

Fair Lending/Fair Credit Compliance

2007 MBA Regulatory Compliance



Copyright © 2007
Mortgage Bankers Association



Fair Lending/Fair Credit Compliance

- Home Mortgage Disclosure Act (HMDA)
- Equal Credit Opportunity Act (ECOA)
- Fair Credit Reporting Act (FCRA)- Fair and Accurate Transactions Act (FACTA)

Home Mortgage Disclosure Act (HMDA)



Copyright © 2007
Mortgage Bankers Association



HMDA Overview

- Purpose of HMDA
- History of HMDA
- Application of HMDA
- Players involved
- Data fields

Purpose of HMDA

- Provide the public with data that can be used to:
 - Help determine whether financial institutions are serving the housing needs of their communities
 - Assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed
 - Assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes
- Neither HMDA, nor Regulation C is intended to encourage unsound lending practices or the allocation of credit.

History of HMDA

- Enacted in 1975
- Implemented by Federal Reserve Board's Regulation C
- Amendments
 - 1989: amended to require the reporting of applicants' race, ethnicity, sex, and income
 - 2002: amended to include the reporting of pricing data in the form of rate spreads above certain thresholds and HOEPA status
 - With the exception of two provisions that went into effect January 1, 2003, the 2002 amendments went into effect January 1, 2004.

Application of HMDA

- On an annual basis, financial institutions are required to report specified data on the following for residential mortgage loans:
 - Applications
 - Originations
 - Purchases
- This data must be filed in a registered format (the loan application register or “LAR”)

Application of HMDA

- LAR must be filed for the preceding calendar year's data by March 1.
- Data must be recorded within 30 days of the end of each calendar quarter.
- The data is available to the public and is used to ensure that financial institutions are:
 - Complying with fair lending laws and do not engage in discriminatory lending practices
 - Lending in areas that they are present (in compliance with the Community Reinvestment Act)

Players Involved

➤ Depository Institutions

- Meets assets threshold (updated annually)
- On 12/31 of preceding year, had a home or branch office in an MSA
- Originated at least one purchase or refinance on a first lien, one-to-four family dwelling in previous year

➤ Non-depository Institutions

- For-profit institution
- Meets asset thresholds (updated annually) OR originated 100 or more loans in preceding year
- Originations in preceding year equaled or exceeded 10% of total loan originations
- Home or branch office in an MSA on 12/31 of preceding year OR originated/purchased five or more loans on properties in an MSA in preceding calendar year

Data Fields

➤ Related to the:

- Loan
- Applicant
- Property
- Disposition

Loan-Related Data

- Loan number
- Application date
- Loan type
- Request for pre-approval
- Loan amount
- Lien position
- Home Ownership Equity Protection Act status
- Rate spread

Applicant-Related Data Fields

➤ Race, Gender, and Ethnicity

- ✓ Required on face-to-face applications (best guess if applicant does not wish to furnish)
- ✓ Report up to five races (as many as applicant records)

➤ Income

- ✓ Gross, annual income used in making credit decision

Property-Related Data Fields

- Property Type
- Occupancy
- Purpose
- Metropolitan area, county and state code
- Census tract

Disposition-Related Data Fields

- Action taken
 - Originated, purchased, denied, cancelled
- Denial reasons – optional
- Action taken date
- Purchaser type

Equal Credit Opportunity Act (ECOA)



Copyright © 2007
Mortgage Bankers Association



ECOA Overview

- Purpose of ECOA
- History of ECOA
- Application
 - ✓ Anti-discrimination
 - ✓ Notification
 - ✓ Record retention
 - ✓ Appraisals
 - ✓ Electronic Communications

Purpose of ECOA

- Requires that financial institutions make credit equally available to all creditworthy customers
- Applies to all credit transactions, not just housing and mortgage related transactions.
 - A few exceptions exist for certain types of transactions, such as public utilities credit, securities credit, incidental credit, and government credit

History of ECOA

- Enacted in 1974
- Expanded and improved upon the protection afforded to consumers by the Fair Housing Act of 1968
- Implemented by the Federal Reserve Board's Regulation B

Application of ECOA

- ✓ Anti-discrimination
- ✓ Notification
- ✓ Record retention
- ✓ Appraisals
- ✓ Electronic Communications

Anti-Discrimination: *Application*

- An application is “...an oral or written request for an extension of credit...”
- A completed application and to some extent, an application, are defined by the creditor
- Cannot discourage someone from applying or require a co-applicant
- Inquiry, Prequalification, Preapproval – know the differences

Anti-Discrimination: *Prohibited Bases*

- Applicant information:
 - Race, color, religion, national origin, sex, marital status, age
- Application evaluation:
 - Credit history (joint accounts, accounts in spouse's name, inaccurate information, alternative forms)
 - Income (from public assistance, part-time, pension, retirement, child support, alimony)

Anti-Discrimination: *Monitoring Exercise*

- Self testing – *when must corrective action be taken?*
- Disparate impact vs. disparate treatment – *what is the difference?*
- Special purpose credit programs – *what two requirements must be met for a for-profit organization to have a special purpose credit program?*

Notification: *Requirements*

Within 30 days of receiving a “completed application,” the creditor must notify the applicant(s) of a credit decision

OR

Notify the applicant(s) that a decision cannot be made because the application is incomplete

Notification: *Approval*

- Substantially same terms/conditions requested
- Notification may be oral or written

Notification: *Counteroffer*

- Unable to approve terms/conditions requested, but able to offer an alternative
- Notification may be oral or written
- Within 90 days of counteroffer, written notification must be provided if counteroffer was not accepted

Notification: *Denial*

Notification must be written and include:

- ✓ Statement of action taken
- ✓ Name and address of creditor
- ✓ Statement of the provisions of the act
- ✓ Name and address of federal agency that administers compliance
- ✓ Reasons for adverse action (or notice that they can be obtained)

Notification: *Incomplete Application*

Must be written and include:

- ✓ Specific information required
- ✓ A time frame within which the information must be provided
- ✓ Notification that no further action will be taken if requested information is not provided

Record Retention

For a minimum of 25 months (some states may require longer), creditor must retain documentation relating to:

- ✓ Application
- ✓ Self tests
- ✓ Prescreened solicitations

Appraisals

Creditors must provide a copy of the appraisal within 30 days of request, receipt of appraisal, or receipt of payment for appraisal; whichever is last to occur

OR

Notify the applicant(s) that he/she has a right to request a copy of the appraisal

When must notification be provided and what must it contain?

