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***Newcomer Workshop
Workshop 1: Survey of TILA, HOEPA, RESPA and Data Security***

Wednesday, September 6, 1:00 pm to 2:30 pm

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I. RESPA

A. Scope

1. RESPA applies to federally related mortgage loans.
2. The term “federally related mortgage loans” is broadly defined to include:
 - a. First lien purchase money loans.
 - b. First lien refinance loans.
 - c. Junior lien loans, including home equity credit lines.
 - i. Home equity credit lines are exempt from various RESPA requirements.

B. Disclosures

1. Time of application disclosures:
 - a. Good Faith Estimate of Settlement Costs.
 - i. Not required for home equity credit lines if the Truth in Lending Act (TILA) home equity disclosures are provided.

- b. Special Information Booklet.
 - i. Only required for first lien purchase money loans.
 - c. Servicing Disclosure Statement.
 - i. Not required for home equity credit lines subject to TILA or junior lien loans.
2. Definition of application:
- a. The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer generated.
 - b. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan.
3. Companies struggle with the definition of an application with regard to the triggering of initial disclosures.
- a. If a consumer submits financial information in anticipation of a credit decision, and the submission states or identifies a specific property, an application exists for RESPA purposes, and TILA purposes.
 - b. Current technology and consumer shopping practices team up to present an issue: When a consumer calls to ask about loan products and prices, by asking a few questions and using technology to instantly access consumer credit information, you can respond to the consumer based on his or her credit position.
 - i. But in obtaining the information, do you trigger the need to issue initial disclosures?

C. Application to the Internet

- 1. Often you will find that folks that deal in the world of the Internet believe that the rules applicable everywhere else do not apply to them.
- 2. There is no Internet version of RESPA, or special Internet exceptions under RESPA.

D. Section 8 Background

- 1. RESPA Section 8 prohibits referral fees.

- a. A “referral” includes any oral or written action directed to a person that has the effect of affirmatively influencing the selection by any person of a settlement service provider.
2. RESPA Section 8 also prohibits the splitting of a settlement service fee, other than for services provided.
3. RESPA Section 8 does not prohibit payments to any person that reflect the reasonable value of services, goods or facilities provided by the person.
4. HUD interprets the RESPA fee splitting prohibition to prohibit all unearned fees, including but not limited to cases in which:
 - a. Two or more persons split a fee for settlement services, any portion of which is unearned.
 - b. One settlement service provider marks-up the cost of services performed or goods provided by another settlement service provider without providing additional actual, necessary and distinct services, goods or facilities to justify the additional charge.
 - c. One service provider charges the consumer a fee where no, nominal or duplicative work is done, or the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed. This commonly is referred to as “overcharging.”
5. United States Circuit Courts of Appeal have rejected HUD’s position on overcharges, but HUD’s position regarding mark-ups has met with mixed results.
 - a. The Scorecard:
 - i. The Fourth, Seventh and Eighth Circuit Courts of Appeals have found that mark-ups do not violate the fee splitting prohibition.
 - ii. The Second and Third Circuit Courts of Appeals have found that the mark-ups violate the fee splitting prohibition, if not supported by services.
 - iii. The Eleventh Circuit, although ruling for the defendants in a case, noted that a single settlement service provider can violate the fee splitting prohibition and, thus, appeared to indicate that mark-ups violate the fee splitting prohibition if not supported by services.
 - iv. The Seventh Circuit also found that an impermissible fee split may exist when both the lender and the closing agent imposed a release fee on the borrower.

- b. States Within The Jurisdiction of the Courts of Appeals:
 - i. Second Circuit: Connecticut, New York and Vermont.
 - ii. Third Circuit: Delaware, New Jersey, Pennsylvania and the Virgin Islands.
 - iii. Fourth Circuit: Maryland, North Carolina, South Carolina, Virginia and West Virginia.
 - iv. Seventh Circuit: Illinois, Indiana and Wisconsin.
 - v. Eighth Circuit: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota.
 - vi. Eleventh Circuit: Alabama, Florida and Georgia.

6. Related TILA Issue.

- a. Under the Truth in Lending Act and Regulation Z, in a mortgage loan transaction certain fees are excluded from the finance charge if they are bona fide and reasonable in amount.
- b. The fees include credit report fees, appraisal fees, loan-related document preparation fees and title examination fees.
- c. If a party mark-ups up one of the fees, does the entire fee still qualify for exclusion from the finance charge? Is the fee still reasonable?

