

## *Application or Prequalification?*

### Federal Real Life Scenario – Application/Adverse Actions

Laura is a licensed Mortgage Loan Originator with XYZ Mortgage Bankers. Laura spoke with Fran and Max Small who want to purchase a new home suitable for their growing family. As a normal part of her initial interview, Laura asked the Smalls whether they were working with a realtor and if they had found a house in which they were interested. In fact, the Smalls were working with a realtor whom Laura knew and they had seen a home they liked.

Laura also asked the Smalls about their credit history and their income. The houses they were considering were all around \$225,000. The Smalls told Laura that their income fit into the standards of the debt to income ratios needed for the purchase. Since she was still in the prequalification stage, Laura took only enough information to pull their credit reports. When she ran their credit, however, she found that Fran's credit scores were too low and did not meet the criteria needed for the loan. She also found that Fran had a defaulted student loan on her credit report. Since they were not in a community property state, Laura could process the loan using only Max's credit. Without Fran's income, however, Max didn't qualify for the loan either.

Laura had not taken a full 1003. Max and Laura hadn't signed a contract on a home. What should Laura do?

- a This requires no action since Laura hadn't taken a full 1003
- b This requires no action since the Smart's had not signed a sales contract
- c Both A and B
- X d Laura should fill out the 1003 as completely as possible and send an adverse action notice to the Smalls.

The correct answer is "D."

For The Equal Credit Opportunity Act, the act of decisioning the loan defines whatever information Laura has gathered as an "application." The Official Staff Commentary on The Equal Credit Opportunity Act clearly says, "Whether a creditor must provide a notice of action taken for a prequalification or preapproval request depends on the creditor's response to the request..." The commentary goes on to say, "The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. **The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.**" (Emphasis added.)

**Note:** Although HMDA uses the Equal Credit Opportunity Act classifications, it does not cover scenarios like the one above. Reg C never really treats a prequalification like an application, no matter if it is dispositioned. The Official Commentary on Regulation B says, "Board interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR Part 202, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under regulation C, **the definition of an application does not include prequalification requests.**" (Emphasis added.)

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