying off of debt in regular installments, or payments of principal and interest, over a period of time to gradually reduce funds owed

Annual Percentage Rate – APR: Shows costs of funds over the term of the loan - includes any fees or additional costs

Application: Any request from a borrower for an offer of mortgage loan terms

Appraised Value: The dollar value of a home based on the market conditions

Arrears: A monthly payment, such as interest, that is applied to the previous month

Blanket authorization: Unlimited permission

Cash back: Funds a client receives from equity in the home

Chapter 13 Bankruptcy: Bankruptcy code that enables consumer to repay something to their creditors over time, thereby allowing credit obligations to become current

Charged off accounts: Used by creditors for uncollectible debts that are considered a loss. Consumer remains responsible for debt and the credit report will carry it for seven years

Child support judgment: Court order that provides for the collection of past or current monetary support or health insurance for a child

Civil and small claim judgment: An action taken against someone in a court of law to recover debt, damages or property

Collateral: Property accepted as security for a mortgage loan or other debt

Collection accounts: Unpaid funds placed into an account until the debts are satisfied

Compliance: Rules or laws that must be followed

Consolidate: To combine all debts into one debt

Consumer: A cardholder or natural person to whom consumer credit is offered or extended

Conventional loan program: A loan that is not VA or FHA

Cost of credit: Amount consumer must pay to acquire a loan, usually referred to as fees or charges

Creditor: Person or business money is owed to

Deed of Trust: A legal instrument in place of a mortgage to secure payment of a promissory note

Default: Foreclosure

Derogatories: Unfavorable credit ratings

Detached building: A building that stands freely on its own with no other units attached to it

Discharge papers: Military documents given to veteran upon separation of active duty, stating under what category the veteran was discharged – **DD214** form

Disclose: To reveal information to someone

Disclosures: Documents that reveal to consumer the arrangement they are about to enter into

Discrimination: To go against a person unfairly

Divorce decree: Document showing the settlement between the parties in a divorce

Entity: An individual or unit

Equity: The value of a property minus any mortgage balances or liens

Escrow: Money placed in a special savings account to pay property taxes and insurances

Federal benefits: Items such as health care and financial assistance provided by the Federal Government

Federal Trade Commission – FTC: An independent agency of the U.S. Government responsible for keeping American business competition fair

Federally related residential loan: Includes any loan, except for temporary financing, which is secured by a first or subordinate lien on residential, 1-4 family real properties

Full legal names: Complete name of the borrower, first, middle, last, and maiden names

Government backed: Insured by HUD or another governmental agency

Gross Monthly Income – GMI: The total amount of funds received by an employee before deductions

Guarantees: Assumes responsibility for repayment of the debt

Guidelines: Rules to be followed

Homestead exemption: Causes the assessed value of a primary residence to be reduced to calculate property taxes

Identity fraud: When someone impersonates an unknowing consumer and incurs debts in the unknowing party's name

Incentive pay: Money paid for specific performance

Installment debt: Regular payments of principal and interest for a financial debt to a lender

Institutions: A financial organization that lends money to individuals

Interim: The time during the construction of a home

Interim interest: Money collected from the date of closing through the end of that same month

Investor: Person who commits money for a financial return

Judgment: A decision of a court of law stating one person is indebted to another

Legal description: Describes a piece of property using specific distances and landmarks

Legal holiday: A holy or sacred day or festival permitted by law as a day of exemption from labor

Lien: A claim against a property for the payment of a debt

Loan to value ratio – LTR or LTV: The loan amount expressed as a percent of either the purchase price or appraised value

National origin: The country of an individual's birth or of their ancestry

Negligent misrepresentation: Careless falsification

Paid finance charge: Those charges that were not used to purchase the home but were used in connection with the closing of the loan

Parcel: A piece of land

Pension: A retirement plan

Permanent loan: The loan the client will have for the term of the loan; usually pays off the construction loan

Public Sector Investor: A person or company who purchases an area for use by all people

Ratios: Numbers that determine a borrower's ability to pay back a loan based on their house payment and other monthly debt

Real estate appraiser: An individual, usually hired by a lender, to give an estimate of value (dollar amount) on a property

Registry: The Nationwide Mortgage Licensing System and Registry, or NMLS.

Rescission: The ability to revoke or cancel

Residences: A person's dwellings

Schedules: Attachments on tax returns

Seasonal work: Employment only during certain times of the year

Seasoned: Funds in a bank account for the last three months

Second home: A residence other than the primary

Secondary market: A market where existing mortgages are bought and sold

Securities: Something given as a pledge of repayment

Self-employed: Individual who works for himself or herself

Separate Maintenance: An allowance made by one spouse to the other under a deed of separation

Settlement charges: Costs incurred from the closing attorney

Settlement services: Assistance involved in the full loan transaction from application to closing

Settlement Statement: Document provided at closing which details costs from and to both buyer and seller. Also known as a HUD-1 or a HUD-1A.

Shareholder: Individuals who own stock in a company and also own the company itself

Social Security Awards Letter: States the income the borrower will receive from Social Security

Starter home: The first home a family lives in

Subordinate position: A position taken when an additional lien securing the property is filed while the existing lien remains and is not paid off

Tax lien: A claim against a property for non-payment of taxes.

Term: Length of time

Time sensitive: Due within a certain number of days

Title: Legal right to possess

Traditional underwriting criteria: Guidelines set forth by FNMA or Freddie Mac

Underwriter: Person who gives the credit decision about a loan file

Unique Identifier: Number or identifier that will permanently identify locate a registered mortgage loan officer

LESSON SUMMARY

Ethics

- A moral philosophy
- In establishing moral guidelines you are responsible to:
  - Ensure employees conduct themselves properly
  - Make sure every consumer is treated fairly
  - Be self-disciplined
- Mortgage originators should assist and educate consumers in the home loan process
- Failure to uphold ethics could result in:
  - Payment of fines and/or make financial restitution
  - Serve time in prison
  - Suspension or loss of professional license
  - Have personal property seized

Federal lending laws

- **Real Estate Settlement Procedures Act (RESPA) – Regulation X**
  - Consumer must receive certain disclosures in a timely manner
  - Does not allow kickbacks that increase the cost of settlement services
  - This act helps buyers be better shoppers in the home buying process
- **Equal Credit Opportunity Act (ECOA) - Regulation B**
  - Cannot discriminate based on:
    - race,
    - color,
    - religion,
    - sex,
    - national origin,
    - disability,
    - handicap,
    - marital status,
    - age,
    - public assistance, and
    - familial status
- **Home Ownership and Equity Protection Act (HOEPA) - Regulation Z**
  - Will not allow abusive practices in refinances
  - Closed-end home equity loans with high interest rates or high fees

- **Truth in Lending Act (TILA) - Regulation Z**
    - Disclose fees/costs associated with loan in a straightforward method
    - Must provide disclosures within permissible time frame with truthful estimates/final figures
    - Document must show: Annual Percentage Rate (APR), terms of the loan and total costs to borrower
    - Must follow advertising rules
- **Home Mortgage Disclosure Act (HMDA) - Regulation C**
    - Prohibits redlining
    - E - Appraisal

Ethics in appraisals

- **Valuation Independence Rule**
    - Created to further the integrity of the home appraisal practice in the mortgage finance industry by prohibiting certain behavior of the people involved in the appraisal process.
- If property is overvalued, loan amount will be larger than it should be and lender's risk of loss is greater
- In 1989, Congress passed Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA)
- Provisions prompted states to pass licensing and certification legislation for appraisers
- Appraisals used in "federally related" loan transactions must be:
    - Prepared by state-licensed or certified appraisers
    - In accordance with uniform standards of professional appraisal practice
- "Federally related" loan is one made by any bank or savings and loan association that is regulated or insured by federal government:
    - Prepared by state-licensed or certified appraisers
    - In accordance with uniform standards of professional appraisal practice

Fraud in lending

- Fraud is a deception against another person.
- Shams come in the form of: An act, expression, omission, concealment or misrepresentation.
- The FBI lists two type of categories of mortgage fraud:
- Fraud for profit and Fraud for housing

Fraud for profit

- Involves criminals with intent to deceive
    - Individuals who do not intend to pay back loan
    - Objective is to inflate the value of property
    - Provide false income and credit info
    - Remove the equity
    - Abandon the home and payments
- The fraud could involve: Seller, Buyer, Loan officer, Appraiser, Real estate agent, Processor, Underwriter, or several of these parties colluding to defraud.

Fraud for housing

- Borrower is the perpetrator
    - Owns home under false pretenses
    - Falsifies supporting loan documents
- Four categories of Fraud for Housing: Occupancy, Cash to close, Income to qualify and/or Appraisal

Straw borrower

- Imposter
    - Acts like real borrower
    - Allows the use of their name
    - Allows the use of their credit history
    - Real borrower kept secret to gain loan approval
- Used in situations where the actual borrower may:
    - Not have the income or credit history
    - Not intend to occupy the home as a principal residence
    - Not be a legal alien
    - Not be eligible for a special purpose loan
    - Intend to use the property for flipping

Identity theft

- Occurs when a person steals personal info from an individual to use for financial gain
  - Can be used on a mortgage loan application
  - Used by underhanded spouse to refi to pay off debt
  - Spouse may use to finance a secret second life

Builder bailout

- Builder has trouble moving property
  - May use a relative to secure fake sale
  - Could offer bargains like no money down or a silent second
  - Red flags would be if the borrower: Barely qualifies, the source of funds is questionable or is affiliated with the builder

Flips

- Property being purchased at an inflated appraised value
  - Purpose to obtain a larger loan and skim the equity off of the property
  - Mislead a buyer into thinking home is worth more
  - Appraiser inflates the value
  - Borrowers have negative equity

Loan application fraud

- Certain sections to search for fraud
  - Employment information
  - Years on job is consistent with age
  - Assets column
  - Substantial assets = ample credit
  - Home sized for occupants
  - Debts listed match credit report
  - Property purchased from landlord or employer

Income fraud

- Verification of Employment
  - If borrower is related to employer or is employer, further investigation is required
  - Investigate W-2
  - Lists exact earnings
  - Form should be the borrower/employee copy
  - A consistent font
- Self-employed borrowers
  - 25% or more ownership
  - Ensure tax returns are signed and dated
  - Address or profession is consistent with info on application
  - Handwriting or font throughout return is the same
  - No evidence of whiteouts
  - Check stub should be checked for: Company name and/or employer name is not handwritten, Income is listed in exact figures and SSN matches all documents