E. HUD Informal Advice on Lead Sale

- 1. Does compensating a party for providing leads constitute a payment for services or goods, or a referral fee or fee split?
- 2. HUD has advised informally that a settlement service provider can pay another party for leads.
 - a. In a March 1994 informal interpretation, HUD advised that a settlement service provider could pay a party for a list of prospects, provided that the payment was for the use of the list, and not conditioned on the number of closed transactions or any other consideration, such as an endorsement of the provider's product by the seller of the list.

3. Enforcement action, with few facts.
 - a. A July 2003 settlement agreement with World Savings addressed a “For Services Rendered” program in which HUD alleged that World Savings compensated real estate agents for the online completion and submission of loan applications through a World Savings website. HUD alleged that the arrangement involved the compensation of real estate agents by World Savings for the referral of business in violation of the RESPA referral fee prohibition. World Savings denies any violation of RESPA Section 8.
 - b. The settlement agreement does not provide much detail regarding the specific services provided by the agents.
 - c. However, the settlement agreement provides that if World Savings desires to continue the program, it must do so consistent with RESPA, Regulation X, and HUD Policy Statements, and all compensation paid to agents must be reasonably related to the value of goods, facilities or services actually furnished or performed.
 - i. The Policy Statement reference reflects that HUD believes the program must comply with the 1999-1 and 2001-1 HUD Policy Statements on the compensation of mortgage brokers by lenders.
 - ii. Pursuant to the Policy Statements, which are addressed below, a mortgage broker must provide a minimum level of services, goods and facilities to receive any compensation from a lender, and the total compensation received by the mortgage broker must be reasonable in relation to the value of the services, goods and facilities provided by the broker, ignoring any referral value.

F. Basic Lead Sale Structure Points

1. A party can be paid a per name fee for a list of consumers, but the party should not also promote the purchaser of the list to the consumers.
2. Paying for a name only when a closed transaction results, or varying the fee paid for a name based on whether a closed transaction results, can be viewed as a referral fee or fee splitting arrangement, rather than a lead sale arrangement.
3. Be mindful of triggering mortgage brokerage requirements, both under RESPA and state law.
 - a. *RESPA*: Minimum service level required. See discussion of HUD Policy Statements below.
 - b. *State Law Requirements*: Include licensing requirements.

G. Lead Sales in the Context of the Internet

1. As noted above, there is no Internet version of RESPA, or special Internet exceptions under RESPA.
2. The list sale approach is used as a basis for click-through fee arrangements and similar arrangements on the Internet.
 - a. For example, a real estate broker can be paid a flat dollar amount on a per name basis when consumers who visit the broker's website transmit contact information to a lender by clicking-through to a lender's website.
3. At what point can a fee be earned/triggered for a lead?

H. Marketing

1. To some, if you call a referral arrangement "marketing" it is okay to pay referral fees under RESPA. It's not okay.
2. While a party may receive compensation that reflects the reasonable value of services, goods or facilities provided, in general a party may not be compensated for referring settlement service business.
3. A "referral" includes any oral or written action directed to a person that has the effect of affirmatively influencing the selection by any person of a settlement service provider.
4. In view of the inherent tension between the referral fee prohibition and payments for marketing services, one might expect there to be guidance from HUD on this issue.
 - i. If you expect such guidance, you will be disappointed. No formal HUD guidance exists.
5. Marketing Arrangement Structure Points (in the absence of HUD formal guidance):
 - a. Tying compensation to business generated is not advisable.
 - b. Focusing on the value of the services, goods and facilities, not tied to results, is the better approach.
 - i. Set compensation amount based on non-results factors.
 - ii. Flat, periodic fees are helpful.

- c. Joint marketing efforts by settlement service providers should involve proportionate contributions by the parties involved based on the extent to which each party is marketed.

- i. HUD's informal position is reflected on its RESPA website:

Can a mortgage banker and a real estate broker advertise their services together, for example, on the same brochure or real estate advertisement?

Answer: Nothing in RESPA prevents joint advertising. However, if one party is paying less than a pro rata share for the brochure or advertisement, there could be a RESPA violation.

- 6. Examples:

- a. A lender can display posters, brochures and other marketing materials in the sales offices and model homes of a builder, and pay a flat monthly fee to the builder.
- b. A title company can display banner advertisements on the website of a real estate broker, and pay a flat monthly fee to the broker.
- c. A lender and real estate broker can purchase advertising space in a local newspaper, with the space equally divided between the parties and the cost equally shared by the parties.

