

# 2013: The Year Ahead for Mortgage Lending

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# Outline

- “Never a Dull Moment”
- ATR/QM Final Rule
- HOEPA Final Rule
- Loan Officer Final Rule
- Escrow Final Rule
- ECOA Appraisal Disclosure Rule
- Appraisals for Higher Priced Mortgages



# Resources

- QM/Ability to Repay
  - <http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/>
  - Proposed Rule: 76 Fed. Reg. 27,389 (May 11, 2011)
  - Effective Date: January 10, 2014
  - Final Rule: 78 Fed. Reg. 6,407 (January 30, 2013)



# Resources

- HOEPA (High Cost)
  - <http://www.consumerfinance.gov/regulations/high-cost-mortgage-and-homeownership-counseling-amendments-to-regulation-z-and-homeownership-counseling-amendments-to-regulation-x/>
  - Proposed Rule: 77 Fed. Reg. 49,089 (August 15, 2012)
  - Effective Date: January 10, 2014
  - Final Rule: 78 Fed. Reg. 6,855 (January 31, 2013)



# Resources

- Loan Officer Compensation
  - <http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/>
  - Proposed Rule: 77 Fed. Reg. 55,272 (Sept. 7, 2012)
  - Effective Date: Section 1026.36(h) and (i): June 1, 2013. All other provisions of the rule are effective on January 10, 2014.
  - Final Rule: February 15, 2013



# Resources

- Escrow
  - <http://www.consumerfinance.gov/regulations/escrow-requirements-under-the-truth-in-lending-act-regulation-z/>
  - Proposed Rule: 76 Fed. Reg. 11,597 (March 2, 2011)
  - Effective Date: June 1, 2013
  - Final Rule: 78 Fed. Reg. 4,725 (January 22, 2013)



# Resources

- Appraisal (ECOA)
  - <http://www.consumerfinance.gov/regulations/disclosure-and-delivery-requirements-for-copies-of-appraisals-and-other-written-valuations-under-the-equal-credit-opportunity-act-regulation-b/>
  - Proposed Rule: 77 Fed. Reg. 50,390 (Aug. 21, 2012)
  - Effective Date: January 18, 2014
  - Final Rule: 78 Fed. Reg. 7,215 (January 31, 2014)



# Resources

- Appraisal (Interagency)
  - <http://www.consumerfinance.gov/regulations/appraisals-for-higher-priced-mortgage-loans/>
  - Proposed Rule: 77 Fed. Reg. 54,721 (Sept. 5, 2012)
  - Effective Date: January 18, 2014
  - Final Rule: 78 Fed. Reg. 10,367 (February 13, 2013)





# Never a Dull Moment

- **DECISION** - U.S. Circuit Court of Appeals issued a decision on January 25, 2013, in Noel Canning v. NLRB
- Case held appointment of NLRB members were illegal as vacancy appointments
- **IMPLICATIONS** – While case did not mention CFPB, raises concerns respecting CFPB's powers and rules. Other circuits have different approach. Government will appeal.
- MBA is working hard on this issue. For now, implementation should move forward
- CFPB Announces Implementation Plan (February 13, 2012)



# QM/Ability to Repay

- **BACKGROUND-** Proposed rule issued May, 2011 by Federal Reserve
  - Responsibility transferred to CFPB July, 2011
  - Strong MBA advocacy
  - Summer 2012 new comment period – DTI & Litigation Risks
- **FINAL RULE** - Offers safe harbor & flexible standards DTI or GSE, FHA, etc.
- **CONCURRENT PROPOSAL** - Comments sought on key areas: loan officer compensation and other matters - due February 25, 2013
- **APPLICABILITY** – All consumer-purpose mortgages except home equity lines of credit, timeshare plans, reverse mortgages, or temporary loans.