Electronic Communications

- ✓ Affirmative consent
- ✓ Creditor may send disclosure to applicant directly or post to web site
 - Notify applicant directly
 - Post for 90 days from later of date disclosure is available or date notification is sent to applicant
- ✓ “Reasonable steps” to redeliver documents that are returned to the creditor undelivered

✓ Electronic signatures are okay



Fair Credit Reporting Act

Including the Fair and Accurate Credit Transactions Act of 2003



Copyright © 2007
Mortgage Bankers Association



FCRA Overview

- Purpose of FCRA
- History of FCRA
- Major Requirements

FCRA Purpose

- Governs the credit reporting system in the United States
- The purpose of FCRA, as stated by Congress, is as follows:
 - *"It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title."*

History of the FCRA

- Fair Credit Reporting Act (FCRA) enacted in 1970. 15 U.S.C. 1681
- Fair and Accurate Credit Transactions Act (FACT Act) enacted December 4, 2003.

Major FACTA Requirements

- Furnisher obligations
- Credit score disclosure
- Risk-based pricing
- Identity theft
- Affiliate sharing for marketing purposes
- Prescreening
- Medical information
- Preemption

Furnishers of Credit Report Obligations

- Must follow more stringent standards for the accuracy of information
- Credit report contents:
 - Bankruptcy – 10 years.
 - Civil suits, civil judgments, and records of arrest – 7 years.
 - Paid tax liens, accounts placed for collection – antedates the report by seven years
- May only furnish a credit report under defined circumstances

Credit Score Disclosure

- After pulling a score, brokers/lenders must provide the consumer with the score, and the key factors affecting the score.
- Consumers can access their credit score at a consumer reporting agency (CRA).

Adverse Action Notices

- Users of credit reports must deliver notices to consumers where the user takes an adverse action against the interests of a consumer based on information in the credit report.
- Adverse Action Standard keyed into type of transaction.

Risk-based Pricing Notice

- Included in the FACT Act
- Lenders who use credit reports for risk-based pricing are required to provide the consumer with a risk-based pricing notice

Identity Theft Protections

- Free credit report
 - Consumers can take advantage of a free credit report from the three major repositories once per calendar year
- Alerts in credit reports
 - Fraud Alerts – initiated by a phone call and valid for 90 days
 - Active Duty Alert – valid for one year.
 - Extended Alerts – requires the filing of a police report or similar type of report. Valid for seven years.

Identity Theft Protections

➤ Blocking of information

- CRA's must block reports of items that were generated from an identity thief, and notify the entity that furnished the blocked information
- Furnisher must establish reasonable procedures to avoid "refurnishing" information to a CRA if the CRA has blocked the information because of ID theft.

➤ Records

- Requires the user of consumer reports, upon request of ID victim to provide application and transaction records related to the ID theft without charge

Identity Theft Protections

- Reconciling addresses:
 - CRA's must alert lenders when a request for a credit report includes a different address than the address on the credit report. The lender must take reasonable steps to confirm the identity of the applicant.
 - Proposed rules to come out by the federal regulators.
- Red flag guidelines
 - Requires lenders to monitor and identify or flag patterns, practices or activities that would indicate ID theft.
 - Federal regulators to issue rules.

Identity Theft Protections

- Disposal of Credit Report Information
 - Each financial institution must develop, implement and maintain, as part of its existing information security program, appropriate measures to properly dispose of consumer information derived from consumer reports to avoid identity theft.

Affiliate Marketing

- Before affiliates share information *for marketing purposes* they must provide the consumer notice and an opportunity to opt-out of the sharing.
- Opt-out effective for 5 yrs. Notice must be clear and conspicuous, must allow the consumer to prohibit all marketing solicitations and may also allow partial opt-outs from different types of solicitations.

Affiliate Marketing Exclusions

- Preexisting relationship.
- Consumer initiated transaction.
- Consumer authorizes or requests a solicitation.

Prescreening

- Opportunity for lenders to engage in marketing campaigns offering products to consumers who meet certain credit criteria.
- Lender requests a list of consumers who meet certain credit criteria from CRA. Must make each consumer on list a “firm offer of credit.”

Medical Information

- FACT Act places new limits on the use of medical information in underwriting credit.
- Information other than amounts owed or account status is restricted or reported using codes that do not identify, or do not provide information sufficient to infer the specific provider or the nature of the services.

Preemption

- National uniformity provisions permanently prevent states from enacting more stringent regulations

Furnisher Related Obligations

- Negative Information Notice
- Prescreening Opt-out
- Accuracy Standard for Furnishing Information
- Dispute Resolution

Review

- Practicing fair lending and enabling fair credit through:
 - Home Mortgage Disclosure Act (HMDA)
 - Equal Credit Opportunity Act (ECOA)
 - Fair Credit Reporting Act (FCRA)- Fair and Accurate Transactions Act (FACTA)