

MEMORANDUM OF UNDERSTANDING

I. INTRODUCTION

The Arizona Attorney General's Office (the Attorney General) and Banc One Mortgage Corporation, a Delaware Corporation (Banc One Mortgage), enter into this Memorandum of Understanding (Memorandum) to address matters related to the Arizona Fair Housing Act (A.R.S. § 41-1491 et seq.) in Yuma, Arizona.

Banc One Mortgage is a mortgage banking institution that offers residential mortgage loans to customers in the State of Arizona and is the second largest residential lender in Arizona. In 1995 and 1996, the Attorney General received complaints from certain Hispanic customers of the Banc One Mortgage office located in Yuma, Arizona, alleging discrimination in the handling of their mortgage applications. Subsequently, the Attorney General began an investigation into those allegations to determine whether Banc One Mortgage engaged in practices that discriminated on the basis of national origin in its home mortgage lending business in Yuma, Arizona during 1995-1996.

Banc One Mortgage denies that any discrimination occurred with respect to customers in the Yuma market, and the Attorney General has not made any formal finding that a violation of any laws, including the fair lending laws, occurred by Banc One Mortgage or any of its individual employees or affiliates.

The Attorney General and Banc One Mortgage have cooperated in a review of the complaints and in the investigation. Prior to the filing of the complaints and the

1 commencement of the investigation, Banc One Mortgage had determined that customer
2 service levels in the Yuma market needed improvement and had begun to develop and
3 implement enhancements to its policies and procedures as a means of further
4 improving customer service. These improvements and enhancements have been
5 described to the Attorney General. The Attorney General and Banc One Mortgage
6 believe the terms contained in this Memorandum, including the existing and proposed
7 enhancements to customer service and origination, processing and underwriting
8 practices, will address the issues identified by the Attorney General and Banc One
9 Mortgage.
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12 The Attorney General and Banc One Mortgage have reached an understanding
13 to conclude and settle the issues raised in the review on terms acceptable to the
14 Attorney General and Banc One Mortgage, the terms of which are memorialized in this
15 Memorandum.
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17 On the basis of the foregoing representations and agreement of the parties, the
18 Attorney General and Banc One Mortgage agree to the following:
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20 II. GENERAL PROVISION

21 Banc One Mortgage expressly ratifies and reaffirms for itself and also on behalf
22 of its officials, employees, and agents that they will not engage in any act or practice
23 that discriminates on the basis of race, religion, national origin, color, familial status,
24 handicap and sex in the provision of home mortgages, or in the provision of services or
25 facilities in connection with any such transactions; and from imposing on the basis of
26 race, religion, national origin, color, familial status, handicap, and sex different terms or
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1 conditions for the availability of home mortgage loans, as prohibited by the Arizona Fair
2 Housing Act, A.R.S. § 41-1491 et seq.

3 III. SPECIFIC UNDERTAKINGS

4 1. Banc One Mortgage will establish a five million dollar (\$5,000,000) loan
5 program based upon an existing secondary market product offered by the Federal
6 Home Loan Mortgage Corporation (Freddie Mac) to provide residential purchase-
7 money mortgage loans to low to moderate income ("LMI") homebuyers in Yuma
8 County, Arizona. This loan program will exist for a two year period or until such time
9 that all the program funds are expended. Banc One Mortgage will use its best efforts to
10 market and expend the program funds within the two year period. The loan program
11 roll-out date is estimated to be January, 1998. As a part of the program, Banc One
12 Mortgage will provide a three percent (3%) down payment grant from Banc One
13 Mortgage's own funds for each recipient of these loans. The details of this loan product,
14 as well as the current Freddie Mac parameters and the mortgage insurance
15 requirements and guidelines, are attached to this Memorandum as Schedule 1 and
16 incorporated by reference. In addition to the above-described program, Banc One
17 Mortgage will continue to offer additional loan products in the Yuma market as
18 appropriate in the ordinary course of its business.
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23 2. Banc One Mortgage will designate a Community Lending Loan Officer
24 with specific responsibility for Yuma, Arizona. This individual will be fluent in English
25 and Spanish and will have special training in LMI products offered by Banc One
26 Mortgage, including the loan product described above.
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3. Within ninety (90) days of the signing of this Memorandum, Banc One Mortgage will provide access to a new toll-free customer service "hotline" available to all Arizona applicants. This hotline will direct calls to a centralized call center taking customer calls for Banc One Mortgage and other Bank One affiliates, and refer the caller's concerns to a senior Banc One Mortgage regional officer responsible for overall customer service in the applicable market. Banc One Mortgage will make a concerted effort to ensure the availability of Spanish-speaking customer service representatives at the hotline.