Asset fraud

- On VOD, be aware of:
  - Available cash is not adequate funds to close loan
  - Dollar amounts are rounded
  - Significant changes in balances in short periods of time
  - Borrower’s name not listed on account
  - Crossed out information
  - Fees collected for insufficient funds

Sales contract fraud

- Sales agreement should be checked by lender for validity
- Sales agreement should be specific:
  - Borrower different from purchaser
  - Sales price way below market value

- No realtors involved
- A second mortgage is shown
- One or more realtors handle transactions

Appraisal fraud

- Appraisal fraud occurs when pressure is placed on appraiser to inflate values.
- Sometimes individuals in the real estate industry “convince” the appraiser to embellish a value with promises of:
  - Continued appraisal requests
  - Cut of the illegal profits
- Lender should scrutinize appraisal’s contents looking for signs of an appraisal scam, such as:
  - Subject property value has increased when others in same area are declining
  - Comparables do not match subject
  - No data source for the comps to show recordation information
  - Photo of subject show “For Sale” or “For Rent” sign in front yard

Credit report fraud

- Credit report is good source for detection of fraud:
  - Social security no. and all personal information should be consistent with all loan docs
  - Items of concern on a credit report:
  - SS# is not valid
  - Employment date is inconsistent
  - Zero balances on all account

Quality control

- Quality control tactics
  - Personnel trained to detect and prevent fraud
  - Quality control program
  - Updates on compliance info
  - Document checklist
  - Fraud detection practices
  - Red flag situations
- Freddie Mac has established practices for fraud prevention on their website
  - Includes a mortgage screening checklist
  - FBI – Financial Crimes Report, details their focus on fraud crimes
  - Financial Institution Fraud Unit identifies mortgage fraud as a principal target
  - Separate forms for reporting “Origination” and “Servicing” fraud

Ethical Behavior – Consumers

- Should give true and accurate info on application
- Supply supporting docs/exact duplicates

Appraisers

- Give “fair market value”
- Never be persuaded to give fraudulent value

Underwriters should assure that

- Borrower - Unlikely to default
- Property - has enough value for loan

Ethical Behavior – Investors should avoid

- Straw Borrowers
- Appraisers who give false values
- Bogus supporting docs

Warehouse Lenders

- Maintain a strong screening process
- Fund only legitimate loans
- Control funds from investors

Real Estate Licensees

- Should show honesty regarding buyer/seller
- Do not practice “money under the table”
- Document all items on the Closing Disclosure, which is provided to the borrower

Closing Agent

- Review documents for loan with borrower
- Ensure all charges are legitimate

Employers

- Provide honest information regarding wages and expenses
- Self-employed borrower should provide accurate supporting documents

National Association of Realtors®

- Strict code of Ethics & Standards of Practice
- Realtors should keep personal info regarding consumers private
- Realtors must take steps to ensure the privacy, security and confidentiality of customer files

Prospecting for business

- The Holy Grail for mortgage loan officers is truly the consistent supply of qualified prospects.
- Put a list together of names from family and friends
- Personal website and social media
- Strategic partners such as CPA’s, investment counselors, financial planners, and attorneys are great sources of business.
- Provide personalized service based on integrity, and commitment
- Develop strong follow-up skills
- Laws that affect advertising as a mortgage loan originator

Overview
Who is Fannie Mae/Freddie Mac?
Secondary Market Agencies
Mortgage Backed Securities
History
On the Brink of Insolvency
Private Mortgage Insurance (PMI)
Homeowners Protection Act of 1998 - HPA
Flood Insurance

Who is Fannie Mae/Freddie Mac?

Fannie Mae (Federal National Mortgage Association – FNMA) was established in 1938 as a response to the effects of the Great Depression on the housing market. Functionally Fannie Mae buys loans from banks and then sell those loans to investors.

Originally a government agency it became a private company in 1968.

Freddie Mac (Federal Home Loan Mortgage Corporation) was established in 1970. Like their secondary mortgage market counterpart Fannie Mae, they also buy loans from banks and then resell those loans to investors.

Freddie Mac's intended purpose was to break up Fannie Mae's monopoly in the secondary mortgage industry.

Who is Ginnie Mae?

Ginnie Mae, the Government National Mortgage Association, or GNMA, is a corporation wholly owned by the federal government and operating within the Department of Housing and Urban Development (HUD).

Ginnie Mae guarantees investors the timely payment of principal and interest on MBS derived from loans insured or guaranteed by FHA and the VA.

Unlike Fannie Mae and Freddie Mac, Ginnie Mae does not purchase mortgages.

Secondary Market Agencies

Fannie Mae and Freddie Mac are government-sponsored enterprises (GSE), chartered by Congress and supervised by HUD

Fannie Mae: Federal National Mortgage Association – FNMA

Freddie Mac: Federal Home Loan Mortgage Corporation – FHMLC

Ginnie Mae: Government National Mortgage Association – GNMA
Fannie and Freddie less discussed little sister, Ginnie Mae, is a bit different in the fact that she is a government-owned corporation within the U.S. Department of Housing and Urban Development (HUD)

- Secondary market agencies also issue mortgage-backed securities (MBS)
- Mortgage-backed security is an investment instrument with pools of mortgage loans as collateral. Investor returns are monthly payments from the secondary market agency.
- Investors prefer MBSs to actual mortgage loans for several reasons:
    - More liquid than mortgages
    - Can be purchased in small denominations
    - Working with borrowers to prevent default

Fannie Mae

*Fannie Mae **takes mortgage loans** from banks, in order to repackage them in the form of **mortgage-backed securities**. There are limits on the types and size of loans it can guarantee.*

*Those **mortgage-backed securities are sold** to investors, and Fannie Mae guarantees that the loans will be repaid.*

*Fannie Mae also **borrows money from the debt markets**, traditionally at a rate much lower than other banks, and uses it to **buy mortgages it holds as its own investments**. By buying these loans, Fannie injects new money into the housing economy.*

MBS Guaranties
- Agency subtracts guaranty fee before passing payments to investor
- A servicing fee is deducted for the lender servicing the loan
- Loan servicing includes:
    - Processing payments
    - Dealing with collection problems
    - Working with borrowers to prevent default

MBS Trading
- MBSs can be purchased directly from Fannie Mae, Ginnie Mae, or Freddie Mac when first issued

Private-Label Securities
- Private firms also buy and pool mortgage loans and issue securities called "private-label mortgage-backed securities"
- These firms are often subsidiaries of:
    - Investment banks
    - Financial institutions
    - Home builders

Functions of Secondary Market

- The secondary market serves two important functions for real estate industry:
    - Makes funds available for mortgage loans, promoting home ownership
    - Moderates adverse effects of real estate cycles, providing some stability

Example

Acme S&L has a long list of prospective borrowers who need funds for the purchase of homes. Acme's problem is that all of it savings deposits are already tied up in mortgage loans. But by selling its existing mortgage loans on the secondary market, Acme can get the funds it needs to make new loans and satisfy its customers. The effects of a tight money market in Acme's local community are moderated because Acme can get funds in the national secondary market.

If Acme S&L had a surplus of deposits instead of a shortfall, it might have a difficult time finding enough local investments to absorb its funds. In this case, Acme could buy mortgages or mortgage-backed securities on the secondary market - - in essence, investing in real estate located all over the country, without ever seeing the properties it is helping to finance or meeting the borrowers who are buying them.

- Availability of funds in the primary market depends on the secondary market
- Mortgage funds flow between the two markets

- Funds given to home buyer by lender in primary market
  - Mortgage sold to secondary market agency
  - Agency pools mortgages and sells as MBS, which frees agency funds to purchase more mortgages
  - As agencies buy more mortgages, more funds are available for primary market lenders to make more loans
- If a lender doesn't sell a loan on the secondary market, it is kept in portfolio.
  - Only a small percentage of loans are kept in portfolio today

Standardized Underwriting

- Loans sold to secondary market agency must comply with agency's underwriting rules:
  - Apply when qualifying loan applicants
  - Agencies have uniform application forms, appraisal forms and mortgage documents
- If lender violates agency rules, lender may be required to buy loan back from agency
- Guidelines and uniform documents are a quality control system to ensure the quality of loans purchased by secondary market agencies

Inspires investor confidence & strongly influences primary market lenders

Historical Background

Fannie Mae
- Created in 1938 by federal government in response to Depression-era credit problems
- Original purpose to provide secondary market for FHA-insured loans
- 1948 – authorized to buy VA-guaranteed loans
- 1968 – reorganized as a private corporation owned by stockholders
- HUD retains limited authority over it as a Government-Sponsored Enterprise (GSE)
- Created and supervised by the federal government - Owned by private stockholders

Freddie Mac
- Created in 1970 by the Emergency Home Finance Act
  - Like Fannie Mae, it is a government-sponsored enterprise
- Original purpose: to assist savings and loan associations hit hard in 1969 recession

Ginnie Mae - *Like Fannie Mae, it is a government-sponsored enterprise*
- Established in 1968 and is wholly owned by the federal government and operates within the Dept. of Housing and Urban Development (HUD)
  - Guarantees the principal and interest payment on mortgage-backed securities issued by program participants
- Pioneered the issuance of mortgage backed securities (MBS)
- Lenders "package" similar loans together for sale to a secondary market agency. Loans must meet quality standards of the purchasing agency

Agencies Today

- Fannie Mae and Freddie Mac (the GSEs) buy conventional loans, as well as FHA and VA loans
  - GSE status gives them certain advantages and restrictions
- Restrictions/responsibilities of GSEs
  - GSEs restricted by charter to investment in residential mortgage assets
  - Required to meet affordable housing goals set by HUD
  - Must promote programs to help provide affordable home financing and rental housing

GSE's and Subprime Loans
- In 2005, Fannie Mae and Freddie Mac began buying significant numbers of subprime loans.
  - Primarily A-minus loans: this is the top layer of subprime market.
- Encouraged to do so by government, to help meet affordable housing goals.

