

Chapter 2

Ethical Standards of Conduct for MLOs

Chapter Objectives

- Describe the meaning of ethics as it pertains to the standards of conduct of a mortgage professional
- Identify unethical and unlawful predatory and fraudulent mortgage activities that are prohibited and punishable
- Explain how to comply with federal laws that govern mortgage-related advertising with a focus on the MAP Advertising Rule
- Identify key provisions of Chapter 87 specific to telemarketing and senior abuse prevention
- Describe federal laws that protect against identity theft, including FCRA and FACTA requirements

Ethics of Mortgage Professionals

- **Qualities of Ethical Mortgage Professionals**
 - Serve mortgage lending needs of public in virtuous manner
 - Treat everyone equally
 - Be honest
 - Give full disclosure about all terms and conditions of mortgage loan
 - Don't use your knowledge to take advantage of people
 - Keep good documentation
 - Adhere to code of ethics from professional organization

Ethics of Mortgage Professionals

- **Fraud vs Ethics**
 - Fraud is deliberate act with intent to deceive or with reckless indifference to truth and standards of conduct
- **Mortgage Fraud**
 - Material misrepresentation or concealment relied upon by lender and used in effort to obtain mortgage loan, such as falsifying documents
- **Enforcement and Criminal Liability**
 - Federal offense; fines and imprisonment

Activity 2.1 Knowledge Check

1. Mortgage fraud is a _____ crime when committed in relation to any federally-related loan.

- A. federal
- B. felony
- C. misdemeanor

Activity 2.1 Knowledge Check

2. For violations of 18 U.S.C. § 1014 involving false statements on loan applications, the punishment may include a fine of not more than

- A. \$10,000, imprisonment for not more than 2 years, or both.
- B. \$1 million, imprisonment for not more than 30 years, or both.
- C. \$5 million, imprisonment for not more than 30 years, or both.
- D. \$10 million, imprisonment for up to a lifetime, or both.

Ethics of Mortgage Professionals

**Read the
Mortgage Fraud Application Scheme
Case Study**

Activity 2.2 Apply Your Knowledge

- 1. The Assistant U.S. Attorney who handled the case stated that between 2012 and 2013, the defendant conspired with others to defraud Mortgages R Us (MRU), a mortgage bank, and other financial institutions by**
- A. falsifying ability to repay documents.
 - B. preying on financially distressed consumers.
 - C. submitting falsified appraisal and title documents.
 - D. submitting fraudulent applications for home loans.

Activity 2.2 Apply Your Knowledge

2. In this case, Doug Bennett was convicted of conspiring to commit _____ fraud affecting a financial institution. He was sentenced to time served and 10 months home detention by U.S. District Court Judge Will Smith.

- A. identity theft
- B. loan documentation
- C. mail and wire
- D. mortgage

Activity 2.2 Apply Your Knowledge

3. In total, six defendants have pleaded guilty for their roles in this fraud. Attorney Ted White, Esq. pleaded guilty to a misprision of felony for failing to report knowledge of a felony to the appropriate authorities and was sentenced to

- A. a penalty fine of \$500,000.
- B. 10 months home detention.
- C. one month in prison.
- D. four months in prison.

Predatory Lending

- **Predatory Lending**
 - Unethical behaviors of originating loans that take advantage of ill-informed consumers; motive is profit
- **Predatory Sub-Prime Lending**
 - Lenders make these riskier loans because they can charge higher rates, points, and other fees
 - Sub-prime does not equal predatory
 - Foreclosure scam artists prey on homeowners in dire financial straits

Predatory Lending Indicators

1. Steering to high-rate programs
2. Falsely identifying loans
3. Structuring loans with unaffordable payments
4. Falsifying loan documents
5. Making loans to mentally incapacitated
6. Forging signatures on loan documents
7. Changing loan terms at closing
8. Requiring credit insurance
9. Increasing interest rates for late payments
10. Charging excessive prepayment penalties
11. Failing to report good payment on credit report
12. Failing to provide accurate balance and payoff info

Activity 2.3 Knowledge Check

1. Larry borrowed \$180,000 to buy a house in Albany. In order to get the loan, his lender charged him fees totaling \$18,000. Would you consider this to be suspicious?