# QM/Ability to Repay

- **ABILITY TO REPAY REQUIREMENT** – Prohibits creditor from making covered mortgage loan unless creditor makes reasonable and good faith determination, based on verified and documented information, that consumer will have reasonable ability to repay the loan according to its terms.
- **MEETING REQUIREMENT** - Creditor can comply in any of four ways:
  1. **General Ability to Repay - Originating mortgage loan after considering and verifying eight factors at minimum**
  2. **Originating “Qualified Mortgage” (QM)**
  3. **Originating Rural Balloon-Payment QM**
  4. **Refinancing a “non-standard mortgage” into a “standard mortgage”**

# Ability to Repay

**Originating mortgage loan after considering and verifying eight factors at a minimum:**

1. Current or reasonably expected income or assets, other than value of dwelling;
2. Current employment status, if creditor relies on employment income;
3. Monthly payment on the covered transaction;
4. Monthly payment on any simultaneous loan creditor knows or should have known about;
5. Monthly payment for mortgage-related obligations;
6. Current debt obligations, alimony, and child support;
7. Monthly debt-to-income ratio or residual income; and
8. Credit history.



# Ability to Repay

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  3. **Originating Balloon-Payment QM**
  4. **Refinancing a “non-standard mortgage” into a “standard mortgage**



# QM/Ability to Repay

**Originating Garden Variety “Qualified Mortgage” (QM)** - Lender may satisfy ATR by originating QM. To qualify as QM, mortgage must:

- (A) Provide regular periodic payments;
- (B) Not include negative amortization, interest-only or balloon features (except for balloon payment QMs described below) or have a loan term exceeding 30 years;
- (C) Not have total points and fees, discussed below, exceeding 3% of the total loan amount for loans \$100,000 or more, with greater limits for smaller loans;



# QM/Ability to Repay

**Originating Garden Variety “Qualified Mortgage” (QM)** - Lender may satisfy ATR by originating QM. To qualify as QM, mortgage must:

- (D) be underwritten by taking into account the monthly payment for mortgage related obligations using the maximum interest rate that may apply during the first five years and periodic payments of principal and interest based on such interest rate; and
- (E) Involve creditor consideration and verification of: (a) consumer’s current or reasonably expected income or assets and (b) current debt obligations, alimony, and child support.



# QM/Ability to Repay

For loan amount –

- Greater than or equal to \$100,000, total points and fees for the transaction may not exceed 3 percent of the total loan amount
- Greater than or equal to \$60,000 but less than \$100,000, points and fees may not exceed \$3,000
- Greater than or equal to \$20,000 but less than \$60,000 fees cannot exceed 5 percent of total loan amount;
- Greater than or equal to \$12,500 but less than \$20,000, \$1000 indexed for inflation; and
- Less than \$12,500 (indexed for inflation), 8 percent of the total loan amount.





# QM/Ability to Repay

- Rule definition of “points and fees” includes fees or charges known at or before consummation including:
  - (1) All items included in finance charge under TILA rules
  - (2) All compensation paid directly or indirectly by a consumer or creditor to a loan originator including a mortgage brokerage firm and individual employee loan originators that can be attributed to the transaction at the time the interest rate is set;
  - (3) all *bona fide* and reasonable real estate related fees under Section 1026.4(c)(7) of TILA including title related charges (other than amounts held for future payments of taxes) unless the charge is reasonable; the creditor does not receive any compensation for the charge and charge is not paid to an affiliate



# QM/Ability to Repay

- Rule definition of “points and fees” includes fees or charges known at or before consummation including:
  - (4) premiums or other charges payable at or before consummation for any credit life, disability, unemployment or credit property insurance or any other life, accident, health or loss-of-income insurance for which the creditor is a beneficiary;
  - (5) Maximum prepayment penalty that may be charged under the mortgage;
  - (6) Total prepayment penalty if the consumer refinances existing mortgage with the current holder or servicer or affiliate of either.



# QM/Ability to Repay

- *Excluded if not paid to a creditor, originator or affiliate* - The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:
  - (i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.
  - (ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.
  - (iii) Notary and credit-report fees.



# QM/Ability to Repay

- *Excluded if not paid to a creditor, originator or affiliate* - The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

Rule defines bona fide discount point as amount equal to 1 percent of the loan amount paid by the consumer that reduces interest rate based on a calculation that is consistent with established industry practices.