Public Benefits from GSEs

- Before current crisis, many industry analysts credited Fannie Mae and Freddie Mac with:
  - Dramatically increasing home ownership rates
  - Reducing mortgage interest rates
  - Enabling lenders to offer larger variety of mortgage loan products
  - Cutting down the time and cost involved in obtaining a mortgage
  - Making underwriting practices in industry sounder and fairer
  - Providing mortgage lenders access to global capital markets as a source of funds

GSEs and the Economic Crisis

- Before current crisis, critics argued:
  - Claims about how much GSEs benefited public were exaggerated
  - GSEs were too large and had too much power over mortgage industry
  - GSEs limited opportunities for other investors and enterprises
  - GSEs weren't being run well (2004 accounting scandals)
- By 2007, almost one-third of Fannie Mae and Freddie Mac's new purchases and guaranties involved riskier loans
- As the subprime crisis began to unfold, house prices dropped and foreclosure rates rose sharply
- Caused GSEs' stock prices to plunge, further undermining their financial stability

Conservatorship

- Housing and Economic Recovery Act of 2008 - (HERA) created new independent regulatory agency to oversee GSEs [Housing and Economic Recovery Act of 2008/Division A/Title I]
- Federal Housing Finance Agency [1311 (a)(b)(1)(2)(c)]
  - FHFA was the result of a legislative merger of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB) and the U.S. Department of Housing and Urban Development (HUD) GSE mission team
  - FHFA regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks [1311 (b)(2)]
- September 2008: to prevent economic consequences of GSE failure, FHFA placed both agencies in a conservatorship [1313 (All)]
- Essentially a government takeover
- Terms of GSE conservatorship:
  - Top management replaced
  - Voting power of shareholders and directors terminated
  - To maintain solvency of GSEs, government would:
  - Buy securities from the GSEs
- Buy up to $100 billion of stock in each GSE

Federal Guaranty

- In Ginnie Mae securities have always been backed by "full faith and credit" of U.S. government
  - Ginnie Mae is a government agency
  - Investors won't lose their invested capital in an economic crisis
- In contrast, securities issued by Fannie Mae and Freddie Mac didn't carry a government guaranty
  - A GSE's private guaranty ensured only that investors would receive timely payment in spite of borrower default
  - No protection against financial crisis affecting the GSEs themselves
  - Guaranty usually worthless if guarantor bankrupt
- However, investors believed government would feel obligated to intervene if Fannie Mae or Freddie Mac became insolvent
  - Investors therefore viewed GSE mortgage-backed securities as carrying implicit government guaranty
- After conservatorship announced, government confirmed federal guaranty
  - GSEs were "too big to fail"
  - Default on payments to MBS investors could have drastic effect on national economy

Private Mortgage Insurance (PMI)

When a borrower applies less than 20 percent towards a down payment on a home, the lender will require private mortgage insurance - PMI.

The less the buyer puts down, the higher the risk to the lender. This is a policy that will protect the lender in the event of default on the mortgage loan.

- Borrower pays the premium
- Lender is the beneficiary

There are two type of mortgage insurers:

- Government – Federal Housing Administration - FHA
- Private – Corporations will underwrite

EXAMPLE CALCULATION

- Purchase price and appraised value = $200,000
- Borrower makes a 10% down payment
- PMI company charges an annual premium of 0.49%
- Annual premium will be $882
- $882 is divided by 12 months
- Borrower will pay $73.50 for PMI insurance
    - This amount is applied to their escrow account
        - Calculation:
            - $200,000 minus 10% down payment = Loan amount of $180,000
            - $180,000 x 0.0049 = $882 divided by 12 = $73.50

Homeowners Protection Act of 1998 - HPA

Allows borrowers with conventional mortgages signed on or after July 29, 1999, to request PMI cancellation once the value reaches 80%.

The borrower must be current on the loan and have a good payment history. The lender may require an appraisal of the property to ensure it has not declined in value. The lender is required to notify the borrower at closing how many years and months it will take to reach an 80 LTV.

Also, the HPA rules require PMI must be automatically removed once the balance of the loan has been reduced to 78 percent of the original value (defined as the lesser of the purchase price or appraised value). Borrower must be current on their mortgage payments.

On an FHA loan the following will apply for the Mortgage Insurance Premium or MIP.

15-year loan term for FHA loans sized $625,000 or less:

- 15-year loan terms with LTV over 90%: 0.70 percent annual MIP
- 15-year loan terms with LTV under 90%: 0.45 percent annual MIP

30-year loan term for FHA loans sized $625,000 or less:

- 30-year loan terms with LTV over 95%: 0.85 percent annual MIP
- 30-year loan terms with LTV under 95%: 0.80 percent annual MIP

Note: Loans above $625,000 are subject to an additional 25 basis point (0.25%) annual FHA MIP increase.

Note: FHA will remove annual MIP after 11 years for homeowners whose beginning LTV is 90% or less. All other FHA loans pay FHA MIP for as long as the loan is active (not paid-in-full or refinanced away).

Flood Insurance

The Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program (NFIP) allowing homeowners to purchase flood insurance. Flood insurance can also be purchased by business owners and renters. It protects buildings, dwellings and their contents.

It is important to note that a homeowner's policy will not cover flooding; flood insurance is the borrower's only protection.

If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan. Those homes located in an SFHA have a 1% or greater chance of flooding in any given year. This is comparable to a 26% chance of flooding during a 30 year mortgage. Although not required, those outside of the SFHA can carry flood insurance for added protection.

These are the geographic areas (flood zones) that FEMA has defined according to varying levels of flood risk. There will be different zones to identify the type of flooding for that area.

- **B , X and C - Moderate to Low Risk Areas - Insurance available, but not a requirement**
- **A, AE, A1-30, AH, AO, AR, A99, V, VE, V1-30 - High Risk Areas - Mandatory flood insurance requirements**
- **V, VE, V1-30 - High Risk Coastal areas - Mandatory flood insurance requirements**
- **D - High Risk Coastal areas - Mandatory flood insurance requirements**

Freddie Mac/Fannie Mae and Today's Mortgage Origination

In order to make sure that loan applications are meeting Freddie Mac and Fannie Mae loan standards, both GSE's have created systems of automated underwriting. Desktop Underwriter is governed by Fannie Mae and the Loan Prospector is governed by Freddie Mac.

Mortgage loan originators use these to help efficiently determine whether a loan application meets Fannie Mae and Freddie Mac standards prior to sending them to underwriting. The system enables mortgage loan officers to submit the applications and receive a "findings report."

- On Fannie Mae's Desktop Underwriter, the findings report will state that an application is "Approve/Eligible," if the loan application meets Fannie Mae's standards
- On Freddie Mac's Loan Prospectors, the findings report will state "accept" if the loan application meets Freddie Mac's standards.

Generally, mortgage lending companies will use one program or the other, rather than both automated underwriting systems.

In a previous lesson we discussed that trended credit data will be included in credit reports and that this data will not affect consumer's credit scores, however, it will give a better and clearer behavior pattern of a consumer to a creditor. In line with this, Fannie Mae's Desktop Underwriter's (Version 10.0) includes the analysis of trended data.

Fannie Mae's Desktop Underwriter will use trended credit data to determine whether the consumer is creditworthy and is able to manage revolving credit accounts. A consumer that generally does not use up a large percentage of their revolving credit limit and pays off their revolving balance regularly will be considered low risk with regards to a mortgage loan. Consumers that use a high percentage of their credit limit and only make their minimum monthly payments will still be considered creditworthy, but will be considered a higher risk than those that pay off their revolving debt regularly.

It is believed that trended credit data will improve the accuracy of FNMA's Desktop Underwriter's risk assessment and will also benefit those borrowers that usually pay off their revolving debt as they will have a better chance of receiving an approval recommendation form the automated system.

LESSON SUMMARY

Fannie Mae

- Fannie Mae (Federal National Mortgage Association – FNMA) was established in 1938 as a response to the effects of the Great Depression on the housing market. Functionally Fannie Mae buys loans from banks and then sell those loans to investors. Originally a government agency it became a private company in 1968.

Freddie Mac

- Freddie Mac (Federal Home Loan Mortgage Corporation) was established in 1970. Like their secondary mortgage market counterpart Fannie Mae, they also buy loans from banks and then resell those loans to investors.

Ginnie Mae

- Ginnie Mae, the Government National Mortgage Association, or GNMA, is a corporation wholly owned by the federal government and operating within HUD.
- Ginnie Mae guarantees investors the timely payment of principal and interest on MBS derived from loans insured or guaranteed by FHA and the VA. Unlike Fannie Mae and Freddie Mac, Ginnie Mae does not purchase mortgages.

Secondary Market Agencies

- Fannie Mae/Freddie Mac/Ginnie Mae
  - Secondary market agencies also issue mortgage-backed securities (MBS)
  - Mortgage-backed security is an investment instrument with pools of mortgage loans as collateral. Investor returns are monthly payments from the secondary market agency.
  - Investors prefer MBSs to actual mortgage loans for several reasons: More liquid than mortgages, Can be purchased in small denominations, and are guaranteed by the issuing agency

MBS Guaranties

- Agency subtracts guaranty fee before passing payments to investor
- A servicing fee is deducted for lender loan service
- Loan servicing includes: Processing payments, dealing with collection problems, working with borrowers to prevent default

MBS Trading

- MBSs can be purchased directly from Fannie Mae, Ginnie Mae, or Freddie Mac when first issued.

Private-Label Securities

- Private firms also buy and pool mortgage loans and issue securities called "private-label mortgage-backed securities"
- These firms are often subsidiaries of: Home builders, Financial institutions, Investment banks, Home builders

Functions of Secondary Market

- The secondary market serves two important functions for real estate industry:
  - Makes funds available for mortgage loans, promoting home ownership
  - Moderates adverse effects of real estate cycles, providing some stability
  - Funds given to home buyer by lender in primary market
- Availability of funds in the primary market depends on the secondary market
- Mortgage funds flow between the two markets
  - Moderates adverse effects of real estate cycles, providing some stability
  - Agency pools mortgages and sells as MBS, which frees agency funds to purchase more mortgages
  - As agencies buy more mortgages, more funds are available for primary market lenders

Standardized Underwriting

- Loans sold to secondary market agency must comply with agency's underwriting rules:
  - Apply when qualifying loan applicants
  - Agencies have uniform application forms, appraisal forms and mortgage documents
- If lender violates agency rules, lender may be required to buy loan back from agency
- Guidelines and uniform documents are a quality control system to ensure the quality of loans purchased by secondary market agencies

Fannie Mae History

- Created in 1938 by federal government in response to Depression-era credit problems
- Original purpose to provide secondary market for FHA-insured loans
- 1948 – authorized to buy VA-guaranteed loans
- 1968 – reorganized as a private corporation owned by stockholders
- HUD retains limited authority over it as a Government-Sponsored Enterprise (GSE)

Freddie Mac History

- Created in 1970 by the Emergency Home Finance Act
  - Like Fannie Mae, it is a government-sponsored enterprise
- Original purpose: to assist savings and loan associations hit hard in 1969 recession

Ginnie Mae History

- Established in 1968 and is wholly owned by the federal government and operates within the Dept. of Housing and Urban Development (HUD)
  - Guarantees the principal and interest payment on mortgage-backed securities issued by program participants

- Pioneered the issuance of mortgage backed securities (MBS)
- Lenders "package" similar loans together for sale to a secondary market agency. Loans must meet quality standards of the purchasing agency

Agencies today

- Fannie Mae and Freddie Mac (the GSEs) buy conventional loans, as well as FHA and VA loans. GSE status means advantages and restrictions
- Restrictions/responsibilities of GSEs
    - GSEs restricted by charter to investment in residential mortgage assets
    - Required to meet affordable housing goals set by HUD
    - Must promote programs to help provide affordable home financing and rental housing

GSE's and Subprime Loans

- In 2005 Fannie Mae and Freddie Mac began buying significant numbers of subprime loans. Mostly A-minus loans: top layer of subprime market
- Encouraged to do so by government, to help meet affordable housing goals.

