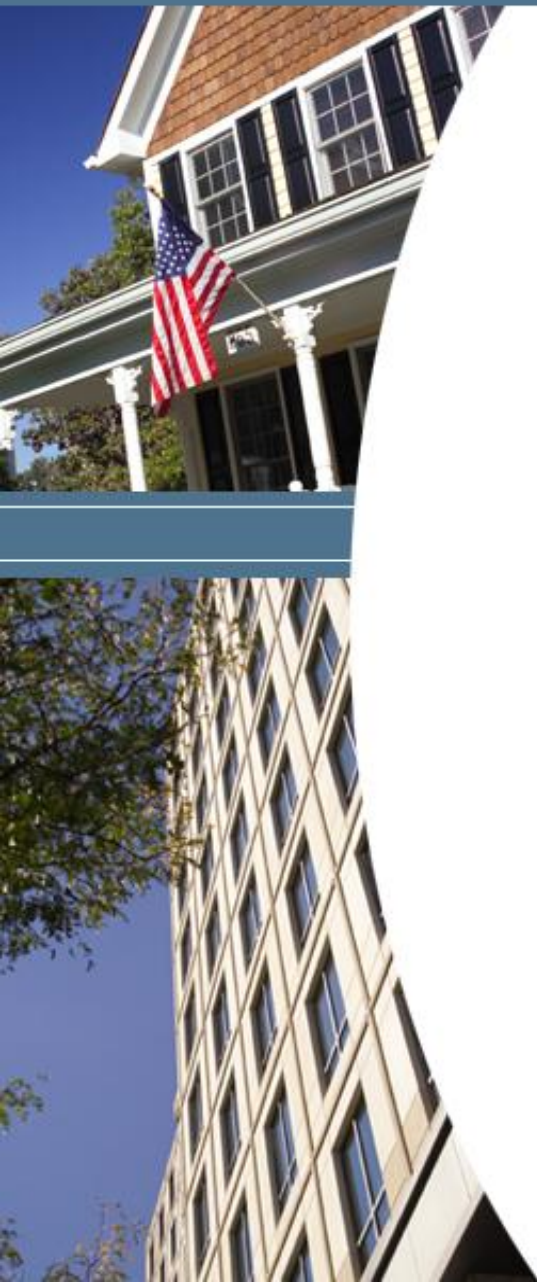




## **MBA Legal Issues/Reg Comp Conference**

### **Workshop 1 – Quick Guide to the Alphabet Soup of Federal Laws**



## » RESPA

## » Fair Lending Laws and Regulations

- HMDA
- ECOA
- FHA

## RESPA

### Citations

- 12 USC 2601 *et seq.*
- 24 CFR Part 3500

### Rulemaking Authority / Implementation:

- US Department of Housing & Urban Development

Eliminate kickbacks

Compliance disclosures

Escrow administration

Controlled business arrangements

Advertising

Regulation X

- Federal regulation that implements RESPA

[www.hud.gov/offices/hsg/sfh/res/respamor.cfm](http://www.hud.gov/offices/hsg/sfh/res/respamor.cfm)

## Section 8 RESPA

“No person shall give and no person shall accept any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.”



Within 3 days of Application :

Good Faith Estimate (GFE)

HUD Booklet on Settlement Costs

Initial Servicing Disclosure

Affiliated Business Arrangement Disclosure  
(if applicable)

## RESPA - Good Faith Estimate

Approximate borrower's costs before or at settlement

GFE figures must:

- Be made in “good faith”
- “Bear a reasonable relationship” to what the borrower will pay at settlement
- Be based upon “experience in the locality of the mortgaged property”

- Helps borrower to better understand the nature and costs of real estate settlement services
- Describes typical settlement costs and provides worksheets so that the consumer can compare settlement charges

## RESPA - Initial Servicing Disclosure

Discloses the lender's transferring practices

- whether the loan may be
- assigned,
- sold, or
- transferred

When a lender (or other) “refers” a consumer borrower for a settlement related service to a business partner, affiliate, or associate, the lender must provide a special disclosure.



- 1) HUD-1 or 1A Settlement Statement
- 2) Initial Escrow Statement
- 3) Annual Escrow Account Statement
- 4) Servicing Transfer Notice

Must clearly and conspicuously itemize all individual charges imposed in connection with settlement

- HUD –1 Settlement Statement

- Property purchase

- HUD – 1A Settlement Statement

- Property refinance

## Initial

- Discloses anticipated accounting of escrow account transactions
- Must be given at closing or within 45 days of establishing account (if set up after closing)

## Annual

- Provides annual accounting of escrow account
  - Due 30 days after end of “computational year”
    - First “computational year” is 12 months from borrower’s first payment
- After closing, during loan administration/servicing

Required if the loan servicer sells or assigns the servicing rights to a borrower's loan to another loan servicer

Generally, the loan servicer must notify the borrower 15 days before the effective date of the loan transfer

Fair Housing Act

Home Mortgage Disclosure Act (HMDA) and Reg C

Equal Credit Opportunity Act (ECOA) and Reg B

## Fair Housing Act (FHA)

## Fair Housing Act

Applies to mortgage and home improvement loans

Protects the applicant from discrimination

- Race
- Color
- Handicap
- National origin
- Sex
- Religion
- Familial Status

Visit <http://www.hud.gov> for more information about the Fair Housing Act.