# QM/Ability to Repay

The following items that are included in the finance charge under current  
TILA rules are not included in the definition of points and fees:

- (a) interest or time price differential,
- (b) premium or other charge imposed under any Federal or state guarantee or insurance that protects creditor against consumer default,



# QM/Ability to Repay

The following items that are included in the finance charge under current TILA rules are not included in the definition of points and fees:

- (c) premium or other charge for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss that is not under a Federal or state agency program if premium or charge is payable after consummation or, for any premium or charge payable at or before consummation, the portion of premium that is not in excess of amount payable under the Federal Housing Administration (FHA) program provided premium or charge is refundable on pro rata basis;
- (d) bona fide third party charge not retained by the creditor, loan originator or an affiliate of either;
- (e) up to two bona fide discount points;

# QM/Ability to Repay

**QM 43% DTI Requirement**– Also, to qualify as QM, consumer’s monthly debt to total monthly income at time of loan consummation may not exceed 43 percent using the consumer’s monthly payment on the loan and any other simultaneous loan creditor knows or has reason to know will be made. OR

**Temporary QM** - Alternatively, under “special rules,” loan may be treated as a QM if it satisfies QM criteria for regular periodic payments, maximum 30-year loan term and maximum points and fees and is eligible (1) for purchase or guarantee by Fannie Mae or Freddie Mac under conservatorship or a limited-life regulatory entity successor to either; (2) insurance by HUD/FHA or the Rural Housing Service; or (3) for VA or Department of Agriculture guarantee. These rules expire on the effective date of a QM rule issued by these agencies or January 10,

2021



# QM/Ability to Repay

**Conclusive Presumption of Compliance or Safe Harbor** – Rule provides conclusive presumption or “legal safe harbor” that ability to repay requirements have been met for QM that satisfies the other requirements and has an Annual Percentage Rate (APR) that does not exceed the Average Prime Offer Rate (APOR) by 1.5 or more percentage points for a first lien or 3.5 percentage points for a subordinate lien transaction.

**Presumption of Compliance** - Provides “rebuttable presumption of compliance” for loans that meet qualified mortgage requirements listed above for loans that exceed the APOR by 1.5 or more percentage points for a first lien or 3.5 percentage points for a subordinate lien transaction.

Basically, CFPB is trying to give the safe harbor to the prime market and the rebuttable presumption for the subprime market, **but unlike the “higher priced mortgage loan” rule, there is no special threshold for jumbo mortgages.**





# QM/Ability to Repay

- **Positive Outcomes** - MBA advocated strongly concerning the qualified mortgage rule and is pleased to see that the final rule:
  - Establishes a safe harbor to ensure compliance without jeopardizing the availability of credit to consumers because of undue litigation risk
  - Includes bright line standards (43 DTI, GSE, FHA, VA, RHS) that are expansive enough to qualify most creditworthy consumers in today's market



# QM/Ability to Repay

- **Still Concerns** - While the rule has positive features, several concerns remain, among them:
  - Inclusion of loan originator compensation and third party affiliate fees which will unnecessarily result in more loans exceeding the 3% points and fees cap, making credit less available to borrowers particularly moderate-income borrowers with low balance loans
  - QM standards for jumbo loans are unduly restrictive
  - How the APOR is currently calculated may understate that actual APOR in the market
  - Because of the significant liability involved, the standards must be clarified prior to implementation



# QM/Ability to Repay

- CFPB issued proposed rule with final rule on January 10, 2013, comments due February 25, 2013
- Invites comments on:
  - **Inclusion of loan originator compensation in points and fees definition** - proposes alternative calculation methods to eliminate double counting or over-inclusion. Also asks for comments on other calculation methods
  - **Need to raise APR-APOR triggers for balloon loan qualified mortgages** - to allow more of these loans to fit within safe harbor
  - **New QM for smaller creditors that hold mortgages in portfolio** - QM would not be subject to 43% DTI cap and would fall into safe harbor category as first lien mortgage as long as APR less than 3.5% above APOR
  - **Exemptions from ability to repay requirements for refinancing programs** - Federal programs, GSE refinances, Homeownership Stabilization and Foreclosure Prevention programs as well as credit extended pursuant to Community-Focused Lending Program or by certain non-profit creditors

# QM/Ability to Repay

- What we are hearing
- Questions?