Public Benefits from GSEs

- Dramatically increasing home ownership rates
- Reducing mortgage interest rates
- Enabling lenders to offer larger variety of mortgage loan products
- Cutting down the time and cost involved in obtaining a mortgage
- Making underwriting practices in industry sounder and fairer
- Providing mortgage lenders access to global capital markets as a source of funds

GSEs and the Economic Crisis

Before current crisis, critics argued:

- Claims about how much GSEs benefited public were exaggerated
- GSEs were too large and had too much power over mortgage industry
- GSEs limited opportunities for other investors and enterprises
- GSEs weren't being run well (2004 accounting scandals)

On the Brink of Insolvency

- By 2007, almost a third of Fannie Mae and Freddie Mac's new purchases and guaranties involved riskier loans
- As subprime crisis began to unfold, house prices dropped and foreclosure rates rose sharply
- Caused GSEs' stock prices to plunge, further undermining their financial stability

Conservatorship

- Housing and Economic Recovery Act of 2008 - (HERA) created new independent regulatory agency to oversee GSEs [Housing and Economic Recovery Act of 2008/Division A/Title I]
- Federal Housing Finance Agency [1311 (a)(b)(1)(2)(c)]
    - FHFA was the result of a legislative merger of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB) and the U.S. Department of Housing and Urban Development (HUD) GSE mission team
    - FHFA regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks [1311 (b)(2)]
- September 2008: to prevent economic consequences of GSE failure, FHFA placed both agencies in a conservatorship [1313 (All)]
- Essentially a government takeover
- Terms of GSE conservatorship:
    - Top management replaced
    - Voting power of shareholders and directors terminated
    - To maintain solvency of GSEs, government would:
    - Buy securities from the GSEs
    - Buy up to $100 billion of stock in each GSE

Federal Guaranty

- Ginnie Mae securities have always been backed by "full faith and credit" of U.S. government
    - Ginnie Mae is a government agency
    - Investors won't lose their invested capital in an economic crisis

- In contrast, securities issued by Fannie Mae and Freddie Mac didn't carry a government guaranty
    - A GSE's guaranty ensured only that investors would receive timely payment in spite of borrower default
    - No protection against financial crisis affecting the GSEs themselves
    - Guaranty usually worthless if guarantor bankrupt
- Investors believed government would feel obligated to intervene if Fannie Mae or Freddie Mac became insolvent
    - Investors therefore viewed GSE mortgage-backed securities as carrying implicit government guaranty
- After conservatorship announced, government confirmed federal guaranty
    - GSEs were "too big to fail"
    - Default on payments to MBS investors could have drastic effect on national economy

PMI

- When a borrower applies less than 20 percent towards a down payment on a home, the lender will require private mortgage insurance - PMI.
- The less the buyer puts down, the higher the risk to the lender. This is a policy that will protect the lender in the event of default on the mortgage loan.
    - Borrower pays the premium
    - Lender is the beneficiary
- There are two type of mortgage insurers:
    - Government – Federal Housing Admin- FHA
    - Private – Corporations will underwrite

Homeowners Protection Act of 1998 - HPA

- Allows borrowers with conventional mortgages signed on or after July 29, 1999, to request PMI cancellation once the value reaches 80%.
- The borrower must be current on the loan and have a good payment history. The lender may require an appraisal of the property to ensure it has not declined in value. The lender is required to notify the borrower at closing how many years and months it will take to reach an 80 LTV.
- Also, the HPA rules require PMI must be automatically removed once the balance of the loan has been reduced to 78 percent of the original value (defined as the lesser of the purchase price or appraised value).

FHA/MIP

- **15-year loan term for FHA loans sized $625,000 or less:**
    - 15-year loan terms with LTV over 90%: 0.70 percent annual MIP
    - 15-year loan terms with LTV under 90%: 0.45 percent annual MIP
- **30-year loan term for FHA loans sized $625,000 or less:**
    - 30-year loan terms with LTV over 95%: 0.85 percent annual MIP
    - 30-year loan terms with LTV under 95%: 0.80 percent annual MIP

Note: Loans above $625,000 are subject to an additional 25 basis point (0.25%) annual FHA MIP increase.
Note: FHA will remove annual MIP after 11 years for homeowners whose beginning LTV is 90% or less. All other FHA loans pay FHA MIP for as long as the loan is active (not paid-in-full or refinanced away).

MIP Removal - FHA will remove annual MIP after 11 years for homeowners whose beginning LTV is 90% or less. For everyone else, including those making a 3.5% down payment, FHA will charge MIP for the remainder of the loan's term.

Flood insurance

- The Federal Emergency Management Agency (FEMA) manages the National Flood Insurance Program (NFIP) allowing homeowners to purchase flood insurance. Flood insurance can also be purchased by business owners and renters. It protects buildings, dwellings and their contents.
- A standard homeowner's policy will not cover flooding; flood insurance is the borrower's only protection.
- If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan. Those homes located in an SFHA have a 1% or greater chance of flooding in any given year. This is comparable to a 26% chance of flooding during a 30 year mortgage. Although not required, those outside of the SFHA can carry flood insurance for added protection.
    - FEMA Zones B, X and C: Moderate to Low Risk Areas - Insurance available, but not a requirement
    - FEMA Zones A, AE, A1-30, AH, AO, AR, A99: High Risk Areas - Mandatory flood insurance requirements
    - FEMA Zones V, VE, V1-30: High Risk Coastal areas - Mandatory flood insurance requirements
    - FEMA Zones D: Area of undetermined but possible flood hazards

Overview

- Title and Title Insurance
- Settlement/Closing Agent
- Explanation of Documents
- Funding

Title and Title Insurance

Owner's Title Policy - Optional - Insures owner against unexpected problems with the title on their property

- Protects against title defects that:
    - Could not be found
    - Were missed during the title search
        - Errors or omissions
        - Forgery
        - Undisclosed heirs
        - Mistakes in the examination
- Some items it will not cover:
    - Violations of building and zoning ordinances
    - Restrictive covenants limiting how property can be used
    - Any conflicts with boundary lines, encroachments, etc.
- Policy is issued in the amount of the purchase price
- This is a one-time fee

Lender's Title Policy - Requirement of the lender - insures the lender against unexpected problems with title on the borrower's property. This policy protects their interest in the collateral secured by the real estate. Also guarantees the lender has a legitimate first lien against the property.

- Protects the lender up to the mortgage amount
- Paid by borrower
- One-time fee

Settlement/Closing Agent: Closing Agent

In many areas, closings are handled through escrow.

- Escrow - neutral third party who holds money and documents for buyer and seller
- Closing agent disburses purchase price and delivers deed when conditions in agreement are satisfied
- Closing agent may be:
    - Independent escrow agent
    - Employee of lender
    - Title company
    - Lawyer
    - Real estate broker

Settlement/Closing Agent: Steps in the closing process

Closing agent responsible for handling details of closing, which includes:

- Clearing liens from title
- Establishing condition of title
- Inspections and repairs
- Buyer's funds for closing
- Preparing documents and recording

Settlement/Closing Agent: Clearing Liens From Title
Any liens that would have higher priority than the new mortgage or deed of trust must be removed.

- Does not include:
  - Property tax liens
  - Special assessment liens

Settlement/Closing Agent: Inspections and Repairs

Lenders often require inspections and certain repairs made before closing. These might include:

- Pest control inspection
- Soil percolation test
- Flood hazard inspection

Settlement/Closing Agent: Documents and Buyer's Funds

- Once approved, lender forwards loan documents to closing agent
- Buyer deposits his part of transaction, such as down payment and closing costs into escrow, and signs loan documents

Settlement/Closing Agent: Impound Account

- Lenders often require buyers to make a deposit into an impound account at closing. An impound account ensures that taxes, hazard insurance, and mortgage insurance are paid on time

Settlement/Closing Agent: Hazard Insurance

- Protects property owner against damage caused by fires, severe storms, earthquakes and other natural disaster
- Usually maintained along with mortgage payments/escrow account

Settlement/Closing Agent: Flood Insurance

If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan.