A. Yes

B. No

Predatory Lending

- **Predatory Lending Risk Reduction**
 - **State and Federal Intervention**
 - Implemented regulations
 - HUD task force
 - Filed lawsuits
 - **Existing Laws – HOEPA**
 - Controls acceleration clauses
 - Places limitations on prepayment penalties
 - Prohibits loan flipping
 - Prohibits demand clauses
- **Read the Case Study – Mortgage Fraud Short Sale Flip Scheme**

Activity 2.4 Apply Your Knowledge

1. In this case, which of the following are fraudulent activities that Barton and others are charged with committing?

- **Engineering fraudulent short sale “flips” of properties with mortgages that were in default**
- **Fraudulently obtained numerous home equity lines of credit using fraudulent documents and information**
- **Generating false pre-approval letters**
- **Rigging the short sale process to maximize the difference in price between the two transactions**

Activity 2.4 Apply Your Knowledge

2. To obtain HELOC loans, the conspirators allegedly submitted loan applications in the name of

- A. consumers in default.
- B. foreclosure scam artists.
- C. protected elderly consumers.
- D. straw borrowers.

Activity 2.4 Apply Your Knowledge

3. As stated in this case, what is the maximum penalty for each count of conspiracy to commit bank fraud and each substantive count of bank fraud?

30 years in prison and a \$1 million fine

Ethics in Advertising

- **Unfair, Deceptive and Abusive Practices**
 - Unfair Practices
 - Deceptive Practices
 - Abusive Practices
- **Evaluating Advertisements**
 - Examine from perspective of consumer
 - Focus on context; not certain words

Activity 2.5 Knowledge Check

1. The CFPB defines an act as _____ if the act reasonably takes advantage of a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service.

- A. abusive
- B. deceptive
- C. unfair

Ethics in Advertising

- **Read the Case Example**
- **Regulation N, MAP Advertising Rule**
 - Advertising must be truthful; not misleading or deceptive
 - Must not make any material misrepresentation, expressly or by implication or omission, in any commercial communication regarding any term of any mortgage credit product
 - Must keep copies for 24 months from the last date made or disseminated

12 CFR § 1026.14

Ethics in Advertising

- **Better Business Bureau Advertising Guidance**
 - ✓ Does your advertising result in satisfied customers?
 - ✓ Do you avoid impossible promises and guarantees?
 - ✓ Is the advertised merchandise or program readily available?
 - ✓ Is it your intent to sell what is advertised?
 - ✓ Do you avoid using misleading inferences?
 - ✓ Do advertised terms agree with the facts?
 - ✓ Is the advertisement easy to understand without asterisks and fine print?
 - ✓ Do you agree with your comparatives?
 - ✓ Are you attracted by your ad?

Ethics in Advertising - Online

- **Online Disclosures Practices**
 - Place disclosures near triggering claim
 - Use text/visual cues to encourage consumers to scroll
 - Make links obvious, label appropriately, and take consumers directly to disclosure
 - Display disclosures so they are noticeable
 - Ensure that other elements do not distract from disclosure
 - Repeat disclosures as needed
 - Display for a duration sufficient to notice, read, and understand disclosure
 - Use clear language and syntax

Activity 2.6 Knowledge Check

1. **MLO Patty places an online ad for: “Interest rates from 2.00%.” Is this advertisement deceptive? Why or why not?**

Deceptive

2. **MLO Patty has a Facebook “fan page” where she describes various loan programs as well as a range of interest rates available but does not display her NMLS unique identifier number or her employing broker information. Is this advertisement deceptive? Why or why not?**

Deceptive

Telemarketing Fraud and Abuse

- **Telemarketing and Consumer Fraud and Abuse Prevention (Chapter 37)**
 - Lose \$40 billion a year in telemarketing fraud
- **Senior Abuse Findings**
 - Senior citizens often target of telemarketing fraud
 - 56% of names on 'mooch lists' are individuals age 50 or older
 - Examples: Pigeon drop, fake accident ploy, charity scams
- **Education**
 - Public education of seniors required

15 U.S. Code § 6101

Telemarketing Fraud and Abuse

- **Telemarketing Sales Rules**
 - Must provide certain material information before consumer pays; material information is information that would likely affect choice
 - TSR violation = \$42,530 per violation
 - Oral clear and conspicuous
 - At an understandable speed and pace
 - In the same language(s)
 - In the same tone and volume as sales offer(s)
 - Prohibited false or misleading statements to induce payment or contribution