4. Banc One Mortgage will expand the contents of its Loan Application Kit in Arizona to include a Spanish-language information sheet, with instructions in Spanish on how to contact the originator or processor for assistance, and how to request a Spanish language version of the United States Department of Housing and Urban Development (HUD) Settlement Cost Booklet.

5. Banc One Mortgage will continue, and enhance as described below, its mandatory fair lending training for all Banc One Mortgage personnel in Arizona with mortgage lending responsibilities that could impact fair lending compliance. New subject employees of Banc One Mortgage will complete this training course within thirty (30) days of commencing employment; all current subject employees that have not attended training in 1997 will complete a fair lending course within one hundred twenty (120) days of execution of this Memorandum. The training course will include, but not be limited to, the following elements:

- a. the purpose of, and prohibitions contained in, statutes prohibiting fair lending discrimination;

1 b. individual and principal liability for violations of fair
2 lending statutes;

3 c. Banc One Mortgage's policies and disciplinary
4 procedures regarding nondiscrimination in lending.

5 6. Banc One Mortgage will implement the use of a participation certificate in
6 Banc One Mortgage's Arizona fair lending training program which will be executed by
7 each person required to complete the training course under the preceding paragraph.
8 Banc One Mortgage will maintain originals of these certificates in a compliance file and
9 duplicates in each employee's personnel file. The certificate will acknowledge:

10 a. completion of the training course;

11 b. name and title of the individual(s) conducting the training;

12 c. that the employee has received, read and understands Banc
13 One Mortgage's policies regarding nondiscrimination, including its
14 disciplinary policy regarding violations of the fair lending laws; and

15 d. that the employee understands that violations of fair lending
16 laws may subject them or Banc One Mortgage to individual liability,
17 judicial sanctions, and/or administrative sanctions.
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19 7. Banc One Mortgage will immediately take steps to increase the training of
20 processing and underwriting staff in Arizona, to be combined with fair lending training
21 when appropriate, in the use (consistent with investor guidelines and prudent lending
22 practices) of compensating factors and additional qualifying criteria (including the use of
23 available non-traditional credit sources). In addition, training will be provided on ways to
24 be more active in eliciting possible explanations of adverse items on credit reports and
25 possible offsetting factors to compensate for credit deficiencies, and on how to record
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1 relevant customer information and contacts regarding these efforts in the applicant's
2 file.

3 8. Banc One Mortgage will continue its current second review process as
4 described to the Attorney General in a letter provided prior to the execution of this
5 Memorandum, and will further agree to:

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- 7 a. require all second reviewers to receive the fair lending and
8 enhanced underwriting training described above, in addition to
9 standard underwriting training; and
 - 10 b. add Phoenix and Yuma as targeted markets under its
11 existing second review program.
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13 In addition, where economically and technologically feasible, Banc One
14 Mortgage will implement the use of developing technologies and methodologies in the
15 industry to further enhance the efficiency of its second review process.

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17 9. In accordance with applicable law:

- 18 a. Banc One Mortgage's written advertising and marketing
19 efforts for residential mortgage loan products will continue to contain
20 an Equal Housing Opportunity logo, statement, or slogan; and
- 21 b. in all television and radio advertisements and promotions for
22 home mortgage loans, the statement "Equal Housing Lender" will
23 continue to be audibly stated. In the alternative, if a television
24 advertisement or promotion for mortgage loans includes a written
25 statement appearing on the screen, the nondiscrimination statement
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may so appear; the nondiscrimination statement must appear on the screen as long as any other written statement appears.

10. Banc One Mortgage agrees that it will continue to implement its existing customer service enhancements as follows:

a. Ongoing refinement, implementation and training on Banc One Mortgage's existing "LoanXchange™" origination system, including specific training on recording of all relevant customer information and contacts in a central customer file.

b. Expanded use of the management reporting capability of LoanXChange to enable Banc One Mortgage management to monitor a number of key service-related activities such as the status of applications as they progress through the underwriting process, and overall processing times of applications.

c. Continued utilization of Banc One Mortgage's Loan Application Kit (including the new Spanish language information sheet identified in Paragraph II.4 above and containing relevant forms and disclosures) that is provided to all Arizona applicants to assist in providing an explanation of the application process.

d. Ongoing training on customer service to teach Banc One Mortgage employees how to respond to customer service issues in a prompt and effective manner consistent with fair lending laws, including the appropriate way to interact with customers, the need to treat all customers in a fair and equal manner, and how to assist customers through the residential mortgage loan application, particularly those less familiar with the credit application process.

