LOAN OFFICER COMPENSATION TIPS AND TRENDS:

HOW TO GAIN A COMPETITIVE EDGE WHILE REMAINING COMPLIANT

Post Presentation Questions & Answers

Updates and Developments in 2018

August 6, 2018

JOHNSTON | THOMAS

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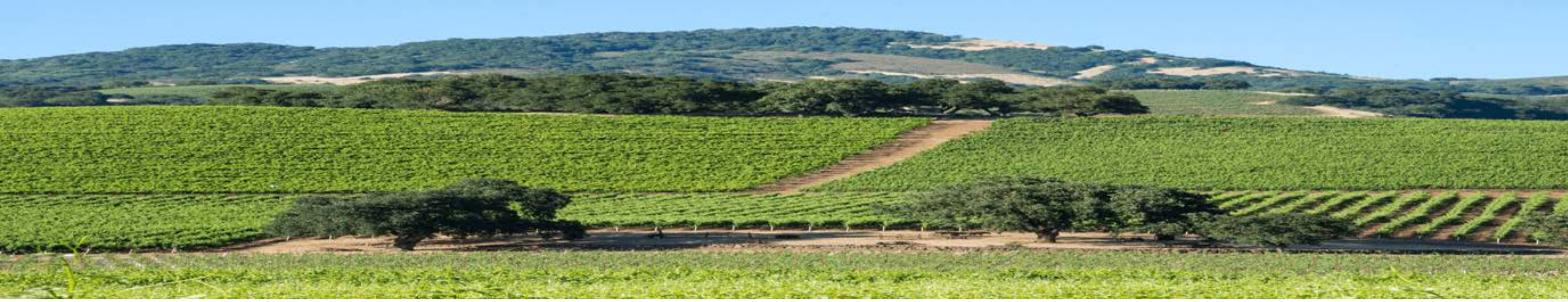

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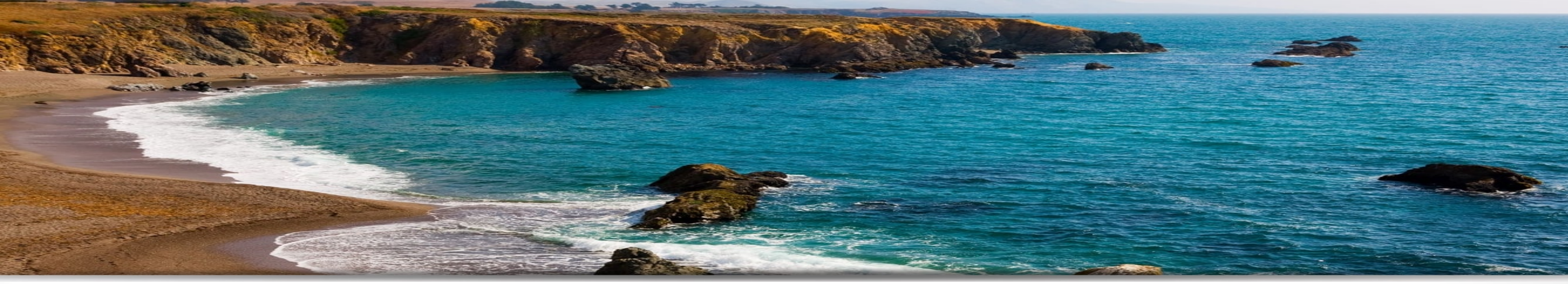

Question(s):

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Answer:

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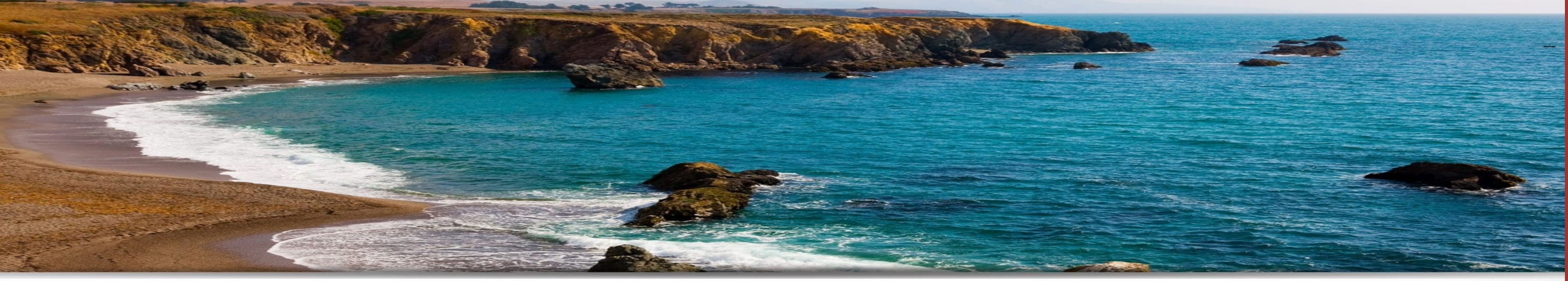