15 U.S. Code § 6101; 16 C.F.R. Part 310

Telemarketing Fraud and Abuse

- **TSR Privacy Protection Prohibitions**
 - No calling number on National DNC Registry
 - No misusing DNC list
 - No denying/interfering with DNC rights
 - No calling outside the permissible hours
 - No abandoning an outbound telephone call
 - No placing outbound call that delivers a prerecorded message without express written agreement
 - No failing to transmit Caller ID information
 - No using threats, intimidation, or profane language
 - No continuous calls with intent to annoy, abuse, or harass

15 U.S. Code § 6101; 16 C.F.R. Part 310

Telemarketing Fraud and Abuse

- **Do Not Call Registry**

- Must maintain national and internal lists of customers and prospects; National DNC lists updated every 3 months and internal DNC lists updated every 30 days
- Must not call consumer later than 31 days after a consumer asks to be included on DNC Registry
- Consumers called despite being on Registry can file complaint; violators fined up to \$42,530 per incident
- Exception for established business relationship for up to 18 months after the last purchase, delivery, or payment
- Exception for consumer inquiry or application in the prior 3 months, as long as consumer did not ask to be put on internal DNC list

15 U.S. Code § 6101; 16 C.F.R. Part 310

Activity 2.7 Knowledge Check

1. In 2000, Congress estimated that 56% of the names on telemarketing 'mooch lists' are individuals who are

- A. age 50 or older.
- B. in foreclosure.
- C. financially distressed.
- D. in a protected class.

Activity 2.7 Knowledge Check

2. The Telemarketing Sales Rule prohibits calls to a consumer no later than ____ days after a consumer asks to be included on the Do Not Call Registry.

- A. 10
- B. 11
- C. 30
- D. 31

Identity Protection

- **About Identity Theft**

- Crime in which someone wrongfully obtains and uses another person's personal data in some way that involves fraud or deception, typically for economic gain

- **Identity Theft Categories**

- Financial
 - Criminal
 - Medical
 - Cloning
 - Medical
 - Child

18 U.S.C. § 1028, 1028A;

www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud

Identity Protection

- **About Identity Theft**
 - **Identity Theft Schemes**
 - Shoulder surfing
 - Dumpster diving
 - Mail theft
 - Electronic equipment
 - Spamming
 - Skimming
 - Malware or spyware
 - Hacking
 - **Recent Data**

18 U.S.C. § 1028, 1028A;
www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud

Activity 2.8 Knowledge Check

1. Which category of identity theft is the most common?

- A. Criminal Identity Theft
- B. Financial Identity Theft
- C. Identity Cloning
- D. Medical Identity Theft

Activity 2.8 Knowledge Check

2. Sending unsolicited e-mails designed to trick recipients into providing personal information is the identity theft scheme known as

- A. dumpster diving.
- B. hacking.
- C. skimming.
- D. spamming.

Identity Protection Laws

- **Theft and Assumption Deterrent Act**
 - Identity theft a federal crime; must be committed in connection with another federal crime or state or local felony
- **Identity Theft Penalty Enhancement Act**
 - Aggravated identity theft as a crime
 - More significant criminal penalties
 - Terrorism offense = 5 years of imprisonment
 - Identity theft-related felonies = 2 years of imprisonment

18 U.S.C. § 1028, 1028A;

www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud

Activity 2.9 Knowledge Check

1. For those convicted of aggravated identity theft where the underlying felony is a terrorism offense, the sentence is _____ years of imprisonment to run consecutively with any other sentence.

- A. 2
- B. 5
- C. 10
- D. 15

Identity Protection Laws

- **Fair Credit Reporting Act**

- Regulates collection, dissemination, and use of consumer information
- Establishes model for protecting consumer information privacy for the world

- **Creditor Responsibilities**

- Provide complete and accurate info to CRAs
- Investigate disputes
- Correct, delete, or verify info within 30 days
- Inform consumers about negative information in process or placed on credit report within 1 month