## Home Mortgage Disclosure Act (HMDA) and Reg C

Congress enacted HMDA in an effort to combat inner city redlining which is the practice of excluding certain neighborhoods (primarily those with lower income demographics) from home lending. However, its more recent application is the identification of discriminatory lending. HMDA requires lenders to provide to their supervisory agency (HUD in the case of independent mortgage lenders) an annual report detailing the “who and where” for:

- All home loans made
- Loans purchased
- All applications taken

- Annual reporting requirements
- Meeting the needs of the community?
- Identify possible discriminatory practices
- Regulation C
  - Federal regulation that implements HMDA

For more information about HMDA, please visit  
<http://www.ffiec.gov/hmda/default.htm>.

Enacted in 1975

Implemented by Federal Reserve Board's  
Regulation C

For both Depository and Non-Depository  
Institutions

On an annual basis, financial institutions are required to report specified data on applications, originations, and purchases of residential mortgage loans. This data must be filed in a registered format (the loan application register or “LAR”)

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)

## Types of Data Collected:

- 1) Loan Information
- 2) Applicant Information
- 3) Property/Security Information
- 4) Disposition Information

# Types of Data Collected

## Loan Information:

### Loan number:

An individual identifier for each loan

### Application date:

The date the application was taken

For broker loans, the date the creditor received the application

### Loan type:

A code that indicates if the loan was conventional, government-guaranteed, or government-insured

### Request for preapproval:

A code to indicate if a denied or originated loan began with a preapproval request

### Loan amount:

- Closed loans –the amount of credit granted
- Purchased loans – the UPB at the time of purchase
- Cancelled/denied loans – report the amount requested

### Lien Position

First or junior lien position

### Home Ownership Equity Protection Act status

Covered or not covered by HOEPA

### Rate spread

If the annual percentage rate (APR) exceeds the applicable treasury yield by the amount indicated below, report the difference (otherwise, report N/A):

- First lien – 3%
- Second lien – 5%

Title: Click View then Master then Slide Master to edit

Subtitle: Click View then Master then Slide Master to edit

# Types of Data Collected

## Applicant Information:

### Income

Gross, annual income used in making credit decision

Rounded to nearest 1000

“N/A” may be reported if income was not relied upon in making credit decision (i.e. an employee loan, Application withdrawn)

### Race, Gender, and Ethnicity

Can Report up to five races, which is as many as applicant records

Required on face-to-face applications

Report “Does not wish to furnish” for non face-to-face applications where the customer does not choose to provide info

# Types of Data Collected

## Property/Security Information:

### Property Type

1-4 family, multi-family, or manufactured home

### Occupancy

Owner occupied or non-owner occupied (including second home and investment properties)

### Purpose

- Purchase, Refinance, Home Improvement
- Purchase trumps refinance and home improvement
- Home improvement trumps refinance
- New definition of refinance

### Metropolitan area, county and state code

- Code to indicate applicable location if property is in an MSA where financial institution has branch or home office
- N/A can be reported if property is located outside the MSA where lender has a home or branch office (unless covered by CRA)

### Census tract

- Use 2000 census
- N/A if population was less than 30,000

# Types of Data Collected

## Disposition Information:

### Action taken

- Originated
- Purchased
- Denied
  - Counteroffers
  - Conditional approvals
- Canceled
  - Withdrawn
  - Incomplete
  - Approved, but not accepted

### Action taken date

- Originated
- Purchased
- Not originated (except withdrawn)
- Withdrawn

### Loans Purchased

## Equal Credit Opportunity Act (ECOA) and Reg B

# ECOA - Equal Credit Opportunity Act

Enacted in 1974

Implemented by the Federal Reserve Board's Regulation B

Focuses on:

- 1) Anti-discrimination
- 2) Notification
- 3) Record retention
- 4) Appraisals
- 5) Electronic Communications

## 1) Anti-discrimination

Activities constituting discrimination. It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction:

- on the basis of race, color, religion, national origin, sex or marital status, or age provided the applicant has the capacity to contract
- because all or part of the applicant's income derives from any public assistance or;
- because the applicant has in good faith exercised any right under this chapter

[www.hud.gov/offices/fheo/lihtcmou.cfm](http://www.hud.gov/offices/fheo/lihtcmou.cfm)

## 1) Anti-discrimination

ECOA violations may exist in three different forms or types:

- **Overt discrimination**, where the lender blatantly discriminates on a prohibited basis
- **Disparate treatment**, where the lender treats the applicants differently based upon one of the prohibited factors
- **Disparate impact**, where the lender applies a practice uniformly to all applicants but the practice has a discriminatory effect on a prohibited basis and the lender's use of such practice does not result from a business necessity

## 2) Notification

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

**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

**Denial** - Notification is 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)

**Incomplete App.** –Notification is 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

## 3) Record Retention

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

- 1) Application
- 2) Self tests – Monitoring Exercise - *when must corrective action be taken?*
- 3) Prescreened solicitations

## 4) 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

## 5) 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

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