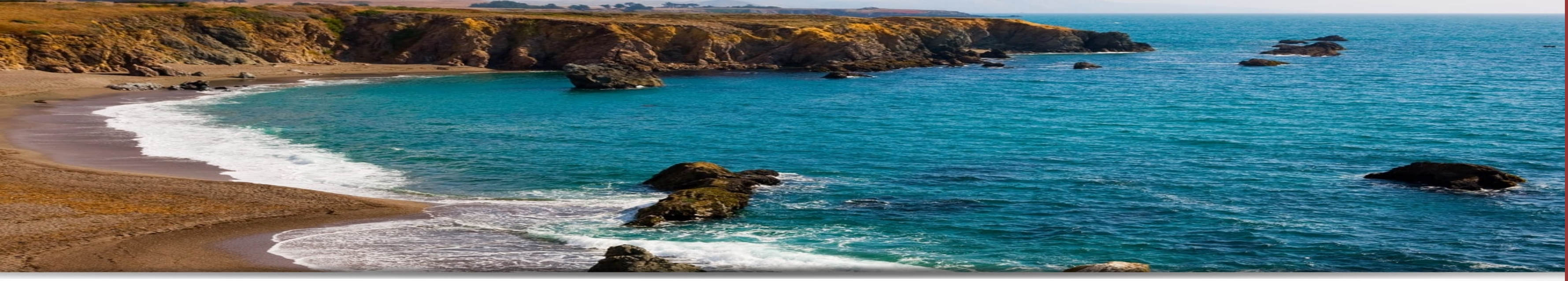
Question:

Bond Programs, since the compensation is extremely low.

Answer:

Nothing in the loan officer compensation rule prohibits a lender from varying compensation among different loan officers, so long as payment variations are not related to terms and conditions of a loan or a proxy thereof. Such variances might be attributed to experience, market differences, variations in overhead costs, as well as other reasons. It is prudent to monitor compensation practices and how they affect the consumer to ensure that such variances do not result in fair lending issues.

Many lenders have chosen to create salaried positions in which the LO only originates less-profitable products like reverse mortgages, Home Equity Lines of Credit, bond-funded loans and construction loans to avoid having to pay out more in commission than the loan will ultimately bring in profit. This is permissible.

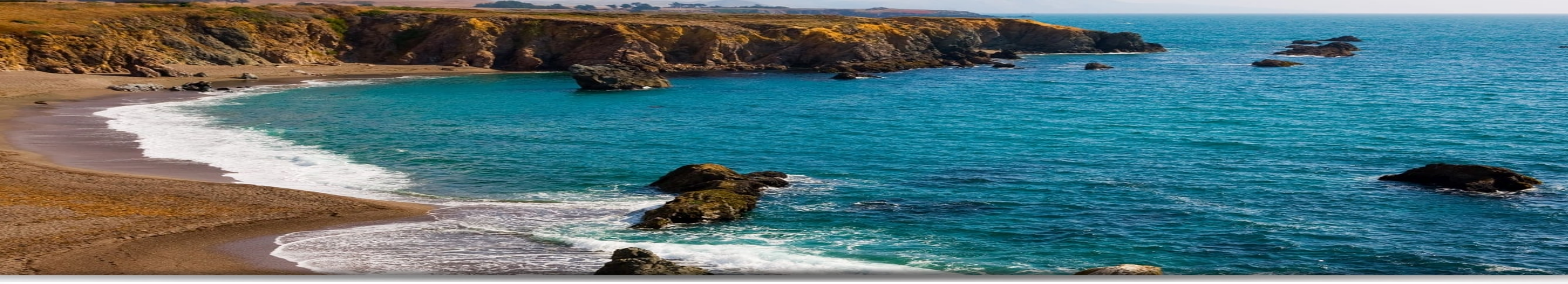


Question:

Is it permissible to pay an LO different comp based on marketing campaign. For example, pay LO 40bps if loan generated from direct mail and 70bps on loans generated from a digital on line marketing campaign?