15 U.S.C. § 1681; see also 12 C.F.R. § 1022

Identity Protection Laws

- **Fair Credit Reporting Act**

- **CRA Responsibilities**

- Provide access to the info; ensure accurate info
 - Provide a dispute method
 - Remove delinquent, tax lien, or judgement 7 years
 - Remove bankruptcy 10 years after dismissed
 - Provide central website to request credit report copies
 - Provide free copy of credit report for adverse action, identity theft victim, and inserted fraud alert
 - Provide a credit score when requested
 - Limit prescreened offers
 - Provide, at minimum, a toll-free telephone number

15 U.S.C. § 1681; see also 12 C.F.R. § 1022

Identity Protection Laws

- **Fair Credit Reporting Act**

- **User Responsibilities**

- May only obtain consumer reports for certain permissible purposes under the FCRA
 - Must get written permission from consumer and inform the consumer how report will be used
 - Must identify source of report should any inaccurate information be present
 - Must advise consumer of any adverse action
 - Must not misuse any information obtained

- **Penalties**

Activity 2.10 Knowledge Check

1. As set forth by the FCRA, creditors who furnish information about consumers to consumer reporting agencies must correct, delete, or verify information within _____ days of receipt of a dispute.

- A. 10
- B. 15
- C. 30
- D. 45

Activity 2.10 Knowledge Check

2. Under the FCRA, CRAs must remove negative information _____ years after an account becomes delinquent, _____ years after a tax lien or judgment has been paid, or _____ years after a bankruptcy was dismissed or discharged.

- A. 5; 7; 10
- B. 5; 7; 7
- C. 7; 7; 10
- D. 7; 10; 10

Identity Protection Laws

- **FACTA Key Provisions**

- **Access to Credit Report**

- Receive Home Loan Applicant Credit Score Information Disclosure notice
 - Obtain free copy once every 12 months

- **Place Fraud Alert**

- Warns credit issuers that personal data has been or may have been illegally accessed
 - Protects against unverified access for 1 year

- **Place Credit Freeze**

- Prevents bureaus from releasing credit report and score to new lenders and other businesses
 - Free to place, temporarily unfreeze, or remove

Identity Protection Laws

- **FACTA Key Provisions**
 - **Truncation of Card Number**
 - Prohibits businesses from printing more than 5 digits of customer's credit/debit card number or the expiration date on a receipt provided to the cardholder at the point of sale or transaction
 - **Secure Disposal of Information**
 - Must securely dispose of sensitive personal information found in consumer's credit report
 - Burning or shredding
 - Destroying or erasing electronic files
 - Place in secure location at end of day

Identity Protection Laws

- **FACTA Red Flag Rules**
 - **Identity Theft Prevention Programs**
 - Identify red flags to incorporate
 - Detect red flags incorporated
 - Respond appropriately to detected red flags
 - Ensure program is updated
 - Provide for continued administration of program
 - **Red Flag Examples**
 - Alerts, notifications, or warnings from CRA
 - Suspicious documents and information
 - Unusual use of, or suspicious activity related to, the covered account

15 U.S.C. §§ 1681-1681x

Activity 2.11 Knowledge Check

1. The Identity Theft Prevention Program mandated by the FACTA must include reasonable policies and procedures specific to which of the following?

- A. detect red flags incorporated in Program
- B. ensure Program is updated, at minimum, monthly
- C. ensure and provide for continued administration of Program
- D. identify relevant red flags to incorporate in Program
- E. respond to any red flags detected in Program

Identity Theft Violations

**Read the
Identity Theft Violation
Case Study**

Activity 2.12 Apply Your Knowledge

1. In this case, what are the violations that Dale Schaffer is charged with committing specific to mortgage loan applications?

Made false statements in loan applications

- Claimed loans on properties were paid in full and mortgages were released when, in fact, loans were not paid in full and mortgages had not been released**
- Kept financing paid by the banks, as well as proceeds from the eventual sales of the properties, without paying the mortgages**

Activity 2.12 Apply Your Knowledge

2. In this case, Dale Schaffer's identity theft charges pertain to his alleged use of multiple

- A. fake identities to steal public money, property, or rewards.
- B. fake and stolen identities to fraudulently obtain loans for vehicles and credit cards.
- C. fake and stolen identities resulting in mail, bank, and wire fraud.
- D. stolen identities to fraudulently obtain customer information by false pretenses.

Activity 2.12 Apply Your Knowledge

3. The defendant is presumed innocent and entitled to a fair trial at which the government has the burden of proving guilt beyond a reasonable doubt. Each bank fraud count is punishable by a maximum sentence of 30 years in prison, while each count of aggravated identity theft carries a mandatory minimum sentence of _____ years.