I. Promotions

- 1. RESPA Section 8 prohibition of referral fees.
 - a. A "referral" includes any oral or written action directed to a person that has the effect of affirmatively influencing the selection by any person of a settlement service provider.
- 2. There is no express exception from the referral fee prohibition for consumer promotions.

- a. HUD's informal position is reflected on its RESPA website:

Can a lender give a borrower an incentive, such as a chance to win a trip or rebate, for doing business with the lender?

Answer: RESPA does not prohibit a lender or other settlement service provider from giving the borrower an incentive for doing business with it

as long as the incentive is not based on the borrower referring business to the lender.

3. Consumer Promotion Structure Points:

- a. Prospective customers can be offered gifts, coupons, chances to win prizes, etc. to select you as a settlement service provider.
- b. There is no general consumer referral fee exception. An existing customer may not be offered a gift, coupon, chance to win a prize, etc., for referring a relative, friend or other person.

4. Examples:

- a. You can offer a prospective customer an entry in a drawing for a vacation if he or she selects you to provide a settlement service.
- b. You can give a prospective customer a \$100 coupon that he or she can apply to the cost of the settlement service that you provide.
- c. You cannot offer an existing customer or other consumer a gift, coupon, chance to win a prize, etc., for referring a relative, friend or other person for a settlement service.

5. General Promotion Exception.

- a. An express exception exists from RESPA Section 8 for normal promotional and educational activities that are not conditioned on the referral of business and do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement service business.
- b. HUD's informal position is reflected on its RESPA website:

Can a lender give a real estate agent note pads with the lender's name on it?

Answer: Yes. Such note pads with the lender's name on it would be allowable as normal promotional items. However, if the lender gives the real estate agent note pads with the real estate agent's name on it for the agent to use to market clients for its real estate business, then the note pads could be a thing of value given for referral of loan business, because it defrays a marketing expense that the real estate agent would otherwise incur.

6. General Promotion Exception Structure Points:

- a. You can promote yourself and in doing so provide minimal things of value that are part of the promotion.
- b. You cannot under the guise of a promotion defray expenses that otherwise would be incurred by a party, or otherwise provide things of value to a party, who refers settlement service business to you.

7. Examples:

- a. In an old informal interpretation, HUD found the following arrangement to be a permissible promotion:

A lender had a program in which it regularly distributed VISA cards to individuals or groups, and the lender would waive the \$20 annual fee. The lender desired to offer VISA cards with the fee waived to real estate agents in a certain area, and would include promotional material about the lender's loan products with the offer. There was no tying of the offer to any referral of business. On an informal basis, HUD concluded that this was permissible because the lender was promoting itself, and was not providing a thing of value in return for the referral of loans.

- b. A builder plans to hold an open house to show a model home to real estate agents and explain the features of a new development. A lender could offer to provide a simple buffet lunch at the open house in connection with making a presentation to the agents to promote the lender as a financing source for homes in the development.
- c. In contrast, the lender could not send the builder a check to pay for a lunch offered by the builder at the open house in return for the builder referring customers to the lender.

8. Contests.

- a. A common RESPA Section 8 violation. HUD considers the chance to win a prize, as well as the prize itself, to be a thing of value that may not be provided based on the referral of business.
- b. For example, a mortgage company or title company may not provide a real estate agent with an entry in a drawing for a gift certificate for each customer referred by the agent.
- c. In an August 2003 settlement agreement that is short on facts, HUD alleged that InterTrust Mortgage violated RESPA Section 8 by contributing to a pool of funds in connection with an awards program for agents administered by a real estate brokerage company. InterTrust denies any violation of RESPA Section 8.

1. As noted above, there is no Internet version of RESPA, or special Internet exceptions under RESPA.
2. With marketing, follow the traditional concept of payments for services, goods and facilities provided.
 - a. Banner ads.
 - b. Co-branded websites.

J. Mortgage Broker Compensation—HUD Policy Statements

1. *Two Basic Principles:* HUD has established two basic principles regarding the payment of compensation by lenders to mortgage brokers:
 - a. A lender may compensate a mortgage broker for services, goods and facilities provided by the broker, as long as the total compensation received by the broker from the lender, the consumer and any other party is within the range of the market value of the services, goods and facilities provided the broker.
 - b. For a lender to pay any compensation to a mortgage broker, the broker must provide at least a minimum level of services, goods and facilities (services).
2. *Minimum Level of Services:*
 - a. *Background:* HUD first provided guidance on the minimum level of services in two informal interpretations (February 14 and June 20, 1995 letters by Nicolas Retsinas). HUD then formalized the guidance in Statement of Policy 1999-1, and reconfirmed the guidance in Statement of Policy 2001-1. HUD identifies specific services, and then addresses the minimum number of services that must be performed to justify the payment of any compensation by a lender to a mortgage broker.
 - b. *Identified Services:*
 - i. Taking information from the borrower and filling out the application, or performing a comparable activity, such as filling out a worksheet.
 - ii. Analyzing the prospective borrower's income and debt and pre-qualifying the prospective borrower to determine the maximum mortgage that the prospective borrower can afford.