# HOEPA/High Cost

Scope of HOEPA coverage expanded (if secured by principal dwelling):

- Includes **purchase money** mortgage loans,
- Refinances,
- Closed-end home-equity loans, and
- Open-end credit plans (i.e., home-equity lines of credit, or HELOCs)

Reverse mortgages still are excluded.

Also excluded:

- Initial construction loans
- Housing Finance Agency loans where original creditor is the Housing Finance Agency
- Rural Development Loans



# HOEPA/High Cost

New thresholds:

- APR exceeds the average prime offer rate (APOR) by:
  - 6.5 percentage points for **most** first-lien mortgages;
  - 8.5 percentage points for first-lien secured by personal property and the loan is **less than \$50,000**; or
  - 8.5 percentage points for subordinate lien mortgages.
- Total points and fees exceed:
  - For a loan of \$20,000 or more, 5 percent of the total loan amount;
  - For a loan of less than \$20,000, the lesser of 8 percent of the total loan amount or \$1,000 [amounts adjusted annually]
- Under the loan terms, the creditor may charge a prepayment penalty more than 36 months after loan consummation or account opening, or penalties that exceed more than 2 percent of the amount prepaid.



# HOEPA/High Cost

What rate do you use?

- For a fixed-rate transaction, the APR must be based on the interest rate in effect as of the date the interest rate for the transaction is set;
- For a variable rate where the rate varies solely in accordance with an index, the APR must be based on the greater of the interest rate determined by adding the maximum margin permitted at any time during the loan agreement to the index rate in effect as of the date the interest rate for the transaction is set or the introductory interest rate; and
- For any other variable rate the APR must be based on the maximum interest rate that may be charged during the term of the loan.



# HOEPA/High Cost

Points and fees definition:

- Closed end loans
  - Enumerates six specific categories of items that creditors must include in points and fees
- Open-end loans
  - Also includes:
    - Certain participation fees;
    - Minimum fee the creditor minimum fee the creditor would require the consumer to pay to draw down an amount equal to the total credit line.





# HOEPA/High Cost

Include the following fees or charges known at or before closing:

- All items required to be disclosed as a finance charge, except for “Excluded Fees;”
- All compensation paid directly or indirectly by a consumer or creditor to a loan originator, that can be attributed to that transaction at the time the interest rate is set;
- (Note – the exact details of loan officer compensation included is subject to rulemaking:  
[http://files.consumerfinance.gov/f/201301\\_cfpb\\_concurrent-proposal\\_ability-to-repay.pdf](http://files.consumerfinance.gov/f/201301_cfpb_concurrent-proposal_ability-to-repay.pdf))



# HOEPA/High Cost

Include the following fees or charges known at or before closing:

- All “real estate related” charges in 1026.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and



# HOEPA/High Cost

Include the following fees or charges known at or before closing:

- The maximum prepayment penalty that may be charged or collected under the terms of the mortgage loan; and
- The total prepayment penalty, incurred by the consumer if the consumer refinances the existing mortgage loan with the current holder of the existing loan, a servicer acting on behalf of the current holder, or an affiliate of either.



# HOEPA/High Cost

Include the following fees or charges known at or before closing (open-end):

- All Closed End Fees plus
  - Any fees charged for participation in an open-end credit plan, payable at or before account opening (whether assessed annually or periodically); and
  - Any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line, where the creditor must assume that the consumer will make at least one draw during the term of the plan.



# HOEPA/High Cost

The following fees are excluded:

For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program:

- If the premium or other charge is payable after consummation, the entire amount of such premium or other charge; or
- If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan;



# HOEPA/High Cost

The following fees are excluded:

Up to two bona fide discount points paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:

- The APOR, by more than **one** percentage point; or
- For transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 et seq.) by more than one percentage point



# HOEPA/High Cost

The following fees are excluded:

- If no discount points have been excluded (per above), then up to one bona fide discount point paid by the consumer in connection with the transaction, if the interest rate without any discount does not exceed:
  - The APOR by more than **two** percentage points; or
  - For transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 et seq.) by more than **two** percentage points;



# HOEPA/High Cost

## Bona Fide Discount Point

An amount equal to one percent of the loan amount paid by the consumer that reduces the interest rate or time-price differential applicable to the transaction based on a calculation that is consistent with established industry practices for determining the amount of reduction in the interest rate or time-price differential appropriate for the amount of discount points paid by the consumer.