Question:

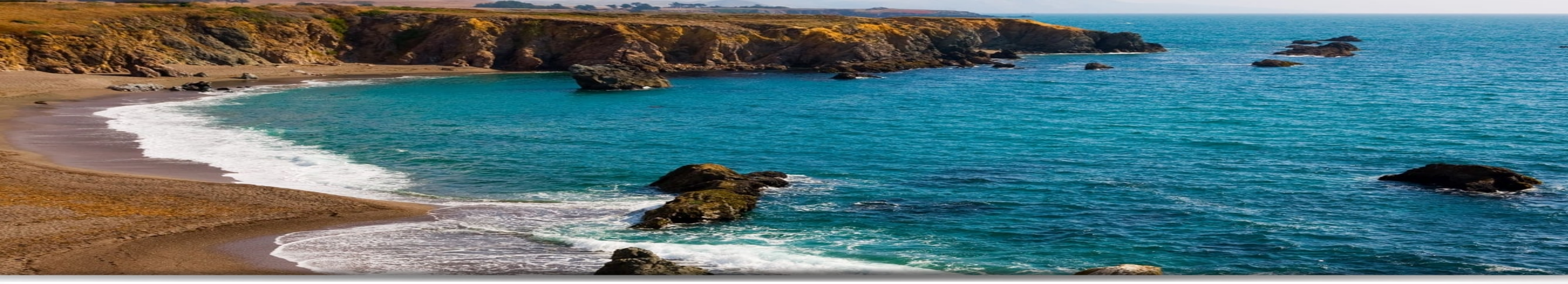
Example: Some marketing campaigns cost more to run that others would be the justification, Would this be similar to new vs exisiting customer scenario?



Answer:

While there is no direct answer to this question set forth in any of the relevant regulations, an examination of Reg Z, as well as “unofficial” CFPB guidance, indicates that **an MLO can be paid different compensation for different referral sources, such as“Self-Sourced” referrals (i.e., originated loans that the MLO obtained through his or her own relationships) and “Company-Sourced” referrals (i.e., originated loans from a source in which the company or an employee of the company other than the MLO has a relationship, such as loans sourced through lead agreements, market servicing agreements or joint marketing agreements).**

Keep in mind that the Loan Originator Compensation Act prohibits loan origination compensation based on transaction terms, such as interest rate, or a proxy for transaction terms. So the actual method of implementation should be tested to ensure it will not be a proxy for a loan term. A referral source is not a proxy for a transaction term, because the second condition is not satisfied.



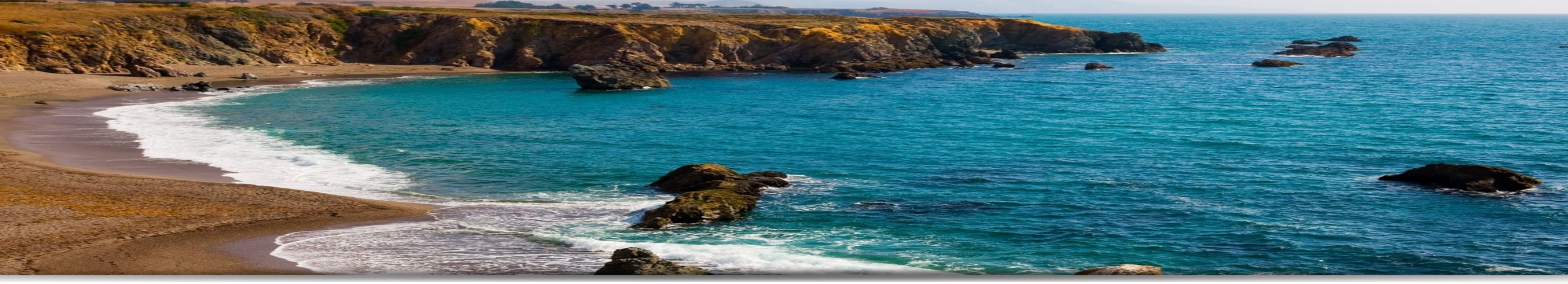
Question:

On the issue of state bond loans, you are saying there LO cannot be paid different from a non-bond loan... even though that bond loan is subsidized by a mortgage revenue bond issues by state and local governments to help qualified low and moderate income home buyers.