- Usually maintained along with mortgage payments/escrow account

Settlement/Closing Agent: Interim Interest

- Buyer will also pay interim interest (prepaid interest) at closing
- Buyer's first monthly mortgage payment is generally not due on first day of month immediately after closing, but next month, therefore:
- Interest on mortgage is paid in arrears
  - Arrears means that interest accruing during month is paid at end of month

Example:

- Closing takes place on January 23. Buyer isn't required to make mortgage payment on February 1. Instead, first payment on loan is due on March 1. But interest continues to accrue after closing date, even though payment isn't due
- March 1 payment covers interest that accrues during February. But it doesn't cover interest accrued from January 23 to January 31
- Interim interest payment covers those 9 days of accrued interest

The Loan Estimate Document Regulation Z, 12 CFR §**1026.37 (all)**

The Loan Estimate sample is from the Consumer Financial Protection Bureau and is an example of a fixed rate mortgage
See sample at http://files.consumerfinance.gov/f/201403_cfpb_loan-estimate_fixed-rate-loan-sample-H24B.pdf

Page One

- **Title of the form** - "Loan Estimate"
- The wording will include: "Save this Loan Estimate to compare with your Closing Disclosure"
- **Date issued**
  - Date mailed or delivered to the consumer
- **Applicants**
  - Include name and address of each applicant
- **Property**
  - Address of property with zip code
    - If unavailable, use a description, example - lot number with a zip code
- **Sales price**
  - For a purchase money transaction, use contract sales price
  - If no seller, use appraised value or an estimate of value
- **Loan term**
  - Use years or months or both if applicable
- **Purpose**
  - Purchase, refinance, construction, home equity
- **Product**
  - ARM, step rate, fixed rate
  - If any features on the loan product will change, this must be included in product description, including:
    - Negative amortization, interest only, step payment, balloon payment, or seasonal payment
      - Duration of this payment feature must be disclosed
        - Example: If the first year of payments cover interest only and will not be applied towards the principal, this type loan description would be disclosed as a *One-Year Interest Only*
  - **Loan type**
    - Conventional, FHA, VA, etc.
  - **Lender's loan identification number**
    - Identifies the transaction
  - **Rate lock**
    - If yes, disclose date, time and time zone when the lock periods ends
    - Also, the date, time and time zone when the estimated closing costs will expire
  - **Loan Terms Section**
    - Loan amount - Use whole dollars
    - Initial interest rate
    - Initial monthly principal and interest
    - Information on the prepayment penalty
      - Answer "Yes" or "No" in this column
      - If prepayment penalty applies,
        - Include maximum amount of penalty
        - Date the penalty ends
    - If the loan has a balloon payment
      - Answer "Yes" or "No" in this column
        - If yes, supply information on
          - Maximum amount of balloon payment
          - Due date of balloon payment
  - **Can this amount increase after closing?**
    - If yes, include applicable information in regards to adjustments in the
      - Loan amount
      - Interest rate
      - Monthly principal and interest
    - If no adjustments, disclose "No"
  - **Projected Payments** will show estimates of payments made during the life of the loan. Must include:
    - Principal and interest, mortgage insurance, estimated escrows, and estimates of the total monthly payment

        - Also must include an estimate of taxes, insurance, and assessments regardless if they are paid through an escrow account
        - Use a periodic table, the sample Loan Estimate demonstrates the payments in years 1-5, 6-8, 9-11, and 12-30
            - Should disclose if, and how payments will change during these different phases
                - Range of payments are for principal and interest only. Mortgage insurance and escrows are not included
    - **Estimated Total Monthly Payment**
        - Each column will show the amount of principal and interest, mortgage insurance, and estimated escrow
    - **Estimated Taxes, Insurance, & Assessments**
        - Must disclose, even if an escrow account will not apply
        - "Amount can increase over time" statement will be included in this section
    - **Costs at Closing**
        - **Estimated Closing Costs** are detailed on page 2 of the Loan Estimate
        - **Estimated Cash to Close** will also be computed on page 2 of the Loan Estimate
- **Page 2 - Closing Cost Details**
    - **Loan Costs**
        - **A. Origination Charges**
            - Lists items the consumer will pay to each creditor and loan originator
                - Example: Points, application fee, underwriting fee
        - **B. Services You Cannot Shop For**
            - May include: Appraisal fee, credit report fee, flood determination fee, tax monitoring fee, lender's attorney fee, upfront mortgage insurance fee
        - **C. Services You Can Shop For**
            - These are services the consumer can shop for and will pay for at settlement
            - Examples: Pest inspection fee, survey fee, title insurance binder, lender's title policy, title search, examination of title
                - Cannot disclose more than 14 Services You Can Shop For. If more, disclose the total amount that exceed 13 with the label "Additional Charges". If needed, an addendum can be added to the Loan Estimate
        - D. Total Loan Costs (A+B+C)
            - Total of these columns
    - **Other Costs**
        - **E. Taxes and Other Government Fees**
            - This section will include recording fees and other taxes and transfer taxes
        - **F. Prepaids**
            - These are items paid by the consumer in advance of the first scheduled payment
                - Include homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, property taxes
                - A maximum of three additional items can be added
        - **G. Initial Escrow Payment at Closing**
            - Items the consumer will place in a reserve or escrow account for homeowner's insurance, mortgage insurance, property taxes
            - Show the amount escrowed per month for each item, number of months collected, and total amount paid
        - **H. Other**
            - Items the borrower is likely to pay or has contracted with a person to pay
                - Such as, owner's title insurance, credit life insurance, home owner's warranty
        - **I. Total Other Costs**
            - Total of columns E, F, G and H
        - **J. Total Closing Costs**
            - The sum of Total Loan Costs (D), Total Other Costs (I) and Lender Credits
        - **Calculating Cash to Close**
            - This section will disclose the total amount the borrower needs to close. Consists of
                - Total Closing Costs - From Section J
                - Closing costs financed
                - Borrower down payment
                - Deposit - If this is a purchase transaction
                - Funds for Borrower

            - Seller Credits - these are items paid for by the seller
            - Adjustments and Other Credits
        - **Estimated Cash to Close**
            - Sum of the above seven items
    - **Page 3 - Additional Information About This Loan**
        - First section will be contact information
                - Name, NMLS ID, License ID for the creditor and the mortgage broker
                - And name, email, phone number of the individual loan originator
                    - Individual loan originator will be the primary contact for the borrower
        - **Comparisons**
            - Must include the statement, "Use these measures to compare this loan with other loans."
            - This sections discloses
                - Loan costs on this loan in five years
                    - Total principal, interest, mortgage insurance, and loan costs
                    - Principal you will have paid off
                - The Annual Percentage Rate (APR)
                - Total Interest Percentage (TIP)
                    - Total interest paid over the life of the loan shown as a percentage of the loan amount
            - **Other Considerations**
                - Lists details about the
                    - Appraisal
                    - Assumption
                    - Homeowner's Insurance
                    - Late Payment
                    - Refinance
                    - Servicing
            - **Confirm Receipt**
                - Borrower is not required to sign the Loan Estimate
                - Lender will have two options:
                    - If a line is included for the borrower's signature, the following must be disclosed

                        - “By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.”

                        - If no line is included, the following must be disclosed

                            - “You do not have to accept this loan because you have received this form or signed a loan application.”

The Closing Disclosure Document Regulation Z, 12 CFR §**1026.38 (all)**

- **The Loan Estimate sample is from the Consumer Financial Protection Bureau and is an example of a fixed rate mortgage**
- **See sample at http://files.consumerfinance.gov/f/201311_cfpb_kbyo_closing-disclosure.pdf**

Page One

- **Title of the form** - "Closing Disclosure"
    - The wording will include: "This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate."
- Closing Information will include the following:
    - **Date issued**
        - This is the date the Closing Disclosure is delivered to the borrower
    - **Closing Date** - Date of Consummation
    - **Disbursement Date** - Anticipated date of disbursement of funds
    - **Settlement Agent** - name of closing agent
    - **File #** - closing agent's file number
    - **Property** - Address or location of property, includes zip code

- **Sales Price**
  - If purchase - Contract sales price
  - If no seller - Appraised value
- **Transaction Information**
  - **Borrower** - name, mailing address
  - **Seller** - if applicable - name, mailing address
  - **Lender** - Name of lender
- **Loan Information**
- **Loan term**
  - Use years or months or both if applicable
  - **Purpose**
    - Purchase, refinance, construction, home equity
  - **Product**
    - ARM, step rate, fixed rate
    - If any features on the loan product will change, this must be included in product description, including:
      - Negative amortization, interest only, step payment, balloon payment, or seasonal payment
        - Duration of this payment feature must be disclosed
          - Example: If the first year of payments cover interest only and will not be applied towards the principal, this type loan description would be disclosed as a *One-Year Interest Only*
    - **Loan type**
      - Conventional, FHA, VA, etc.
    - **Loan ID number**
      - Identifies the transaction
- Note: The Loan Term, Purpose, Product Loan Type and Loan ID number should be updated, if needed, to reflect information regarding the transaction at consummation
  - **MIC#**
    - Mortgage Insurance Case Number
  - **Loan Terms Section**
    - **Loan amount** - Use whole dollars
    - **Interest rate -** rate for this loan
    - **Monthly Principal and Interest**
    - **Prepayment Penalty** - Information on the prepayment penalty, if it applies
      - If prepayment penalty applies,
        - Include maximum amount of penalty
        - Date the penalty ends
    - **Balloon Payment** - If the loan has a balloon payment
      - Maximum amount of balloon payment
      - Due date of balloon payment
  - **Can this amount increase after closing?**
    - If yes, include applicable information in regards to adjustments in the
      - Loan amount
      - Interest rate
      - Monthly principal and interest
      - Prepayment Penalty
      - Balloon Payment
        - If no adjustments, disclose "No"
  - **Projected Payments** will show estimates of payments made during the life of the loan. Must include:
    - Principal and interest, mortgage insurance, estimated escrows, and estimates of the total monthly payment
    - Also must include an estimate of taxes, insurance, and assessments regardless if they are paid through an escrow account
    - Use a periodic table, the sample Closing Disclosure demonstrates the payments in years 1-7 and 8-30
      - Should disclose if, and how, payments will change during these different phases
        - Range of payments are for principal and interest only
          - Mortgage insurance and escrows are not included

- Estimated Total Monthly Payment
  - Each column will show the amount of principal and interest, mortgage insurance, and estimated escrow
- **Estimated Taxes, Insurance, & Assessments**
  - Must disclose, even if an escrow account will not apply
  - "Amount can increase over time" statement will be included in this section
- **Costs at Closing**
  - **Estimated Closing Costs** are detailed on page 2 of the Loan Estimate
    - Other Costs Section
      - Under Total Closing Costs
        - This section includes amounts from
          - Total Loan Costs - Section D
          - Total Other Costs - Section I
          - Lender Credits - Section J
- **Cash to Close**
  - Estimated cash the borrower will pay or receive at the closing
    - Same as page three of the Closing Disclosure
      - Under heading Cash to Close in the Calculating Cash to Close section, top of page three

Page Two Closing Costs Details

- **Loan Costs**
- Note - Items in the Loan Costs and Other Costs sections can be expanded and deleted for space control - Although, if an item is required to be disclosed it may not be deleted, even though it is not applicable. As an example, "Points" located in the Origination Section must remain regardless if there is a charge or this item.

  Loan Costs and Other Costs are allowed to be disclosed on separate pages of the Closing Disclosure. The pages will be numbered Page 2a and 2b.

  There are items in the Loan Costs section that will be somewhat the same as disclosed on the Loan Estimate. You can update some items to reflect the terms and details of the loan at consummation, unless specified below.