# HOEPA/High Cost

## Prepayment Fee - Closed

For a closed-end credit transaction, a charge imposed for paying all or part of the transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation, provided, however, that interest charged consistent with the monthly interest accrual amortization method is not a prepayment penalty for extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.



# HOEPA/High Cost

## Prepayment Fee – Open

A charge imposed by the creditor if the consumer terminates the open-end loan prior to the end of the term, other than a waived bona fide third party charge that the creditor imposes if the consumer terminates the open-end plan sooner than 36 months after account opening



# HOEPA/High Cost

In addition to other disclosures, for a high-cost loan, the creditor must disclose the following in conspicuous type size:

- *Notices.* The following statement: “You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.”
- *Annual percentage rate.* The annual percentage rate.



# HOEPA/High Cost

In addition to other disclosures, for a high-cost loan, the creditor must disclose the following in conspicuous type size:

- **Closed End.** The amount of the regular periodic payment and the amount of any balloon payment.
- **Open End.** An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. And the fact that the loan contains a balloon payment.



# HOEPA/High Cost

In addition to other disclosures, for a high-cost loan, the creditor must disclose the following in conspicuous type size:

- *Variable-rate.* For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate
- *Amount borrowed.* For a mortgage refinancing, the total amount the consumer will borrow, as reflected by the face amount of the note; and where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact shall be stated, grouped together with the disclosure of the amount borrowed.



# HOEPA/High Cost

## Homeownership Counseling Disclosure

Not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must and the broker may provide a clear and conspicuous written list of homeownership counselors that provide relevant counseling services in the loan applicant's location.



# HOEPA/High Cost

## Prohibitions

- **Payments to home improvement contractors**
- **Required notice to assignees**
- **Flipping.** Cannot refinance a high cost mortgage into a high cost mortgage within one year unless in the borrower's interest
- **Repayment ability.** Cannot rely on value of consumer's collateral and must consider repayment ability
- **Preloan counseling.** Must obtain written confirmation by a counselor of the advisability of the mortgage. The counseling must occur after receipt of the GFE.
- **Recommend default.**



# HOEPA/High Cost

## Prohibitions (cont'd)

- **No modification or deferral fees.**
- **Late fees capped.** Late fees may not exceed 4% of the amount past due, and not before 15 days late. No multiple late fees.
- **Payoff Statements.** Cannot impose a fee to obtain payoff information, except for disclosed processing fees or fee for multiple requests.
- **Financing of points and fees.** May not finance points and fees.
- **Cannot evade protections**





# HOEPA/High Cost

- A creditor or assignee when acting in good faith failed to comply is not in violation if:
  - Within 30 days of consummation and prior to institution of any action, the consumer is notified of or discovers the violation
  - Appropriate restitution is made within a reasonable time; and
  - Within a reasonable time, whatever adjustments are made to the loan or credit plan to, either, at the choice of the consumer:
    - (i) make the loan compliant; or (ii) change the terms so it is not high cost.



# HOEPA/High Cost

- A creditor or assignee when acting in good faith failed to comply is not in violation if:
  - Within 60 days of discovery and prior to institution of any action, the consumer is notified of the violation
  - Appropriate restitution is made within a reasonable time; and
  - Within a reasonable time, whatever adjustments are made to the loan or credit plan to, either, at the choice of the consumer:
    - (i) make the loan compliant; or (ii) change the terms so it is not high cost.



# HOEPA/High Cost

- What we are hearing
- Questions?



# LO Comp

- **Overview**: January 20, 2013 - CFPB issued final loan originator (LO) compensation rule implementing Dodd-Frank provisions
- **Coverage**: Generally applies to closed-end consumer credit transactions (covered transactions) secured by dwelling with one section only applicable to a principal dwelling. Rule does not cover HELOCs and loans secured by timeshares
- **Scope**: Implements Dodd-Frank and revises current rule implemented in April, 2011 (originally issued by Federal Reserve and now responsibility of CFPB)
- Implements D/F Qualification provisions
- Also, D/F prohibitions against mandatory arbitration and financing credit life insurance



