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RESIDENTIAL MORTGAGE TRANSACTION - FEDERAL DISCLOSURES

Mortgage Bankers Association of America's
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Federal Laws Impacting the Industry

- Truth-in-Lending Act (“TILA”) and Regulation Z
- Real Estate Settlement Procedures Act (“RESPA”) and Regulation X
- Equal Credit Opportunity Act (“ECOA”) and Regulation B



Federal Laws Impacting the Industry

CONTINUED

- Home Mortgage Disclosure Act (“HMDA”) and Regulation C
- Fair Credit Reporting Act (“FCRA”)
- Gramm-Leach-Bliley Act (“GLBA”)

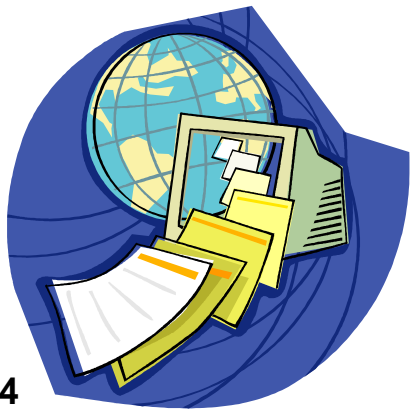
And these are just the federal origination statutes!!





Why Should An IT Person Care Whether Captured Information Is An Application?

- Triggers disclosure requirements.
- Disclosure requirements trigger need to
 - capture information needed to prepare the disclosures, and
 - if disclosures are to be delivered electronically, develop mechanisms to obtain the consumer's consent and deliver the disclosures.





What Is An Application?

Depends on the statute

- RESPA and TILA

- RESPA: The submission of a borrower's financial information in anticipation of a credit decision, whether written or computer generated.
- No specific property identified = a prequalification and not an application. TILA adopts RESPA's definition.





What Is An Application?

CONTINUED

- ECOA
 - ECOA: An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested.
 - However, if a creditor's policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decisions based on oral requests, the creditor will be deemed to have established procedures that it will accept both oral and written applications.



When Is An Initial TILA Notice Required And Who Must Give It?

- What:
 - For all closed end loans, an initial TILA disclosure
- When:
 - Before loan consummation or not later than three business days after the creditor receives the consumer's written application, whichever is earlier.



When Is An Initial TILA Notice Required And Who Must Give It?

- What:
 - In connection with variable rate mortgage loans, the booklet entitled Consumer Handbook on Adjustable Rate Mortgages and a program-specific written description for each program in which the consumer expresses an interest.
- When:
 - At the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

When Is An Initial TILA Notice Required And Who Must Give It?



CONTINUED

- Who:
 - “Creditor,” i.e., the person to whom the obligation is initially made payable.



When Are A GFE And Special Information Booklet Required And Who Must Give Them?



- What:
 - A Good Faith Estimate and Special Information Booklet.
- When:
 - Within three business days after the lender receives or prepares the application.
- Who:
 - There is no definition of a “lender.”
 - The regulation does establish rules for who must deliver the GFE.

When Are A GFE And Special Information Booklet Required And Who Must Give Them?



CONTINUED

- Who: (continued)
 - If no mortgage broker is involved, the lender must deliver the disclosures. If there is a mortgage broker involved and that broker is the “exclusive agent” for the lender, either the lender or the broker may deliver the disclosures. If the broker is not an exclusive agent for the lender, the broker must deliver the GFE. If the broker has provided a GFE, the funding lender need not do so, but the funding lender is responsible for ensuring the broker has properly completed and delivered the GFE.



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When Is ECOA Collection Requirement Triggered And Who Must Collect?

- What:

- Creditors must collect government monitoring information in connection with an application for a to be secured by owner occupied property.

- Who:

- Applies to “creditors.” “Creditor” is defined as a “person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit.”

When Is An ECOA Adverse Action Notice Required And Who Must Give It?



- What:
 - A notice of action the creditor takes in connection with an application (e.g., approval of, counteroffer to, or denial of application for credit)
- When:
 - If a creditor takes an action on a completed application.
 - A creditor has received a “completed application” once the creditor has obtained “all the information that it normally considers in making a credit decision...”
 - Thus, the lender is permitted to define what constitutes a completed application for ECOA purposes.

When Is An ECOA Adverse Action Notice Required And Who Must Give It?



CONTINUED

- When: (continued)
 - BUT, if when responding to a mere inquiry the creditor also evaluates information about the applicant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry as an application and must then comply with the adverse action notice requirements. In short, if a creditor reaches a credit decision and communicates that to the consumer, it will not matter that the creditor did not receive an application. The creditor must deliver the adverse action notice.

When Is An ECOA Adverse Action Notice Required And Who Must Give It?



CONTINUED

- Who:
 - Again, applies to “creditors.”
 - However, for adverse action notice purposes, also potentially applies to those who participate in the credit decision.
 - Arrangers of credit are subject to only limited provisions of ECOA, and as a rule should not be subject to ECOA’s adverse action notice requirements.

When Is An ECOA Adverse Action Notice Required And Who Must Give It?