Answer:

Compensation cannot be paid on a loan term or a proxy for a loan term. To determine if compensation is based on a transaction term depends on objective facts and circumstances indicating whether the compensation would have been different if a transaction term had been different.

To review the compensation based on the Proxy Analysis, a factor (that is not itself a transaction term) is a proxy for a transaction term if it meets two conditions: i.) The factor consistently varies with a transaction term or terms over a significant number of transactions. Ii.) The loan originator has the ability, directly or indirectly, to add, drop, or change the factor when originating the transaction.

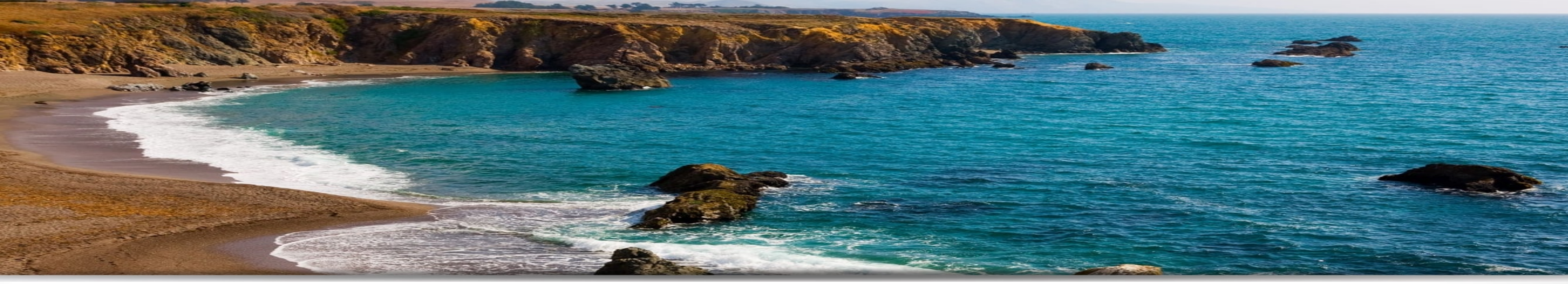


Question:

Can the language of the compensation agreement include penalties for EPO/EPD? Example: An LO will lose a certain amount of money for any EPO/EPD that arises.

Answer:

The Loan Originator Rule identifies a specific list of permissible or "safe" compensation methods that are deemed to be inherently compliant. The seven "safe harbor" methods of compensation includes, the quality of the loan originator's loan files submitted to the creditor. During th presentation, it was mentioned that Clawbacks for Quality of the LO's Files was not contemplated by safe harbor for loan quality. The example given by the CFPB for quality was accuracy and completeness of the loan documentation. If the EPO/EPD was contributed to similar aspects, the compensation penalty could be included for quality.

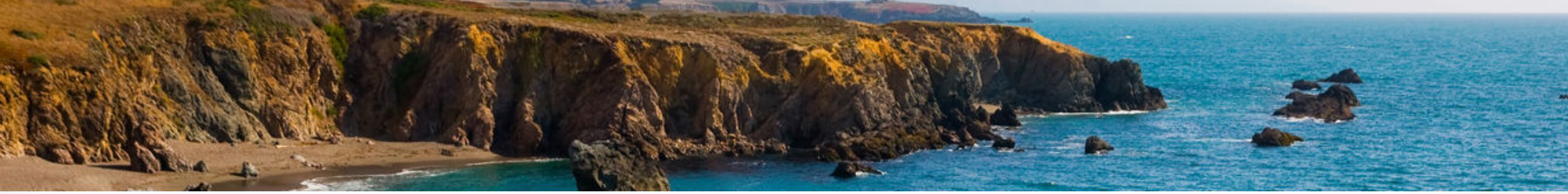


Question:

Can compensation be different for mortgages?

Answer:

LO Comp Rule only applies to closed-end Credit. In the Preamble, it is stated that a Loan Product is a Term. So the type of reverse mortgage product could effect the origination is governed by the LO Comp rule. However, RESPA continues to apply to all Federally Related Mortgage Loans. CFPB, also, has UDAAP Authority. In addition, recently the CFPB has focused on financial abuse impacting older Americans. Differences in the loan officer compensation structures for forward mortgages, home equity lines of credit, and reverse mortgages may contain inherent flaws that could expose older borrowers to financial abuse. Where compensation rules and policies create incentives to steer borrowers between reverse and forward loans could give rise to claims of deceptive and unfair practices.