# LO Comp

1. **No rate or term compensation** - Maintains prohibition against loan originator receiving and person paying loan originator compensation based on loan term or proxy for term (defines proxy)
2. **Defines “loan originator”** - Excludes certain servicer, administrative and clerical tasks, seller financiers of 3 or less properties
3. **Drops zero-zero proposal** – Provides complete exemption from any prohibition on payment of commission to originator and points and fees; matter to be reviewed further
4. **Maintains prohibition against dual compensation** - Establishes exception allowing loan originator organizations that receive compensation directly from consumer to pay commission-based compensation to individual loan originator



# LO Comp

**Limited exception for LOs** – May reduce comp where unforeseen increase in actual settlement cost from GFE

5. **Profit sharing and bonuses** - Permits employer contributions to qualified and non-qualified profit-sharing plans as well as bonuses to 10 percent of compensation; also excludes originators originating ten or fewer transactions
6. **New qualifications for depositories** - Establishes new requirements for organizations employing registered loan originators including background checks, credit reports, periodic training for Los



# LO Comp

**Limited exception for LOs** – May reduce comp where unforeseen increase in actual settlement cost from GFE

7. **Mandatory arbitration** - Prohibits inclusion of provisions in covered mortgages requiring mandatory arbitration and provisions from being applied or interpreted to bar a consumer from bringing a claim in court
8. **Credit insurance** – Prohibits financing of premiums at closing. Provision does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis



# LO Comp

**Record Retention:** Extends period required for retention of records evidencing compensation to loan originators as well as the compensation agreements that govern those payments from two years to three years after the payments and also requires previously uncovered loan originator organizations — mortgage brokerages — to comply with record retention requirements.





# LO Comp (and QM)

- Dodd-Frank establishes severe remedies for violations that can lead to combined penalties and costs of hundreds of thousands of dollars.
  - Actual damages, including for example, the borrower's down payment of 10 percent or more (i.e., \$20,000 or more);
  - Statutory damages of up to \$4,000;
  - All fees and up to three years of finance charges paid by the consumer which on an average loan of \$200,000 at 4.5% may be approximately \$25,000; and
  - Court costs and reasonable attorney's fees associated with action
  - *Plus attorneys fees for lender no matter whether claim is valid may be \$26,000-\$155,000 dollars*



# LO Comp (and QM)

- Dodd-Frank also extends time to bring claim by changing the statute of limitations for action based on a violation from one year for violations to three years from date of occurrence of violation.
- Beyond this, Dodd-Frank also allows consumer to assert violation against any creditor, assignee or other holder of a residential mortgage loan as defense to foreclosure by recoupment or set off without regard to three year time limit.



# LO Comp

- What we are hearing
- Questions?



# Escrows

- Required Escrow Account
  - A creditor may not extend a “higher-priced mortgage loan” secured by a first lien on a consumer’s principal dwelling unless an “escrow account” is established before consummation for payment of property taxes and premiums for “mortgage-related insurance” required by the creditor



# Escrows

- (New) Higher-priced mortgage loan is:
  - A closed-end consumer credit transaction secured by the consumer’s principal dwelling with an annual percentage rate (“APR”) that exceeds the average prime offer rate (“APOR”) for a comparable transaction as of the date the interest rate is set:
    - By 1.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that does not exceed the limit in effect as of the date the transaction interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac;
    - By 2.5 or more percentage points for loans secured by a first lien with a principal obligation at consummation that exceeds the limit in effect as of the date the transaction’s interest rate is set for the maximum principal obligation eligible for purchase by Freddie Mac; or
    - By 3.5 or more percentage points for loans secured by a subordinate-lien.



# Escrows

- Average Prime Offer Rate
  - Means the annual percentage rate that is derived from average interest rates, points and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.
  - <http://www.ffiec.gov/ratespread/newcalchelp.aspx>
  - <http://www.consumerfinance.gov/learnmore/>



# Escrows

- Required Escrow Account
  - “Escrow account” means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay.
  - The term “escrow account” excludes any account that is under the borrower's total control.



# Escrows

- Mortgage-Related Insurance Required by the Creditor
  - Refers to insurance against loss of or damage to property, or against liability arising out of the ownership or use of the property, or insurance protecting the creditor against the consumer's default or other credit loss.
  - Insurance premiums do not need to be included for loans secured by dwellings in:
    - Condominiums
    - Planned Unit Developments; or
    - Other common interest communities in which dwelling ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings.