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e. Continued commitment to Banc One Mortgage's Community Lending program in Arizona, including the Yuma market, with dedicated and specially-trained loan officers, some of whom are Spanish-speaking, specializing in LMI-related products such as FHA and VA loans and state bond programs.

11. This Memorandum resolves and settles all fair lending claims by the Attorney General against Banc One Mortgage, its affiliates, directors, officers and employees, arising out of the existing complaints and investigation as described on pages one (1) and two (2) of this Memorandum. This Memorandum in no way affects the rights of individuals to bring complaints as permitted by Arizona's fair lending laws or the Attorney General's right to open investigations regarding future activities of or complaints against Banc One Mortgage unrelated to the existing investigation or complaints.

12. Banc One Mortgage will pay to the Attorney General the amount of \$75,000.00 agreed to by the parties as sufficient to cover the costs associated with the investigation and for continued monitoring contemplated by the terms of this Memorandum.

IV. MONITORING AND REPORTING REQUIREMENTS

1. The terms of this Memorandum shall be for two (2) years. During the term, Banc One Mortgage shall semi-annually (except where otherwise stated) provide the following to the Attorney General for the purpose of monitoring Banc One Mortgage's adherence to this Memorandum:

1 a. Status reports on Yuma market loan product described in
2 Paragraph III.1 of this Memorandum which will include, but not be limited to, reports on
3 the effectiveness of sales and marketing efforts of the Community Lending Program;

4 b. HMDA LAR (Home Mortgage Disclosure Act, Loan Application
5 Register) for Yuma market (annually);
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7 c. Summary of hotline use;

8 d. Summary report of processing and underwriting activity in Yuma,
9 along with related Yuma pipeline, processing and underwriting enhancements;

10 e. Report on training programs and related employee certification;

11 f. Status of other appropriate provisions described in this
12 Memorandum.
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15 2. During the two (2) year term of the Memorandum, Banc One Mortgage will
16 retain, for the Yuma market, copies of all home loan applications submitted to them and
17 all documents and notices relevant to any underwriting decisions regarding such
18 applications, including Second Review decisions. These copies shall be retained in
19 accordance with all applicable state and federal record retention laws and be made
20 available in Phoenix to the Attorney General's Office upon reasonable prior notice for
21 review consistent with the terms of this Memorandum.
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24 3. To monitor Banc One Mortgage's processing and evaluation of home loan
25 applications under this Memorandum, the Attorney General may, from time to time
26 during the term of the Memorandum, seek and be provided access to individual home
27 loan application files and related records for the Yuma market, provided such requests
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1 are reasonable and are made upon reasonable notice and in writing to Banc One
 2 Mortgage and comply with applicable laws concerning the applicant's right to financial
 3 privacy.

4 4. Copies of all notices, correspondence, reports or documents required to
 5 be provided by one party to the other under the terms of this Memorandum shall be
 6 served personally or by registered or certified mail, return receipt requested or by
 7 facsimile with confirmation of receipt, to the addresses stated below:
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 10 For the Attorney General:
 11 Chief Counsel, Civil Rights Division
 12 1275 West Washington
 13 Phoenix, Arizona 85007

14 For Banc One Mortgage Corporation:
 15 Attn: Jeffrey P. Gaia, President
 16 111 Monument Circle, Suite 1401
 17 Indianapolis, Indiana 46277

18 With copy to:
 19 Office of the General Counsel
 20 Banc One Mortgage Corporation
 21 111 Monument Circle, Suite 601
 22 Indianapolis, Indiana 46277

23 **V. ONGOING IMPLEMENTATION AND CONFIDENTIALITY**

24 1. The parties shall endeavor in good faith to resolve informally any
 25 differences regarding interpretation and compliance with this Memorandum, which shall
 26 be deemed to have been jointly drafted by the parties. Thereafter, in the event that the
 27 Attorney General believes that there has been a substantial failure to perform any of the
 28 material terms of this Memorandum that are not outside of Banc One Mortgage's
 29 reasonable control, the Attorney General shall notify Banc One Mortgage in writing and

1 give Banc One Mortgage sixty (60) days to cure the breach. If after sixty (60) days, the
2 breach remains uncured, Banc One Mortgage agrees that the Attorney General may
3 open an investigation into Banc One Mortgage's compliance with this Memorandum
4 and enforce any breach by filing an action in the Superior Court of Arizona.