- iii.* Educating the prospective borrower in the home buying and financing process, advising the borrower about the different types of loan products available, and demonstrating how closing costs and monthly payments could vary under each product.
- iv.* Collecting financial information (tax returns, bank statements) and other related documents that are part of the application process.
- v.* Assisting the borrower in understanding and clearing credit problems.
- vi.* Maintaining regular contact with the borrower, real estate broker/agent and lender between application and closing to apprise them of the status of the application and gathering any additional information as needed.
- vii.* Initiating/ordering verifications of employment and verifications of deposit.
- viii.* Initiating/ordering requests for mortgage and other loan verifications.
- ix.* Initiating/ordering appraisals.
- x.* Initiating/ordering inspections or engineering reports.
- xi.* Providing disclosures (truth in lending, good faith estimate and others) to the borrower.
- xii.* Ordering legal documents.
- xiii.* Determining whether the property is located in a flood zone or ordering such service.
- xiv.* Participating in the loan closing.

HUD considers the services identified in ii. through vi. to be counseling services.

HUD advises that if a mortgage broker takes the loan application information or performs a comparable function, and in addition performs at least five of the listed services, with at least one of the additional services not being a counseling service, then HUD generally will be satisfied that sufficient origination work was performed by the broker to justify compensation.

If the only services rendered by a broker, other than taking the application or performing a comparable function, are counseling services, additional requirements apply to address the concern of HUD that meaningful counseling, and not steering, be performed. The additional requirements are that (a) the borrower has the opportunity to consider products from at least three different lenders, (b) the broker receives the same compensation regardless of which lender's products are selected, and (c) the payment to the broker must be based on the counseling services and may not be based on the amount of loan business referred to a particular lender.

II. DATA SECURITY

A. Various Legal Requirements

1. Keeping Information Safe.
 - a. The principal source of law is the safeguarding requirements under federal Gramm Leach Bliley Act.
2. What To Do if You Don't Keep It Safe.
 - a. Federal safeguarding requirements.
 - i. Interagency guidance.
 - b. State laws.

B. Safeguarding—The Overlooked Part of Gramm Leach Bliley

1. Mortgage companies are subject to the FTC's Standards for Safeguarding Customer Information rule. (16 CFR Part 314.)
2. Depository institutions are subject to Interagency Guidelines Establishing Information Security Standards.
 - a. Comptroller of the Currency—12 CFR Part 30, Appendix B.
 - b. Federal Reserve Board—12 CFR Part 208, Appendix D-2 & 12 CFR Part 225, Appendix F.
 - c. FDIC—12 CFR Part 364, Appendix B.
 - d. Office of Thrift Supervision—12 CFR Part 570, Appendix B.
3. Requirements are brief in length but significant in application.
4. Requirements apply to all customer information that is handled or maintained by or on behalf of you or your affiliates, whether the customer is your customer or a customer of another financial institution.

5. Customer information includes nonpublic personal information for purposes of the GLBA privacy requirements, whether in paper, electronic or other form.
6. Information Security Program—Definition. The administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.
7. Information Security Program—Requirement. You must develop, implement and maintain a comprehensive Information Security Program that:
 - a. Is written in one or more readily accessible parts;
 - b. Contains administrative, technical and physical safeguards that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue;
 - c. Includes the Elements noted in 8. below; and
 - d. Is reasonably designed to achieve the Objectives set forth in 9. below.
8. Elements. In order to develop, implement and maintain your Information Security Program, you must:
 - a. Designate an employee or employees to coordinate your Information Security Program;
 - b. Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information; and
 - c. Assess the sufficiency of any safeguards in place to control these risks.
 - d. At a minimum, the risk assessment should include consideration of risks in each relevant area of your operation, including:
 - i. Employee training and management;
 - ii. Information systems, including network and software design, as well as information processing, storage, transmission and disposal; and
 - iii. Detecting, preventing, and responding to attacks, intrusions, or other systems failures.

