

RATE-LOCKS AND THE REFINANCE BOOM



As a result of the Federal Reserve Board's actions to stimulate the economy by lowering interest rates, consumers seeking to take advantage of historically low mortgage interest rates swamped mortgage loan brokers and lenders with loan applications. Because of the flood of new business, brokers struggled to timely and efficiently process loans for submission to lenders. Appraisers also tried to keep up with the volume, as did lenders who became bottlenecked in underwriting, document preparation and funding. Title insurance and escrow companies tried to accommodate borrowers needing to sign documents and get loans closed. Adding to the problem was the fact that some borrowers placed loan applications with several brokers or lenders hoping to ensure the best deal.

In many cases borrowers asked to be locked into an interest rate or were offered rate locks by their sales representatives. In most cases, rate locks were for no more than 30 or 45 days, and as a result of the enormous volume, many loans were not completed within the specified period of time. As interest rates began to climb, ultimately at a dramatic rate, brokers began to advise some customers that their rate commitments had expired and they could only be offered a higher interest rate or pay discount points to buy-down the rate. In some cases borrowers were able to obtain extensions on their rate commitments but invariably many lost the agreed rate lock. Because of the dramatic spike in rates, for many, buying

the higher rates down was impractical or impossible.

With the rising rates and expired lock-ins, the Department of Real Estate (DRE) began receiving many telephone calls from consumers. The events related to the DRE by borrowers indicate a great amount of confusion on their part as to whether they were truly locked into an interest rate and a lack of knowledge of the terms of the rate lock agreement. Many consumers indicated a belief that they were locked in to their requested interest rate based on statements and representations by their sales representatives. In most cases, they had not been given a written agreement and some believed that the Mortgage Loan Disclosure Statement/Good Faith Estimate that they received constituted a rate commitment. One broker actually contacted the Department and advised us that she had terminated a salesperson for misrepresenting to customers that they had been locked in when in

fact they had not. Some borrowers alleged that they had paid advance fees for rate locks and, when brokers could not deliver their loans, they were only offered the lock-in fees as refunds.

While the great majority of brokers continue to endeavor to deliver loans at interest rates and terms that were promised, confusion reigns over how a consumer may rely on statements and representations by licensees about lock-ins. In the absence of a statutory requirement for a rate-lock or guarantee to be in writing, brokers must ensure that they and their sales representatives clearly state whether the rate is being locked or floated, the terms of the lock-in, whether there are any float-down provisions, the lock-in period and the expiration date. In order to avoid

Continued on page 2

Mortgage Loan Bulletin LAST ISSUE DISTRIBUTED BY MAIL

To increase operating efficiencies and take advantage of today's technology, this will be the last issue of the *Mortgage Loan Bulletin* that will be distributed by U.S. mail. The Department of Real Estate (DRE) will continue to publish the *Mortgage Loan Bulletin* in April and October of each year, however, future issues will be available only on the DRE Web site at www.dre.ca.gov under **Publications** and **Mortgage Loan Bulletin**. Thank you for your understanding and please continue to read the *Bulletin*.

MORTGAGE LOAN BULLETIN

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DRE's Internet address is:
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RATE-LOCKS

Continued from page 1

confusion, brokers should put their agreements in writing and provide them to the customer. Brokers must also ensure that in times of heavy loan application volume that loans can be closed within the time period stated for the lock-in and that rate locks are

long enough to accommodate increased processing time. Based on telephone calls the Department has received, it appears that in too many cases the rate lock was not offered for a sufficient period of time to close the loan.

Business and Professions Code Sections 10176(a) and (c) allow the Department to take formal disciplinary

action against a licensee who makes misrepresentations or false promises. Representing or promising that a rate has been guaranteed when it has not, or that a loan transaction can be com-

pleted before a lock-in expires when it cannot, not only breaches a licensee's fiduciary duty to his or her client, but also can be grounds for formal disciplinary action against that licensee.

Reduce the confusion and risk with written lock-in agreements and ensure that rate-locks are long enough to allow loans to close at the agreed upon terms. When loans don't close, everyone loses. 🗨️

**When loans don't close,
everyone loses.**

Placing Pressure on Appraisers

Many licensed real estate appraisers are concerned that they are sometimes "pressured" into performing appraisals for a minimum value specified by a broker in a transaction. In an attempt to increase awareness of this issue, the Office of Real Estate Appraisers provides the following article:

When working with an appraiser, a broker may tell the appraiser that he or she needs to "hit the sale price" or make a certain value in order for the client to qualify for a loan. Although the broker may not intend to be creating a problem for the appraiser, he or she may be unaware that just by accepting the assignment under those conditions, the appraiser is at a risk for disciplinary action against his or her license.

All licensed appraisers are required to conform to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). The Conduct section of the Ethics Rule in USPAP states:

"An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions."