# Escrows

- A creditor is not required to establish an escrow account for:
  - A transaction secured by shares in a cooperative
  - A transaction to finance the initial construction of a dwelling
  - A temporary or “bridge” loan with a loan term of 12 months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within 12 months; or
  - A reverse mortgage



# Escrows

- An escrow account does not need to be established for a transaction if, at the time of consummation:
  - During the preceding calendar year, the creditor has extended more than 50 percent of its total “covered transactions” secured by a first lien on properties that are located in counties designated as “rural” or “underserved” by the Bureau;
  - During the preceding calendar year, the creditor and its affiliates together originated 500 or fewer “covered transactions,” secured by a first lien; An escrow account does not need to be established for a transaction if, at the time of consummation:
    - As of the preceding calendar year, the creditor had total assets of less than \$2B (adjusted annually); and
    - Neither the creditor nor its affiliate maintains an escrow account for any extension of credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than: (i) escrow accounts established for first-lien higher-priced mortgage loans on or after April 1, 2010 and before June 1, 2013; or (ii) escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.



# Escrows

- “Covered transaction” means a consumer credit transaction that is secured by a dwelling, including any real property attached to a dwelling, other than a:
  - (1) A home equity line of credit;
  - (2) A mortgage transaction secured by a consumer’s interest in a timeshare plan;
  - (3) A reverse mortgage;
  - (4) A temporary or “bridge” loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling; or
  - (5) A construction phase of 12 months or less of a construction-to-permanent loan.



# Escrows

- A “rural” county is one that if, during a calendar year it is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area. A creditor may rely on a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “rural” for a particular year.
- A county is “underserved” if no more than two creditors extend covered transactions secured by a a first lien five or more times in the county. A creditor may rely as a safe harbor on the list of counties published by the Bureau to determine whether a county qualifies as “underserved” for a particular year.



# Escrows

- “Creditor” Exemption
  - Does not apply to any first-lien higher priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not meet the “creditor” exemption
  - “Loan Type” exemption would still apply



# Escrows

- Cancellation
  - A creditor or servicer may cancel a required escrow account upon the earlier of:
    - **Termination.** Termination of the underlying debt obligation; or
    - **Consumer Request.** Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account, provided the conditions are met
  - A creditor or servicer may grant a consumer's request to terminate the escrow account if:
    - The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and
    - The consumer currently is not delinquent or in default on the underlying debt obligation.



# Escrows

- Evasion
  - A creditor may not structure a home-secured loan as an open-end plan to evade the escrow requirements



# Escrows

- What are we hearing?
- Questions





# Appraisals - ECOA

- Key Definitions
  - Application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit.



# Appraisals - ECOA

- Key Definitions
  - “Completed Application” means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.



# Appraisals - ECOA

- Key Definitions

- Consummation means the time that a consumer becomes contractually obligated on a closed-end credit transaction.
- Dwelling means a residential structure that contains one to four units whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home. Motor vehicles are not included.



# Appraisals - ECOA

## ■ Key Definitions

- Valuation means any estimate of the value of a dwelling developed in connection with an application for credit.

Valuations include:

- A report prepared by an appraiser (whether or not licensed), including the estimate or opinion of the real estate's value;
- A document prepared by the creditor's staff that assigns value to the property;
- A report by a GSE for describing to the applicant the estimate of the value developed pursuant to proprietary methodology by the GSE;
- AVM-generated estimate
- Broker Price Opinion by a real estate agent, broker or sales person
- Includes any attachments and exhibits that are integrated part of the valuation

# Appraisals - ECOA

- Key Definitions
  - Valuation does not include:
    - Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to the applicant
    - Governmental agency statements of appraised value that are publicly available
    - Publicly available lists of valuation (such as published sales prices or mortgage amounts, tax assessments and retail price ranges)
    - Manufacturer's invoices for manufactured homes
    - Reports reflecting property inspections that do not provide an estimate of opinion of the value of the property and are not used to develop an estimate or opinion of the value of the property



# Appraisals - ECOA

- Requirement to Provide Copy of Appraisals
  - **Provide Copy of Appraisals.** A creditor must provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is secured by a first lien on a dwelling.
  - **Timing.** The creditor must provide the copy as of the **earlier** of (i) “promptly upon completion;” or (ii) three business days prior to consummation or account opening.
    - Completion occurs at the later of: (i) when the last version is received by the creditor; or (ii) when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required.
      - **Example:** On day 15 following receipt of an application, the underwriting department reviews an appraisal and accepts it. One week later, the creditor sends a copy of the appraisal to the applicant. The applicant receives it more than three days before consummation.



