

SECTION 12 – Higher-Priced Mortgage Loans - Financial Code Section 4995 et seq.

Higher-priced loans as defined in Financial Code Section 4995 are subject to certain limitations. A loan falls within the requirements of this statute if it was a first lien on a dwelling and the interest rate charged was 1.5% higher than the average rate or if it was a junior lien on a dwelling and the interest rate charged 3.5% was higher than the average rate.

Does the broker arrange or make higher-priced mortgage loans?

Correct Procedure:

The following are prohibited acts and limitations for covered loans:

Were terms of the loan within legal limits? Violations of this section include “yes” answers to the following:

- Was the maximum prepayment penalty in the first 12 months more than 2% of the prepaid balance?
- Was the maximum prepayment penalty maximum in second 12 months more than 1% of the prepaid balance?
- Was the loan divided to avoid applying this section?
- Was there any other subterfuge?
- Was there any false, deceptive, or misleading statement or representation?
- Did the broker disclose if only higher-priced mortgages are made or offered?
- Was there steering to a loan at a higher cost than the borrower would qualify for?
- Was there compensation for a prepayment penalty loan that exceeds the amount of compensation that would have been paid for a loan without a prepay penalty?
- Was the compensation fee different for the borrower, lender, or third party?
- Did the broker recommend defaulting on the borrower’s current loan when refinancing?
- Was there negative amortization?

Reference: Financial Code Sections 4995, 4995.1, 4995.2, 4995.3, 4995.4, 4995.5, 4995.6

SECTION 13 – Residential Mortgage Loan Report (RE 857)

This section applies only to Department-licensed brokers who act as direct lenders.

Does the broker act in the capacity of a direct lender?

Correct Procedure:

If the broker files reports at the federal level pursuant to the Home Mortgage Disclosure Act (HMDA) for a calendar year, no RE 857 reports will be filed with the Department.

- Lenders should determine if they meet the HMDA reporting criteria through the HMDA Web site at www.ffiec.gov/hmda under “About HMDA” for non-depository institutions.
- Lenders who meet the reporting criteria of Regulation C of the HMDA must file specified reports at the federal level and are exempt from filing the Residential Mortgage Loan Report (RE 857) with the Department.

If the broker who acts as a direct lender does not meet the reporting criteria under HMDA, then the broker may be required to file the Residential Mortgage Loan Report (RE 857) with the Department if the broker:

- has assets that total \$10 million or less;
- regularly funds real estate purchase and/or home improvement loans (“regularly” meaning 12 or more transactions annually during the immediately preceding calendar year that in the aggregate total more than \$500,000); and