5 2. If at any time during the term of this Memorandum, Banc One Mortgage
6 determines that its continued compliance with a specific provision creates an undue
7 economic burden, it shall be entitled to propose substitute or alternative terms or
8 programs for approval by the Attorney General. The Attorney General shall not
9 unreasonably withhold its approval if Banc One Mortgage can demonstrate that the
10 alternative term(s) substantially serve the underlying purposes of this Memorandum of
11 Understanding.
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14 3. The parties shall mutually cooperate, as agreed, to maintain the
15 confidentiality of each other's proprietary information that has been disclosed during the
16 course of the investigation, and unless otherwise required by law, will not disclose the
17 proprietary information of the other party without the prior written consent of the other
18 party.
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21 4. This Memorandum shall be governed by the laws of the State of Arizona,
22 and during the term hereof, Banc One Mortgage consents to the jurisdiction of the State
23 and Federal Courts in Arizona to enforce the provisions hereof.
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25 5. This Memorandum and any Schedule hereto constitute the entire
26 agreement between the parties and supersedes all prior agreements, understandings,
27 negotiations and discussions, whether oral or written.
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6. The terms and conditions contained in any Schedule shall prevail and supersede any inconsistent or contrary term or condition contained herein.


7. The Memorandum may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

8. The terms of this Memorandum shall bind the parties and their successors in interest.

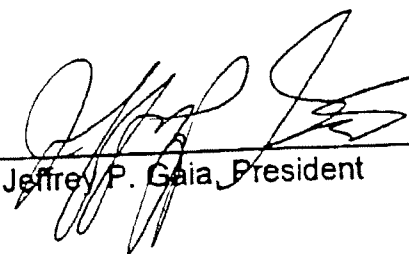
EXECUTED this 5th day of December, 1997.

For the State of Arizona:
J. Grant Woods, Attorney General

For Banc One Mortgage Corporation:

By: 

J. Grant Woods, Attorney General

By: 

Jeffrey P. Gaia, President

09/10/01 REP 10:00 FAX 0120000

09/10/01

SCHEDULE 1
TO MEMORANDUM OF UNDERSTANDING
DESCRIPTION OF YUMA MARKET LMI LOAN PROGRAM

Product Description

- Banc One Mortgage's Yuma program (the "Program") would be based on the Federal Home Loan Mortgage Corporation's (Freddie Mac's) Affordable Gold 97+ LMI product. This product permits up to a 97% loan-to-value ratio for purchase money loans. Banc One Mortgage would provide a grant of 3% to cover the borrower's downpayment costs.

Amount of Program Commitment

- \$5,000,000 in total principal loan amounts over term of MOU.

Eligible Mortgages

- 15-, 20- and 30-year fixed rate term.
- For use to finance purchase of homes only-no refinances
- Not limited to first-time home buyers.

Eligible Properties

- Available for properties located in Yuma County, Arizona
- Single family detached primary residences. No duplexes or multifamily.

Borrower Income

- Qualifying household income cannot exceed 100% of area median income

Down Payment

- Banc One Mortgage grant would be based on 3 percent of home value, defined as the lesser of purchase price or appraised value. Grant is an outright grant and is not required to be repaid. Grant would be offered on a first-come, first-served basis to eligible applicants. Grant is funded at closing upon satisfaction of all required conditions.

Other Closing Costs and Prepaids

- Borrower will be required to pay for all standard fees and costs at closing.
- Source of funds for other closing costs can be from borrower cash, gifts from relatives, nonprofit grants, premium pricing up to 2% of value, or property seller contributions up to 3%.

Reserves

- One month's PITI reserves required to be on deposit in borrower's own funds at closing.

Ratios

- No front end limitation
- 40% back end ratio

Homeownership Education

- Required
- Provided by investor-approved sources such as mortgage insurers.

Mortgage Insurance

- Mortgage insurance required at borrower's cost.

Property Inspection and Appraisals

- Appraisals would be required. Separate property inspections not required.

Underwriting

- Credit scores required.
- Normal investor underwriting criteria to apply.
- Non-traditional credit sources may be used under certain circumstances permitted by investor.

Other Terms

- Loans not assumable.
- Market interest rates; subject to change without notice until locked in.