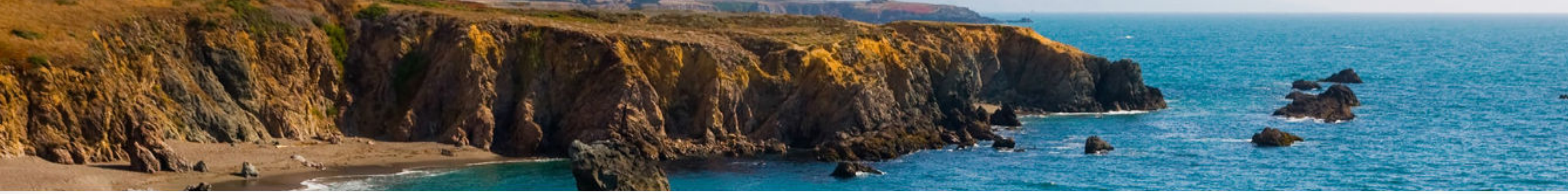
James W. Brody

As a Managing Member, Mr. Brody actively manages complex mortgage banking mitigation and litigation matters for the Johnston Thomas Attorneys at Law ("Johnston Thomas") and its diverse clientele (e.g., national mortgage lenders, warehouse lenders, secondary market investors, loan servicing companies, Wall Street banking firms and insurers). Being one of the Johnston Thomas's founding attorneys, Mr. Brody has been instrumental in the Firm's development and in its continued success.

Mr. Brody has successfully resolved hundreds of mitigation and litigation cases that involve complex mortgage fraud schemes, as well as large-scale repurchase and/or make-whole disputes. Mr. Brody's experience centers on those legal issues that arise during and through loan originations, loan purchases/sales, loan securitizations, foreclosures/ bankruptcy actions, and repurchase/make- whole claims.

Mr. Brody received his B.A. in International Relations from Drake University in 1997. He also received his J.D., with a certified concentration in Advocacy, from the University of the Pacific, McGeorge School of Law in 2000. In addition to being admitted to practice law in all State and Federal Courts in CA, Mr. Brody has served as lead litigation counsel for numerous mortgage banking and commercial related disputes venued in both State and Federal Courts, in a direct capacity or on a *pro hac vice* basis, in AZ, CA, FL, MD, MI, MO, OR, NJ, NY, PA, TN, and TX.

Mr. Brody has made numerous media appearances and industry presentations regarding the prevention, detection and resolution of mortgage fraud matters. In addition, Mr. Brody continues to be a featured speaker in the area of repurchase and make-whole claims. Mr. Brody may be reached at jbrody@johnstonthomas.com or at 415-8246-3995.



Brief Introduction to

Johnston | Thomas, Attorneys at Law, P.C.

Johnston Thomas is a nationally recognized full suite mortgage banking law firm that represents a diverse clientele (e.g., mortgage lenders and servicers, commercial banks, thrifts, savings and loan associations, credit unions, title companies, third-party vendors, etc.), both in and out of court, either directly or in a *pro hac vice* capacity, all across the country.

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Find out more at: johnstonthomas.com

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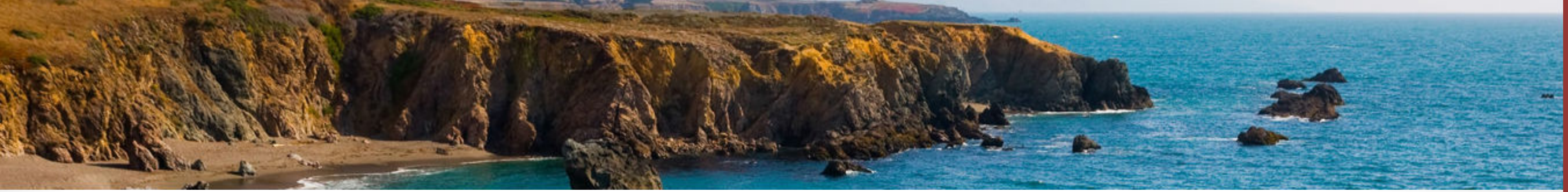

Thank You

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