  This page will consist of five columns for
  - Borrower-Paid
    - At Closing
    - Before Closing
  - Seller- Paid
    - At Closing
    - Before Closing
  - Paid by Others

- **A. Origination Charges**
  - Charges for making this loan
    - Points are shown in dollar amount and percentage of the loan amount
  - Itemization and a subtotal of each amount paid to each creditor and loan originator
- **B. Services Borrower Did Not Shop For**
  - Shows dollar amount and a list of items the borrower did not shop for
    - Appraisal Fee, Credit Report Fee, Flood Determination Fee, Flood Monitoring Fee, Tax Monitoring Fee, Tax Status Research Fee
- **C. Services Borrower Did Shop For**
  - Shows dollar amount and a list of items the borrower shopped for
    - Pet inspection fee, Survey Fee, Title Insurance Binder, Lender's Title Insurance, Settlement Agent's Fee, Title Search
- **D. Total Loan Costs**
  - Total of A, B, and C of the Borrower-Paid section

Other Costs

- **E. Taxes and Other Government Fees**
  - Paid to state and local government agencies
    - Transfer Taxes section will itemize the amount paid by the borrower and the seller

- **F. Prepaids**
  - These are items paid by the consumer in advance of the first scheduled payment
    - Include homeowner's insurance premiums, mortgage insurance premiums, prepaid interest, property taxes
    - A maximum of three additional items can be added
- **G. Initial Escrow Payment at Closing**
  - Items the consumer will place in a reserve or escrow account for homeowner's insurance, mortgage insurance, property taxes
  - Show the amount escrowed per month for each item, number of months collected, and total amount paid
- **H. Other**
  - Includes costs incurred by the borrower or seller, but were not required to be part of the Loan Estimate
    - Home Inspection Fee, Home Owner's Warranty Fee
- **I. Total Other Costs**
  - Total of columns E, F, G and H
- **J. Total Closing Costs**
  - Borrower-Paid - All closing costs added with the Lender Credit amount subtracted from this total
    - Lender Credits are disclosed as Borrower-Paid At Closing

Page Three

Calculating Cash to Close

Includes this notice, "Use this table to see what has changed from your Loan Estimate."

- Three columns
  - Amount disclosed on Loan Estimate
  - Final amount
  - And a "Did this change?" section
    - If yes, give a description of where the changed amounts can be found within the Closing Disclosure
- This section includes information regarding
  - Total Closing Costs
    - Same as page two of Closing Disclosure
      - If increase exceeds the legal limits, show in "Did this change?" column
  - Closing Costs Paid Before Closing
  - Down Payment/Funds from Borrower
  - Deposit
  - Funds for Borrower
  - Seller Credits
  - Adjustments and Other Credits

Summaries of Transactions

Includes the notice, "Use this table to see a summary of your transaction."

- Used for purchase transactions
- **K. Due from Borrower at Closing**
  - Sales price of property, sales price of any personal property, closing costs paid by seller, adjustments and adjustment for items paid in advance by the seller
- **L. Paid Already by or on Behalf of Borrower at Closing**
  - Deposit - paid into a trust account by the borrower
  - Loan amount
  - Existing Loan(s) Assumed or Taken Subject to
    - List any loans the borrower is assuming in this transaction
  - Seller Credit
    - Credit to the borrower from the seller
  - Other Credits
    - From other entity other than the borrower or the seller
  - Adjustments for Items Unpaid by Seller
    - Due to borrower if paid in arrears
      - Example taxes on the property are paid on an annual basis
- **Calculation**
  - Total Due from Borrower at Closing
    - Amount taken from Section K
  - Total Paid Already by or on Behalf of Borrower at Closing
    - Amount taken from Section L

- Cash to Close
  - If borrower owes money check the "From" box
  - If borrower is receiving money check the "To" box
- **Seller's Transaction**
  - **M. Due to Seller at Closing**
    - Will include sales price of the property being purchase and any other personal property included in the sale
    - Adjustments for Items Paid by Seller in Advance
      - Includes any adjustment for property taxes, assessments, Home Owner Association Dues that will be credited to the seller
  - **N. Due from Seller at Closing**
    - Items seller will pay for at the closing include
      - Excess Deposit
      - Closing Costs Paid at Closing from Section J of the Closing Disclosure
      - Existing Loan(s) Assumed or Taken Subject to
      - Payoff of First Mortgage Loan
      - Payoff of Second Mortgage Loan
      - Seller Credit
    - Adjustments for Items Unpaid by Seller
      - Includes taxes and assessments
- **Calculation**
  - Total Due from Seller at Closing
    - Amount taken from Section M
  - Total Paid Already by or on Behalf of Seller at Closing
    - Amount taken from Section N
  - Cash to Close
    - If seller owes money check the "From" box
    - If seller is receiving money check the "To" box

Page 4 Additional Information About This Loan
Loan Disclosures

- **Assumption**
  - If the borrower sells or transfer the property, can another person assume the original terms of this loan?
- **Demand Feature**
  - Is there a demand feature that can require an early repayment of this loan?
- **Late Payment**
  - Terms of the late payment feature will include amount of time that passes before a fee will be assessed and how fee is calculated
- **Negative Amortization (increase in Loan Amount)**
  - Will regular payments pay all of the interest due for each month?
- **Partial Payments**
  - Will the lender accept partial payments? If so, in what increments?
- **Security Interest**
  - Description of the property
- **Escrow Account**
  - Lets borrower know whether or not this loan includes escrow payments
  - If included, chart will show
    - Amount of escrow property costs over the first year, listing costs paid by the account
    - Amount of non-escrow property costs over the first year, listing costs that will not be paid by the escrow account
    - Initial escrow payment
    - Monthly escrow payment
- Two notices included on this page:
  - "You may lose this property if you do not make your payments or satisfy other obligations for this loan."
  - "In the future,
    Your property costs may change and, as a result, your escrow payment
    may change. You may be able to cancel your escrow account,
    but if you do, you must pay your property costs directly. If you fail
    to pay your property taxes, your state or local government may (1)
    impose fines and penalties or (2) place a tax lien on this property. If
    you fail to pay any of your property costs, your lender may (1) add

the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own."

Page 5

- **Loan Calculations**
  - **Total Payments** - this is the sum of all the borrower will have paid after all payments of principal, interest, mortgage insurance, and loan costs have been paid
  - **Finance Charge** - shows what the loan amount will cost in finance charges
  - **Amount Financed** - Loan amount available once the upfront finance charge has been paid
  - **Annual Percentage Rate** - What the costs for this loan will cost expressed as a rate
    - This is not to be confused with the actual interest rate
  - **Total Interest Percentage (TIP)** - Total amount of interest paid over the life of the loan as a percentage of the loan amount
- **Other Disclosures**
  - **Appraisal**
    - Discusses the borrower's rights in relation to the appraisal
  - **Contract Details**
    - Informs the borrower the note and security instrument have information regarding
      - What will happen if the borrower fails to make payments
      - What is default
      - Situations where the lender can require early repayment of the loan
      - Rules for making payments before they are due
  - **Liability After Foreclosure**
    - Statement letting borrower know if State law protects them from liability for any unpaid balance
  - **Refinance**
    - Information regarding the borrower's ability to refinance this loan
  - **Tax Deductions**
    - Information about deductions for interest
      - If you borrow more than the property's worth, interest on the loan amount above the property's fair market value will not be deductible
  - **Questions**
    - Website information on the CFPB
      - If the borrower has questions, wants to make a complaint, or contact the Consumer Financial Protect Bureau
  - **Contact Information**
    - Provides contact information on the
      - Lender, Mortgage Broker, Real Estate Broker for the Buyer, Real Estate Broker for the Seller, and Settlement Agent
      - Information includes
        - Name, address, NMLS ID, ST License ID, contact name, contact's NMLS ID and ST License ID, email, and phone
  - **Confirm Receipt**
    - Borrower is not required to sign the Closing Disclosure
    - Lender will have two options:
      - If a line is included for the borrower's signature, the following must be disclosed
        - “By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.”
        - If no line is included, the following must be disclosed
        - “You do not have to accept this loan because you have received this form or signed a loan application.”

Explanation of Documents

Deed - Transfers title of real property from one owner to the next

Mortgage –

- Lien on property
- Entitles the lender to take possession of property by foreclosure in the event of default

Deed of Trust –

- Used in place of a mortgage in some states
- Transfers title to the trustee until loan is paid in full
- If borrower defaults, trustee can sell the property without legal proceedings

Mortgage Servicing Disclosure Statement –

- Lets the borrower know if the lender will service the loan or transfer it to another lender

Initial Escrow Statement –

- Lists estimated taxes, insurance premiums, etc., to be paid from the escrow account
- Discloses the escrow payment and any required cushion

An annual escrow statement must be provided

Funding

Funding the Loan will occur when lender releases buyer's loan funds to closing agent after documents have been executed and all conditions are satisfied.

Closing agent will send closing documents to lender for review. Once lender approves closing documents, funds are disbursed and wired to the closing agent. Closing agent will distribute funds to appropriate parties.

Final steps:

- Closing agent records:
  - Deed
  - Mortgage or deed of trust
  - Lien releases
  - Any other documents
- Title company issues policies
- Copies of all documents are provided to lender and buyer

<u>LESSON SUMMARY</u>

Title and Title Insurance

- Owner's Title Policy - Optional
  - Insures owner against unexpected problems with the title on their property
  - Protects against title defects that:
    - Could not be found
    - Were missed during the title search
  - Some items it will not cover:
    - Violations of building and zoning ordinances
    - Restrictive covenants limiting how property can be used
    - Any conflicts with boundary lines, encroachments, etc.
  - Policy is issued in the amount of the purchase price
  - This is a one-time fee

- Lender's Title Policy
  - Insures the lender against unexpected problems with title on the borrower's property. This policy protects their interest in the collateral secured by the real estate. Also guarantees the lender has a legitimate first lien against the property.
    - Protects the lender
    - Paid by borrower
    - One-time fee

- Closing agent
    - Closing Agent – In many areas, closings are handled through escrow.
    - Escrow - neutral third party who holds money and documents for buyer and seller
    - Closing agent disburses purchase price and delivers deed when conditions in agreement are satisfied
    - Closing agent may be an independent escrow agent, employee of the lender, title company or a lawyer.