- A. 2
- B. 5
- C. 10
- D. 15

Chapter Quiz

1. _____ is a sub-category of what the FBI classifies as financial institution fraud (FIF). It is characterized by any material misrepresentation or concealment relied upon by a lender and used in an effort to obtain a mortgage loan.

- A. Identity theft
- B. Mortgage counterfeiting
- C. Mortgage fraud
- D. Predatory lending

Chapter Quiz

2. For larger-scale forms of mortgage fraud that involve a series of violations by at least four people acting together which results in at least \$5 million being taken within a 24-month period, individual participants could be punished with a fine of up to _____ million and up to life in prison.

- A. \$10
- B. \$15
- C. \$20
- D. \$25

Chapter Quiz

- 3. Which of the following is NOT an indicator of predatory lending?**
- A. charging excessive prepayment penalties
 - B. falsifying loan documents
 - C. increasing interest charges on late loan payments
 - D. requiring mortgage insurance

Chapter Quiz

4. Which situation is LEAST likely to be an example of predatory lending?

A. ABC Mortgage Co. offers a subprime loan to Mark, who is coming out of bankruptcy.

B. Dave shows up at closing and finds that lender has changed terms of loan.

C. Ellie was 12 days late paying her mortgage and lender raised interest rate 1/4%.

D. Frank paid off his mortgage loan early with lottery winnings and lender charged \$12,000 prepayment penalty.

Chapter Quiz

5. Which situation does NOT involve a straw buyer?

- A. Ann revises her pay stubs so she can qualify for a loan to buy her dream house.
- B. Bob uses his twin brother's SSN and credit information to apply for loan.
- C. Dave agrees to secure loan under his name, even though only his sister with bad credit will live in house.
- D. Tina tells Rob, who is facing foreclosure, that if he deeds property to her, she will refinance on good terms and let him stay in house.

Chapter Quiz

6. The HOEPA places limitations on _____ that may lock consumers into loans that may not be, or are no longer, in their best interest.

- A. closing fees
- B. lock-in agreements
- C. prepayment penalties
- D. refinancing fees

Chapter Quiz

7. According to the CFPB, an act is considered _____ if the consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances.

- A. abusive
- B. criminal
- C. deceptive
- D. unfair

Chapter Quiz

8. Any person or entity subject to the MAP Advertising Rule must keep copies of all commercial communication materials for a period of _____ months from the last date the person made or disseminated them.

- A. 12
- B. 24
- C. 36
- D. 38

Chapter Quiz

9. As set forth by the Telemarketing Sales Rule, when disclosures are oral, clear and conspicuous means all of the following EXCEPT

- A. at an understandable speed and pace.
- B. in the same language(s).
- C. in the same tone and volume as the sales offer(s).
- D. within a reasonable time frame.

Chapter Quiz

10. The Telemarketing Sales Rule requires companies to maintain national and internal lists of customers and prospects and keep them updated regularly. The rule provides that National Do Not Call lists are to be updated every

- A. 30 days.
- B. three months.
- C. six months.
- D. year.

Chapter Quiz

11. The Telemarketing Sales Rule makes exception for telemarketers or sellers who have an established business relationship for up to 18 months after the last purchase, delivery, or payment or where the consumer made an inquiry or application in the prior _____ months, as long as the consumer did not ask to be put on their internal DNC list.

- A. three
- B. six
- C. nine
- D. twelve

Chapter Quiz

12. The Fair Credit Reporting Act is primarily intended to protect consumers from

- A. identity theft.
- B. the inclusion of inaccurate information in credit reports.
- C. money laundering.
- D. terrorism.

Chapter Quiz

13. The Equifax identity theft incident where personal information was accessed via a security breach is an example of what form of identity theft?

- A. hacking
- B. malware
- C. skimming
- D. spamming

Chapter Quiz

14. What is the sentence for someone convicted of aggravated identity theft where the underlying felony is a terrorism offense?

- A. 1 year
- B. 2 years
- C. 4 years
- D. 5 years

Chapter Quiz

15. Paul is convicted of aggravated identity theft that did NOT involve terrorism. Paul will face ____ years of imprisonment.

A. two

B. five

C. ten

D. twenty