# Appraisals - ECOA

- Requirement to Provide Copy of Appraisals
  - **Multiple Versions.** If a creditor receives multiple versions of an appraisal or valuation, it only needs to send the latest version received.
  - **Waiver.** A consumer may waive the timing requirement to agree to receive the copy at consummation or account opening, except otherwise prohibited by law. Waiver must be received at least three business days prior to consummation or account opening unless it relates to receipt of an appraisal or written valuation that contains only clerical changes from a prior version provided more than three business day prior to consummation or account opening. If consummation does not occur, creditors must provide copies no later than 30 days after determining that consummation will not occur.



# Appraisals - ECOA

- Requirement to Provide Copy of Appraisals
  - **Withdrawn, Denied and Incomplete Applications.** This requirement applies even if the applicant withdraws or fails to complete the application or the creditor denies the request
  - **Electronic.** Creditors may provide copies electronically consistent with ESIGN.





# Appraisals - ECOA

- Application Disclosure
  - **General Requirement.** A creditor must mail or deliver notice of the applicant's right to receive a copy of all written appraisals developed in connection with the application for a loan secured by a first lien on a dwelling.
  - **Timing.** Mail or deliver not later than the third business day after the creditor receives the application. If a creditor determines that the loan will be secured by a first lien, then it must provide the notice not later than three business days after it determines the loan will be secured by a first lien on a dwelling.



# Appraisals - ECOA

- Application Disclosure
  - **Fees.** The creditor may not charge for providing the copy of the appraisal or other written valuation required by this rule, except that applicants may be required to pay a reasonable fee to reimburse the creditor for the cost unless otherwise prohibited by law.
    - Prohibited fees include charges for photocopies, postage, or other costs.
    - Cost may include an administration fee charged by an AVM



# Appraisals - ECOA

- Application Disclosure
  - **Model Form C-9.** “We may order an appraisal to determine the property’s value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.”
    - Creditors may add: a telephone number that applicants may call to leave their name and the address to which a copy of the appraisal or other written valuation should be sent; and notice of the cost the applicant will be required to pay the creditor for the appraisal or other valuation.



# Appraisals – Higher Priced

- Appraisals Required
  - **Generally.** A creditor may not extend a higher-priced mortgage loan to a consumer without obtaining, prior to consummation, a written appraisal of the property to be mortgaged. The appraisal must be performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.



# Appraisals – Higher Priced

- Certified or Licensed Appraiser
  - A person who is certified or licensed by the state agency in the state in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989



# Appraisals – Higher Priced

- Appraisals Required
  - **Safe Harbor.** A creditor has obtains an appraisal that meets the above requirement if the creditor:
    - Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and Title XI of FIRREA
    - Verifies through the National Registry that the appraiser who signed the appraiser’s certification was a certified or licensed appraiser in the state in which the appraised property is locates as of the date the appraiser signed the appraiser’s certification;
    - Confirms that the elements in Appendix N are addressed in the appraisal; and
    - Has no actual knowledge contrary to the facts or certifications contained in the appraisal.



# Appraisals – Higher Priced

- Appraisal Requirements do not apply to:
  - A qualified mortgage (as defined in Section 1026.43);
  - A transaction secured by a new manufactured home;
  - A transaction secured by a mobile home, boat or trailer;
  - A transaction to finance the initial construction of a dwelling; and
  - A loan with a maturity of 12 months or less, if the purpose of the loan is a “bridge” loan connection with the acquisition of a dwelling intended to become the consumer’s principal dwelling;or
- A reverse mortgage.



# Appraisals

- What we are hearing
- Questions?





# Contact Information

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