- e. Design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.
 - f. Oversee service providers by:
 - i. Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and
 - ii. Requiring your service providers by contract to implement and maintain such safeguards.
 - g. Evaluate and adjust your Information Security Program in light of the results of the required testing and monitoring, any material changes to your operations or business arrangements, or any other circumstances that you know or have reason to know may have a material impact on your Information Security Program.
9. Objectives. The Objectives are to:
- a. Insure the security and confidentiality of customer information;
 - b. Protect against any anticipated threats or hazards to the security or integrity of such information; and
 - c. Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

C. Security Breaches

1. Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.
 - a. Comptroller of the Currency—12 CFR Part 30, Appendix B, Supplement A.
 - b. Federal Reserve Board—12 CFR Part 208, Appendix D-2, Supplement A & 12 CFR Part 225, Appendix F, Supplement A.
 - c. FDIC—12 CFR Part 364, Appendix B, Supplement A.
 - d. Office of Thrift Supervision—12 CFR Part 570, Appendix B, Supplement A.
2. The Interagency Guidance is based on the safeguarding requirements. The FTC has not adopted the same guidance, and considers customer notification in appropriate circumstances to be an aspect of the safeguarding requirements.
3. The Interagency Guidance provides that:

- i. Financial institutions should develop and implement a risk-based Response Program to address incidents of unauthorized access to customer information in customer information systems.
 - ii. The Response Program should be a key part of an institution's Information Security Program.
 - iii. The Response Program should be appropriate to the size and complexity of the institution and the nature and scope of its activities.
 - iv. An institution's contract with its service provider should require the service provider to take appropriate actions to address incidents of unauthorized access to the financial institution's customer information, including notification to the institution as soon as possible of any such incident, to enable the institution to expeditiously implement its Response Program.
4. Interagency Guidance—Components of a Response Program
- a. At a minimum, a financial institution's Response Program should contain procedures for the following:
 - i. Assessing the nature and scope of an incident, and identifying what customer information systems and types of customer information have been accessed or misused;
 - ii. Notifying its primary federal regulator as soon as possible when the institution becomes aware of an incident involving unauthorized access to or use of "sensitive customer information";
 - iii. Consistent with the Suspicious Activity Report (SAR) requirements, notifying appropriate law enforcement authorities in addition to filing a timely SAR in situations involving federal criminal violations requiring immediate attention;
 - iv. Taking appropriate steps to contain and control the incident to prevent further unauthorized access to or use of customer information (for example, by monitoring, freezing, or closing affected accounts) while preserving records and other evidence; and
 - v. Notifying customers when warranted.
 - b. Where an incident of unauthorized access to customer information involves customer information systems maintained by an institution's service providers, it is the responsibility of the financial institution to

notify the institutions customers and regulator. An institution may authorize or contract with its service provider to notify the institution's customers or regulator on its behalf.

5. Interagency Guidance—Sensitive Customer Information

- a. Sensitive customer information means:
 - i. A customer's name, address or telephone number, in conjunction with—
 - ii. The customer's social security number, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account.
- b. Sensitive customer information also includes any combination of components of customer information that would allow someone to log onto or access the customer's account, such as user name and password or password and account number.

6. Interagency Guidance—Customer Notice

- a. Customer notice of a breach is required if a financial institution determines that misuse of customer information has occurred or is reasonably possible.
- b. Customer notice should be made as soon as possible, although it may be delayed based on law enforcement concerns if an institution receives a written request to delay notice from an appropriate law enforcement agency.
- c. If a financial institution can determine "precisely" which customers' information is involved, it can limit notice to those customers.
- d. The customer notice should:
 - i. Be given in a clear and conspicuous manner;
 - ii. Describe the incident in general terms and describe the type of customer information that was the subject of unauthorized access or use;
 - iii. Generally describe what the institution has done to protect the customers' information from further unauthorized access;

- iv. Include a telephone number that customers can call for further information and assistance; and
 - v. Remind customers of the need to remain vigilant over the next 12 to 24 months, and to promptly report incidents of suspected identify theft to the institution.
- e. When appropriate, the customer notice should include the following:
- i. A recommendation that the customer review account statements and immediately report any suspicious activity;
 - ii. A description of fraud alerts and an explanation of how the customer may place a fraud alert in the customer's consumer reports to put the customer's creditors on notice that the customer may be a victim of fraud;
 - iii. A recommendation that the customer periodically obtain credit reports from each nationwide credit reporting agency and have information relating to fraudulent transactions deleted;
 - iv. An explanation of how the customer may obtain a credit report free of charge; and
 - v. Information about the availability of the FTC's online guidance regarding steps a consumer can take to protect against identity theft. The notice should encourage the customer to report any incidents of identify theft to the FTC, and should provide the FTC's website address and toll-free telephone number that customers can use to obtain the identity theft guidance and report suspected incidents of identity theft. (See the Privacy Initiatives tab on the FTC's website.)