Settlement/Closing Agent

- Closing agent
    - Closing Agent – Closings may be handled through escrow.
    - Escrow - neutral 3rd party who holds money and documents for buyer and seller
    - Closing agent disburses purchase price and delivers deed when conditions in agreement are satisfied
    - Closing agent may be an independent escrow agent, lender employee, title company, lawyer or real estate broker
- Closing process
    - Closing agent responsible for handling details of closing, which includes:
        - Clearing liens from title
        - Establishing condition of title
        - Inspections and repairs
        - Buyer's funds for closing
        - Preparing documents and recording
- Clearing Liens From Title
    - Any liens that would have higher priority than the new mortgage or deed of trust must be removed.
    - Does not include:
        - Property tax liens
        - Special assessment liens
- Inspections and Repairs
    - Lenders often require inspections and certain repairs made before closing. These might include: pest control inspection, soil percolation test and/or flood hazard inspection.
- Documents and Buyer's Funds
    - Once approved, lender forwards loan documents to closing agent
    - Buyer deposits his part of transaction, such as down payment and closing costs into escrow, and signs loan documents
- Impound Account
    - Lenders often require buyers to make a deposit into an impound account at closing. An impound account ensures that taxes, hazard insurance, and mortgage insurance are paid on time.
- Hazard Insurance
    - Protects property owner against damage caused by fires, severe storms, earthquakes and other natural disaster
    - Usually maintained along with mortgage payments/escrow account
- Flood Insurance
    - If the borrower's home is located in a Special Flood Hazard Area (SFHA), the lender will require flood insurance for the term of the loan.
    - Usually maintained along with mortgage payments/escrow account
- Interim interest
    - Buyer will also pay interim interest (prepaid interest) at closing
    - Buyer's first monthly mortgage payment is generally not due on first day of month immediately after closing, but next month, therefore:
    - Interest on mortgage is paid in arrears
        - Arrears means that interest accruing during month is paid at end of month

Explanation of Documents

- Deed: Transfers title of real property from one owner to the next
- Mortgage
    - Lien on property
    - Entitles the lender to take possession of property by foreclosure in the event of default
- Deed of trust
    - Used in place of a mortgage in some states
    - Transfers title to the trustee until loan is paid in full
    - If borrower defaults, trustee can sell the property without legal proceedings
- Mortgage Servicing Disclosure Statement
    - Lets borrower know if the lender will service the loan or transfer it to another lender

- Initial Escrow Statement
    - Lists estimated taxes, insurance premiums, etc., to be paid from the escrow account
    - Discloses the escrow payment and any required cushion

Funding

- Funding the Loan will occur when lender releases buyer's loan funds to closing agent after documents have been executed and all conditions are satisfied.
- Final steps
    - Closing agent records:
        - Deed
        - Mortgage or deed of trust
        - Lien releases
    - Any other documents
    - Title company issues policies
    - Copies of all documents are provided to lender and buyer

Case Studies

CASE STUDY #1

You have a new client who wants to obtain a mortgage loan and purchase a primary residence. After working with her and obtaining all qualification materials, the client's credit application is denied. You telephone her and state the cause for this decision. You discuss ways she can improve her credit issues, counsel her on her right to receive a free credit report and suggest that she try to apply for a mortgage loan in one year to give time for her establishment of a favorable credit history.

Two months later, you still think about your potential borrower and send her a letter stating that her application is denied in the hopes that she will continue to remember that she has some work to do in order to become a borrower. You do not want to lose this client and want her to come back once she is more qualified.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:
What kind of letter should a mortgage loan originator send a person whose application has been denied?

a. A notification of adverse action
b. A letter is not needed if the loan originator communicates via telephone
c. A counteroffer letter
d. A conditional approval letter

Answer: A

Question # 2:

What, if anything, is wrong with the scenario?

a. The loan originator did not send the denial letter right away
b. The loan originator waited too long to send the denial letter
c. The loan originator told the client about her denial via telephone instead of in person
d. The loan originator does not have the authority to speak to a client regarding the approval or denial of an application

Answer: B

Question # 3:

Within how many days of a denial must a notification of adverse action be provided to the consumer?

a. 30 days
b. 60 days
c. 10 days
d. 3 days

Answer: A

Case Study #1 Answer/ Explanation

In this scenario, you must comply with the guidelines found in the Equal Credit Opportunity Act (ECOA). The consumer came to you in order to obtain a mortgage loan, and, unfortunately, she did not qualify for one. Therefore, according to the law, 30 days after the denial of her mortgage loan application, she is entitled to a Notice of Adverse Action. In this case, this particular disclosure provides an explanation as to why her mortgage loan application was denied.

Though, in the scenario, you sent her a letter explaining her denial, you did so two months after the denial, which is in direct violation of the law. The applicant must receive the letter within 30 days of the decision regarding the application. The law states that not only should the applicant receive the disclosure, the disclosure should contain clear and concise reasons for the denial, as indefinite or vague reasons are illegal. The only time a creditor is exempt from issuing a notification is if the application was taken by telephone and the applicant did not provide their address as requested by the creditor. In all other cases, the law requires the disclosure be provided to the consumer.

CASE STUDY #2

You have a new potential borrower that walked into your office requesting a meeting to find out what he needs to do to obtain a mortgage loan. You provide him a list of documents you will need from him in order to determine whether he will qualify for a mortgage loan. A few days later he comes back to meet with you with documents and ready to fill out a mortgage loan application.

You have gone through most of the loan application with the potential borrower. All you have left to fill out prior to submitting to underwriting is the section requesting data for purposes of HMDA. You ask your client to complete the section requesting data on his race and national origin, his ethnicity, and gender prior to signing the loan application. He expresses he is not comfortable providing such information. You tell him that in order for you to submit a completed loan application, he must answer these questions, as they cannot be left blank. After explaining this to him, he answers the questions and you are able to complete his loan application.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:
Did you correctly handle this situation?

a. Yes, an application must be completed prior to submitting.
b. No, the client should not feel obligated to provide such information.
c. Yes, the information must be included in the loan application for approval.
d. No, the client should have felt comfortable to give you the information to begin with.

Answer: B

Question # 2:

Which of the following is most accurate?

a. A mortgage loan applicant is obligated to provide information regarding his race and national origin, his ethnicity, and gender.
b. A mortgage loan originator must provide the information regarding the race and national origin, ethnicity, and gender of the potential borrower on the application.
c. The section of the loan application regarding the race and national origin, ethnicity, and gender of the potential borrower can be left blank.
d. If a mortgage loan originator does not provide the information on the applicant's race and national origin, ethnicity, and gender, the application will be denied.

Answer: B

Question # 3:

If the applicant does not want to provide information regarding his or her race or national origin, ethnicity, or gender, what is true?

a. The mortgage loan originator must fill out the information based on observation or surname.
b. The mortgage loan originator must leave it blank.
c. The mortgage loan originator must notify the applicant that the application will be denied.
d. The mortgage loan originator must provide the borrower with a notice of adverse action.

Answer: A

Case Study #2 Answer/ Explanation

In this scenario, you did not follow what is required of you by law. The Home Mortgage Disclosure Act is a law that requires financial institutions provide certain data to the public. Specifically, HMDA data collection about demographics on the loan application includes the collection of information on the applicant's ethnicity, sex, and race or national origin. While completing a loan application, the loan originator must ask the applicant to choose from the following categories and options:

Ethnicity

- Hispanic or Latino
    - Mexican
    - Puerto Rican

  - Cuban
  - Other Hispanic or Latino (print origin)
- Not Hispanic or Latino

Sex
- Female
- Male
- 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)
- Black or African American
- Native Hawaiian or Other Pacific Islander
  - Native Hawaiian
  - Guamanian or Chamorro
  - Samoan
  - Other Pacific Islander (print race)
- White
- I do not wish to provide this information

However, though the mortgage loan originator must ask the applicant for this information, the applicant is under no legal obligation to provide this information. If the applicant does not want to provide this information, the loan originator must make note of the fact and, to the best of his or her ability, provide the information based on visual observation and surname.

In this scenario, you made the client feel obliged to furnish information he did not want to furnish. This is not what is legally required of you. Proper behavior in this case would have been to tell the applicant that he is not obligated to answer, taken note of the fact, and later filled out this section on the application on your own based on visual observation or the applicant's name.

CASE STUDY #3

You are working with a borrower to help her purchase her first home. You've been helping her get everything ready in order to qualify for a mortgage loan for almost a year. She finally found a property she likes and starts the process to obtain a mortgage loan. You really like this client and want to make sure that all goes smoothly during the purchasing process.

It is finally time to order an appraisal. Luckily, you have been in contact with the appraiser before and feel comfortable calling him to chat about this particular appraisal. You make it clear that the buyer and the sellers are both willing parties and have agreed that the property should sell for $235,000. You explain to the appraiser that the value of the property on the appraisal report must come in at $235,000 or the deal will not go through. You also mention that there are two real estate agents involved in the sale and they both agree that this figure is an accurate one for the property. The appraiser responds positively and a few weeks later delivers what you requested.

Everything else works out well and your client closes the loan and purchases her first home. A week after the loan closes, the borrower contacts you and ask whether she could receive a copy of the appraisal for her own records. You tell her that this will not be a problem and set a reminder on your calendar to send her an email copy when you return to the office in the morning. The next morning you email her a copy of the appraisal.

Please answer the following multiple-choice questions regarding the scenario:

Question # 1:
After reading the scenario, what is most accurate?

a. You are a good loan originator for caring enough about your client to contact the appraiser in order to make sure she can purchase her first home.

b. What you have done is illegal and you should be subject to disciplinary action.
c. So long as you provide the borrower with a copy of the appraisal, you have not violated the law.
d. By taking such an interest in making sure the client obtains the mortgage loan, you have appropriately completed your fiduciary duties.

Answer: B

Question # 2:

Your client requested a copy of her appraisal. What should you have done?

a. Consumers have a right to a copy of their appraisal. A copy should be provided to them promptly after receipt of the appraisal and no later than three days prior to consummation.
b. If the request for the copy of an appraisal is written and not oral, then you must provide a copy of the appraisal.
c. A copy of the appraisal can only be given 90 days after consummation.
d. The only person that needs a copy of the appraisal is the lender. You are not under any obligation to provide an appraisal report to the consumer.

Answer: A

Question # 3:

According to the law, when should a copy of the appraisal be provided to a consumer?

a. Within 3 days of application.
b. Within 90 days of consummation.
c. No later than three days prior to consummation.
d. No later than three days after consummation.

Answer: C

Case Study #3 Answer/ Explanation

In this scenario you have violated the law as a mortgage loan originator. According to the Valuation Independence Rule brought forth by the Federal Reserve, a person involved in a mortgage loan transaction is prohibited form directly or indirectly coercing, extorting, inducing, bribing, intimidating, compensating, or colluding with a person preparing real estate valuations. It is illegal for an appraiser to base the appraised value of a property on factors other than their independent judgment.