In addition, each appraisal report must contain a certification signed by the appraiser, stating his or her compensation for completing the assignment is not contingent upon "the development of a predetermined value or direction in value that favors the cause of the client."

Many appraisers feel they must comply with these "minimum value" requests from brokers or face the prospect of receiving no additional work in the future. As a result, they are performing a balancing act between keeping their license in good standing and keeping their client satisfied. The Office of Real Estate Appraisers encourages all appraisers to provide the best possible service to their clients. However, the appraiser must ensure that this is being accomplished within the framework of USPAP. 🗨️

Home Mortgage Disclosure Act REPORTING REQUIREMENTS

In the Spring 2003 *Mortgage Loan Bulletin*, the Department of Real Estate (DRE) described the criteria for DRE licensed **lenders** to file either a report to the Department of Housing and Urban Development pursuant to the Home Mortgage Disclosure Act (HMDA) or the Residential Mortgage Loan Report to the DRE pursuant to the Holden Act (Health and Safety Code Sections 35815 and 35816). Refer to the DRE Web site at www.dre.ca.gov under **Publications** and **Mortgage Loan Bulletin** for a full review of the article. The Department has received reports from lenders for the 2002 calendar year and our reviews indicate that some licensees who are filing reports with the DRE should be filing HMDA reports with HUD.

Since the criteria for lenders to report their **2003** calendar year HMDA data will be the same as for the 2002 calendar year, and in order for our **lenders** to become familiar with the federal reporting criteria, below we have reprinted the 2003 reporting criteria for nondepository institutions from the Web site of the Federal Financial Examination Counsel (FFIEC) at www.ffiec.gov under “**Who Reports HMDA Data?**”

2003 HMDA REPORTING CRITERIA FOR NONDEPOSITORY INSTITUTIONS

Use information and data from the preceding December 31 date when determining whether you meet the reporting criteria. The following questions for a nondepository institution should be answered to determine if you should report Calendar Year 2003 HMDA data in 2004.

1. Is the nondepository institution a for-profit lender?
2. In the preceding calendar year, did the institution's home purchase loan originations (including refinancings of home purchase loans) equal or exceed 10 percent of its total loan originations, measured in dollars?
3. Did the nondepository institution either:
 - (a) have a home or branch office in an MSA on the preceding December 31, or
 - (b) receive applications for, originate, or purchase 5 or more home purchase or home improvement loans on property located in an MSA in the preceding year?
4. Did the nondepository institution either:
 - (a) have assets (when combined with the assets of any parent corporation) exceeding \$10 million on the preceding December 31, or
 - (b) originate 100 or more home purchase loans (including refinancings of home purchase loans) in the preceding calendar year?

If a nondepository institution responds 'YES' to the above questions 1 and 2 and 'YES' to at least one question in 3 and one question in 4, then HMDA applies to the institution's loan originations, purchases, and applications in the current calendar year. A negative response to either questions 1 or 2, or to all of the questions in 3 or 4 exempts the institution from filing HMDA data for the current calendar year.

For nondepository institutions, a branch office is any office of the institution that takes applications from the public for home purchase or home improvement loans. It does not include offices of affiliates or other third parties such as loan brokers.

Only those **lenders who meet** the reporting requirements of the Holden Act **and do not meet** the HMDA reporting criteria must submit reports to the DRE. Additionally, whether filing HMDA data with HUD or a Residential Mortgage Loan Report with the DRE, the 2003 calendar year reports will require reporting lenders to begin using the **2000** census series. The Mortgage Loan Activities Unit can be reached at (916) 227-0770 for questions regarding the Residential Mortgage Loan Report. 📞

Fall 2003 — Mortgage Loan Bulletin

NATIONAL “DO NOT CALL” REGISTRY

What Real Estate Practitioners Need to Know

Real estate practitioners need to know that the Federal Trade Commission (FTC) has amended the Telemarketing Sales Rule to give consumers a choice about whether they want to receive most telemarketing calls.

In July, consumers began signing up for the national “do not call” registry.

In September, telemarketers will be provided access to the registry and will be prohibited from calling consumers who are listed in the registry, except in specified circumstances. Telemarketers will also be required to compare their call

lists to the registry and remove consumer telephone numbers listed from their call lists at least once every 90 days.

In October, the FTC and states will start to enforce the new provisions and fine violators up to \$11,000 per violation. California consumers will also be able to pursue cases against violators in small claims court.

There are additional changes to the Telemarketing Sales Rule and requirements about which real estate practitioners should be aware. Further information is provided by the FTC at <http://www.ftc.gov/bcp/>



**NATIONAL
DO NOT CALL
REGISTRY**

[online/pubs/buspubs/calling.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/calling.htm). The FTC also provides a guide to complying with the Telemarketing Sales Rule at <http://www.ftc.gov/bcp/online/pubs/buspubs/tsr.htm>.

Consumers can add their home and mobile phone numbers to the national “do not call” registry at www.donotcall.com.