Conditions and Stipulations

- Any reference to or involvement by Freddie Mac, any private mortgage insurers, or any other third-party industry service providers in connection with the Program is in their capacity as arms-length providers of goods and services and do not relate to the activities of Banc One Mortgage that were the subject of the review by the Attorney General.

FIRST ADDENDUM TO MEMORANDUM OF UNDERSTANDING

This First Addendum is entered into by and between the Arizona Attorney General's Office (the "Attorney General") and Bank One Mortgage (a division of Bank One, N.A.) ("BOM").

WHEREAS, the Attorney General and Banc One Mortgage Corporation entered into a Memorandum of Understanding on December 7, 1997 (the "MOU"); and

WHEREAS, BOM is the successor to Banc One Mortgage Corporation and has assumed the performance of the MOU.

NOW THEREFORE, in consideration of the mutual agreements and stipulations of this Addendum, the parties agree as follows:

1. Notwithstanding any other stipulations, BOM will continue to offer three percent down payment grants ("Gold grants") as referenced in the MOU, to low-and-moderate income homebuyers in the Yuma Metropolitan Statistical Area until a total of Five Million (\$5 Million) Dollars in loans has been originated to Gold grantees.
2. BOM acknowledges and reaffirms that the term of the MOU is automatically extended for such period of time as is necessary for BOM to approve and fund \$5 Million in Gold loans. The parties acknowledge that as of December 31, 1999, approximately \$2,000,000.00 in Gold loans will have been funded leaving a balance of approximately \$3,000,000.00.
3. BOM acknowledges and reaffirms that it shall use its best efforts to deplete the Gold fund in the year 2000 and to approve and fund Gold loans at the approximate rate of \$750,000.00 per calendar quarter, utilizing, among other things, the revised program criteria and marketing programs previously described to the Attorney General.
4. BOM will provide monitoring reports consistent with the requirements in Paragraph IV.1 of the MOU on January 31, 2000; April 28, 2000; July 31, 2000; and October 31, 2000.
5. If BOM fails to meet the expected quarterly volume anticipated in paragraph 3 above, BOM will set forth the reasons for any shortfall, including the existence of extenuating circumstances which are unforeseen and unavoidable. BOM will also provide possible alternative approaches or action to address any such reasons.
6. Notwithstanding anything contained in this First Addendum to the contrary, BOM agrees that for each calendar quarter, the amount by which BOM fails to approve and fund \$750,000.00 in Gold loans shall be considered a "quarterly shortfall." If in any calendar quarter BOM approves and funds more than \$750,000.00 in Gold loans, such amount shall be considered a "quarterly excess." If at the end of the calendar year 2000 the amount of quarterly shortfall is greater than the quarterly excess (a "net shortfall"), BOM shall be required to increase the amount of the Gold loan fund (and provide a Gold grant for each new loan) over and above the

original \$5 Million by the amount of the net shortfall. In no event will the amount of the Gold loan fund be reduced below \$5 Million. In the event of a net shortfall, BOM agrees to continue to use its best efforts to approve and fund loans from the Gold loan fund through calendar year 2001 at the quarterly rate of \$750,000.00, and continue with all other reporting and other obligations of the MOU, until the balance of the Gold loan fund is depleted.

7. On or before June 30, 2000, BOM will make a payment of \$10,000 to the Attorney General to cover the costs of continued monitoring of the MOU. If by December 31, 2000, BOM has not approved and funded the full \$5 Million in Gold loan funds, BOM will make an additional payment of \$5,000 to the Attorney General to cover costs of continued monitoring of the MOU. Such amount will be payable on or before January 5, 2001.

8. BOM acknowledges that upon depletion of the Gold loan fund, all pending Gold applications as of the date of depletion will remain eligible for the Gold grant. BOM will be permitted to use reasonable efforts to anticipate the expenditure of the Gold funds. After such time as 95% of the Gold loan fund has been approved and funded, BOM shall be permitted to cease marketing of the Gold program.

9. In consideration for the First Addendum, the Attorney General withdraws the October 14, 1999, notice of breach; provided, however, that BOM expressly acknowledges that such withdrawal is not a waiver by the Attorney General of any breach or other liabilities of BOM, or relinquishment by the Attorney General of any rights it may have under the MOU, as of that date.

10. Except as otherwise amended by this Addendum, the terms of the MOU remain in full force and effect.

EXECUTED this 10th day of January, 2000.

THE ARIZONA ATTORNEY GENERAL

BANK ONE MORTGAGE

By: [Signature]

By: [Signature]