Having spoken directly with the appraiser in an attempt to get a specific appraised value for the subject property is illegal. Both you and the appraiser are liable for this behavior. Though by law you are required to act in the best interest of your client, you cannot collude with an appraiser in order for your client to obtain a loan.

With regards to your client's request of a copy of her appraisal, the law states that a client is entitled to one. Furthermore, the ECOA requires creditors not only provide consumers with a Right to Receive a Copy of the Appraisal disclosure within three days of application, but also creditors are required to provide a copy of the actual appraisal to the applicant no later than three days prior to consummation.

CASE STUDY #4

Claire goes to a mortgage lending institution to meet with a mortgage loan originator. She wants to purchase a property and would like to obtain a mortgage loan in order to do so. Ted is a mortgage loan originator that currently is not busy; therefore, he invites her into his office. After a few minutes of conversation, Ted learns that Claire has already found a property that she likes, and she wants to put an offer on that property but would like to make sure that she qualifies for a mortgage loan before presenting the offer.

Ted starts filling out a mortgage loan application with Claire. He asks her various questions and requests that she bring some supporting documents regarding her financial standing, such as bank statements and retirement account statements. Ted also downloads Claire's credit report. Overall, it appears that Claire will qualify for a mortgage. She notifies Ted that the current selling price is $187,000 and that she can put down a 10% down payment. After reviewing her application and running some numbers, Ted is able to pre-qualify Claire for a conventional loan of $168,300. She will have to put $18,700 as a down payment. To continue on with the mortgage loan application Ted asks Claire about her race or national origin. Claire answers that she is White. Ted asks Claire about her ethnicity and Claire responds by saying she is Hispanic or Latino. Ted asks Claire about her gender, and she responds that she is a female. Lastly, Ted asks Claire whether she intends to have a family in the near future. She responds yes. Ted follows this question by asking whether Claire is able to bear children. She responds that luckily, she is able to bear children and she can't wait to do so.

Claire and her real estate agent send her offer to the seller and the seller accepts the offer. Within the next month Claire and Ted work together and close on the loan. After the closing date, Claire moves to her new house and begins the next chapter of her life as a homeowner.

Please answer the following multiple-choice questions relating to the scenario:

Question # 1:
Has Ted acted in violation of the law in any way during the course of his time with Claire?

a. No, Ted seems to have acted as a good loan originator throughout the lending process.
b. Yes, Ted has violated the law.
c. No, Ted has not violated any law, but has acted unethically.
d. We do not have enough information about their interaction to note whether Ted has acted in violation of the law.

Answer: B

Question # 2:

If Ted has acted in violation of the law, what law has he violated?

a. Ted has not violated any law.
b. Ted has violated ECOA guidelines.
c. Ted has violated RESPA guidelines.
d. Ted has violated TILA guidelines.

Answer: B

Question # 3:

In what way has the law been violated?

a. ECOA laws specifically state that a loan originator cannot inquire about a consumer's ability to bear children.
b. TILA specifically provides that loan originators cannot inquire about the consumer's ethnicity.
c. RESPA specifically provides that loan originators cannot inquire about a consumer's race.
d. Fair Lending Laws state that a loan originator cannot ask a consumer about their gender.

Answer: A

Case Study #4 Answer/ Explanation
In this scenario Ted has violated federal law. According to ECOA, though a mortgage loan originator can ask an applicant about their age, marital status, and number of dependents, they cannot ask about the applicant's childbearing plans. An applicant's childbearing plans, or ability, should in no way affect an applicant's chances for the extension of credit. Considering that this is both illegal and unethical, Ted should be subjected to disciplinary action.

CASE STUDY #5

A branch manager is trying to find a way to bring in more business to his mortgage loan office. His mortgage loan originators are not bringing in enough business to cover all of the monthly expenses; therefore, he is looking for recruitment tools. After thinking about what to do, he has the idea of motivating real estate agents to bring in referrals to the branch office. He decides that a contest would be the best way to motivate these agents. The following week, the branch manager attends a real estate agent gathering. He requests five minutes of their time in order to announce his contents. He announces that his company is offering a contest for real estate agents. The agent that brings in the most referrals within the next 30 days to his branch office will win a brand-new laptop computer. Of course, the real estate agents become excited and are up for playing the game.

30 days later, the branch manager calculates that he has seen a 30% increase in business. Delia, one of the real estate agents has brought in the most borrowers and in the next real estate agent gathering, the branch manager announces that she has won and gives her the new laptop computer.

Please respond the following questions relating to the scenario:

Question # 1:

Has there been a violation of the law in the scenario?

a. No, there has not been a violation of any law.
b. Yes, there has been a violation of RESPA provisions.
c. Yes, there has been a violation of TILA provisions.
d. Yes, there has been a violation of the Dodd Frank Act.

Answer: B

Question # 2:

Which of the following is accurate regarding any violation of the law in the scenario?

a. The fact that the contest requested referrals for a thing of value.
b. The fact that the contest requested referrals.
c. The fact that the branch manager saw an increase in business.
d. The fact that there was a contest.

Answer: A

Question # 3:

What section of the law was violated?

a. Section 8 of RESPA, which prohibits any kickbacks, referral fees, and unearned fees
b. Section 9 of RESPA, which prohibits any kickbacks, referral fees, and unearned fees
c. Section X of Dodd Frank Act, which prohibits the use of contests for increased business.
d. Section 2 of TILA, which prohibits exchanging something of value for referrals.

Answer: A

Case Study #5 Answer/ Explanation

The case study is an example of a violation of the Real Estate Settlement and Procedures Act (RESPA). Though the branch manager was simply trying to improve business, creating this particular incentive for the bringing in of more business is illegal. According to RESPA's Section 8, it is illegal to give or accept a fee, kickback, or anything of value in exchange for a referral involving a federally related mortgage loan transaction.

The branch manager motivated the referral of business by offering a brand-new laptop to the person who brought in the most referrals. The laptop is most certainly a "thing of value," making this scenario a violation of the law. This does not mean that the branch manager cannot give anything to real estate agents in order to promote business. Promotional items such as ink pens, magnets, or post it pads can be provided without violating RESPA provisions. The important thing to remember is that it is illegal to provide an item of value for the referral of loan business.

FORUM DISCUSSION TOPICS

Day 01 – General Mortgage Knowledge

Considering the amount of time most borrowers keep a mortgage loan, is it better for them to try to find a way to increase their down payment, or is it financially better to pay the cost of PMI?

Day 02 – Mortgage Loans: Structures and Types

As a Mortgage Loan Originator, you will be in a position to offer borrowers a variety of loan structures. Of the types of loans discussed in the lesson, which would you feel is best for most residential borrowers? Why did you make that choice? What are the disadvantages to the one you selected?

Day 03 – Loan Origination Processing Part 1

An appraiser makes the assumption that the property is being purchased for cash. Why is that an important consideration, and what effect do you think it has on the final outcome of the property value?

Day 04 – Mortgage Qualifying and Pre-Prep

The two major processes that impact on the mortgage loan are the appraisal and the home inspection. The former is used to establish a market value, and the latter to determine if the home is in the condition the seller represented it to be. Since the value of the property is greatly influenced by its condition, do you think the appraiser should be given the home inspection report to consider when doing the appraisal? Please explain your response.

Day 05 and Day 06 – Originator Activities

TILA requires the disclosure of the APR. Since most borrowers do not know how it is calculated, but simply that it is higher than the simple interest rate, do you feel that the APR should be the only one mentioned in advertising?

Day 07 and Day 08 – Governing Regulations and Entities

TILA only applies to natural persons, and not to corporations, organizations, loans for business commercial or agricultural purposes, and loans over $25,000 not secured by real property. Do you feel that these exclusions have some basis for not falling under TILA guidelines?

Day 09 – Dodd Frank

The Dodd-Frank Act was intended to streamline the regulatory process. Do you feel that it has done this, or simply complicated the process with excessive regulation?

Day 10 – More Governing Regulations and Entities

Do you feel the Home Mortgage Disclosure Act (HMDA) is doing an adequate job in the prevention of red-lining and predatory lending? If so, explain how. If not, give examples of what more could be done.

Day 11 – Fannie Mae/Freddie Mac/PMI/HPA

Do you feel that Fannie Mae and Freddie Mac are still viable concepts for our economy?

COURSE HOMEWORK ASSIGNMENTS

Day 01 Assignment

- Reverse mortgages are advertised extensively on television. What are the advantages and disadvantages of this product?

Day 02 Assignment

- While the 30 year Fixed Rate Level Annuity Loan remains popular, many borrowers are selecting a 15 year plan. While this has obvious advantages in saved interest expense, what are the disadvantages?
- In some cases, a borrower may elect a bi-weekly payment plan, rather than the traditional monthly plan. Is there a downside?

Day 03 Assignment

- To ensure an objective view of the property value, lenders rely on Appraisal Management Companies to appoint an appraiser. Sometimes the appraiser selected is unfamiliar with the area, but, nonetheless, prepares the appraisal. The appraisers say that their methodology does not rely heavily on familiarity with the property location and, therefore, will work anywhere it is applied objectively. Logic would suggest that the more familiar the appraiser is with the area, the better the analysis. What are your thoughts?

Day 04 Assignment

- Explain how the calculation of the basic PITI differs in conventional, FHA, and VA loans.

Day 05/06 Assignment

- Explain why the calculation of a simple interest rate and APR are different.
- A borrower was borrowing $100,000 at 3% simple interest, and the MLO said there was $1,000 in points the borrower had to pay. What is the borrower's APR?
- In the lesson, we mentioned that income analysis has 3 dimensions. Identify the 3 and explain each.

Day 07/08 Assignment

- List the choices the MLO will have in completing the loan application in order to comply with ECOA in each of the following:
  - race or national origin
  - marital status
  - ethnicity

Day 09 Assignment

- The Dodd-Frank Act created the CFPB, OCRA, and FSOC. What is the purpose of each of these?

Day 10 Assignment

- How does the S.A.F.E. Act prevent abusive, predatory practices during loan origination?
- The FBI lists two specific categories for mortgage fraud. Name and describe both categories.

Day 11 Assignment

- Explain the relationship between the primary and secondary market and the role each plays.
- Give a detailed explanation of what caused Fannie Mae and Freddie Mac to be placed in conservatorship.