6. State Laws

- a. California was first.
 - i. California Civil Code Sections 1798.82 to 1798.84.
 - ii. Department of Consumer Affairs—Recommended Practices on Notice of Security Breach Involving Personal Information (www.privacy.ca.gov).
 - iii. Covers computerized data.
- b. Over 30 states have enacted some type of data security breach law:

Arizona; to be codified in Chapter 232, effective December 31, 2006.
 Arkansas; Ark. Code Ann. § 4-110-101 *et seq.*
 California; Civil Code §§ 1798.82 to 1798.84.
 Colorado; to be codified in Chapter 145, effective September 1, 2006.
 Connecticut; Public Act 05-148, effective 1/01/06.
 Delaware; Del. Code. Ann. Tit. 6 §§ 12B-101 *et seq.*
 Florida; Fla. Stat. § 817.5681.
 Georgia (applies to information brokers only); Ga. Code Ann. §§ 10-1-910
 – 912.
 Hawaii; Act No. 135, effective January 1, 2007.
 Idaho; Idaho Stat. Ann. §§ 28-51-104, 28-51-105, 28-51-106 and 28-51-
 107, effective July 1, 2006.
 Illinois; 815 Ill. Comp. Stat. 530/1 *et seq.*
 Indiana; Public Law 125; effective July 1, 2006.
 Louisiana; La. Rev. Stat. Ann. §§ 51:3071 *et seq.*
 Maine; 10 M.R.S.A. § 1346 *et seq.*
 Minnesota; Minn. Stat. § 325E.61.
 Montana; Mont. Code Ann. § 30-14-1704 and Mont. Code Ann. § 33-19-
 321.
 Nebraska; 2006 NE LB 876; effective April 6, 2006.
 Nevada; Nev. Rev. Stat. Ann. §§ 205.461 *et seq.*
 New Hampshire; to be codified in Chapter 242; effective January 1, 2007.
 New Jersey; N.J. Stat. Ann. § 56:8-163.
 New York; N.Y. Gen. Bus. Law § 899-aa.
 North Carolina; N.C. Gen. Stat. §§ 75–60 *et seq.*
 North Dakota; N.D. Cent. Code §§ 51-30-01 *et seq.* and N.D. Cent. Code
 §§ 12.1-23-11 and 12.1-23-12.
 Ohio; Oh. Rev. Code § 1349.19.
 Oklahoma (applies to governmental agencies); 2006 OK HB 2357,
 effective June 8, 2006.
 Pennsylvania; 2005 PA SB 712, effective 7/18/06.
 Rhode Island; R.I. Gen. Laws §§ 11-49.2-1 *et seq.*
 Tennessee; Tenn. Code Ann. § 47-18-2107.
 Texas; Tex. Bus. & Comm. Code Ann. § 48.103.
 Utah; Utah Code Ann. §§ 13-42-101 *et seq.*, effective January 1, 2007.
 Vermont; 2006 VT SB 284, effective January 1, 2007.
 Washington; Wash. Rev. Code § 19.255.010 and Wash. Rev. Code Ann. §
 42.17.31922.
 Wisconsin; Wis. Stat. Ann. § 895.507.

- c. Data security breach bills have been introduced in the District of Columbia and over 10 other states:

Alabama.
 Alaska.
 District of Columbia.

Iowa.
Kansas.
Kentucky.
Maryland.
Massachusetts.
Missouri.
South Carolina.
Virginia.
West Virginia.
Wyoming.

- d. Existing laws can differ with regard to various items, including:
- i. What type of data is covered.
 - ii. Whether the law applies to covered data maintained electronically or in any form.
 - iii. Whether there is an exception for encrypted data and, if so, what level of encryption qualifies.
 - iv. The timeframe to notify customers of a data security breach.
 - v. Whether there is an exemption for particular entities.
 - vi. Whether there is an alternate compliance method based on compliance with a company's own data security breach procedures.
 - vii. Whether there is an express exemption allowing a delay in customer notification because of law enforcement concerns.

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