CONTINUED

- Who: (continued)
 - When an application is made “on behalf of an applicant” to more than one creditor, and one of the creditors offers credit that the applicant uses or expressly accepts, there is no notification requirement imposed.
 - But if no creditor offers credit, or if the applicant does not use or expressly accept any credit offered, each creditor must give notice of adverse action.
 - Any notice from a third party must include the identity of each creditor on whose behalf the third party is giving the notice.

When Is An ECOA Adverse Action Notice Required And Who Must Give It?



CONTINUED

- Who: (continued)
 - If a third party is used to provide the notice, the creditors are protected from liability arising from the third party's acts or omissions only if the creditors gave accurate information to the third party and maintained reasonable procedures to ensure that the third party complied with the notice requirement.



What Are Inquiries, Prequalifications And Preapprovals For RESPA And TILA Purposes?

- Remember, if a submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan.

What Are Inquiries, Prequalifications And Preapprovals For ECOA Purposes?



- A creditor has a great deal of discretion in defining what constitutes an application.
- No application if a consumer calls to ask about loan terms and the creditor explains the basic terms, such as interest rates, loan-to-value ratios, and debt-to-income ratios.
- No application if the creditor explains its basic or general lending policies without telling the consumer whether she qualifies.

What Are Inquiries, Prequalifications And Preapprovals For ECOA Purposes?



CONTINUED

- If, however, a creditor also evaluates information about the applicant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry as an application and must then comply with the adverse action notice requirements.
- Prequalifications and preapprovals are not defined. Whether a prequalification or a preapproval rises to the level of an adverse action depends on the creditor's response to the request.

What Are Inquiries, Prequalifications And Preapprovals For ECOA Purposes?



CONTINUED

- An inquiry if the creditor provides general information such as loan terms and the maximum amount a consumer could borrow under various loan programs, explaining the process the consumer must follow to submit a mortgage application and the information the creditor will analyze in reaching a credit decision.
- An application subject to the adverse action notice requirements if, after evaluating information, the creditor decides that it will not approve the request and communicates that decision to the consumer.



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When Is A FCRA Credit Score Notice Required And Who Must Give It?



- What:
 - Information relating to a credit score used in connection with an application for a residential mortgage loan
- When:
 - As soon as reasonably practicable
- Who:
 - All lenders who use a consumer credit score in connection with the application

When Is A FCRA Risk-Based Pricing Notice Required And Who Must Give It?



- What:
 - Notice of (a) terms of credit based on consumer report, (b) identity of CRA, (c) consumer may obtain copy of report for free, (d) contact info for CRA
- When:
 - Application of approval (subject to regulations not yet issued in final version), but only if person provides credit on material terms that are materially less favorable than the most favorable terms available to a substantial portion of consumers based on information in a consumer report
- Who:
 - All lenders who use a consumer credit score in connection with the application



When Is A FCRA Affiliate Sharing Notice Required And Who Must Give It?



- What:
 - Opt our notice for sharing of certain information with affiliates (may be combined with GLBA).
- When:
 - At least 30 days prior to sharing information.
- Who:
 - All lenders and their affiliates that share information with affiliates.

When Is A GLBA Privacy Notice Required And Who Must Give It?



- What:
 - Privacy notice concerning how and what non-public personal information concerning a customer is used.
- When:
 - Upon establishing a customer relationship.
- Who:
 - All financial institutions as defined in statute and regulation.

When Is HMDA Data Collection Required And Who Must Collect It?



- When:
 - To report properly, must be collected at application.
- What:
 - Application or Loan Number, Date Application Received, Loan Type, Property Type, Purpose of Loan, Owner-Occupancy, Loan Amount, Preapproval (home purchase only), Action Taken, Date Action Taken, MSA/MD #, State Code, County Code, Census Tract, Applicant Ethnicity, Applicant Race, Applicant Sex, Applicant Income (gross - in thousands), Type of Purchaser, Reason for Denial (optional), Rate Spread, HOEPA Status (only for loans originated or purchased), Lien Status (only for applications and originations)

When Is HMDA Data Collection Required And Who Must Collect It?



CONTINUED

- Who:
 - Lenders that meet certain tests in terms of size, originations and/or location of offices. Effectively covers almost all institutional lenders.

How Do These Rules Apply In An Internet Setting?



Calculators.

- The use of plain calculator tools on an Internet site should not result in the need for disclosures under RESPA, TILA or ECOA.
 - Site operator should include a disclaimer that:
 - The calculator is simply a tool to show how the interaction of various factors can impact the amount, type and terms of credit that may be available.



How Do These Rules Apply In An Internet Setting?



CONTINUED

- Results of the calculator computations are not intended as the operator's decisions concerning the type or terms of credit for which the consumer may qualify
- The consumer should submit an application if he or she is interested in determining more precisely the types and terms of credit for which she may qualify.



How Do These Rules Apply In An Internet Setting?



CONTINUED

- TILA Disclosures.
 - Prequalifications.
 - Avoid the need for TILA disclosures by simply not requesting the address of the security property, and not providing a place for the consumer to input that address. Delivery.
 - May send hard copy or send electronically using the E-sign or UETA statutes (as supplemented by the FRB's interim rules once compliance becomes mandatory).

How Do These Rules Apply In An Internet Setting?



CONTINUED

- Delivery.
 - May send hard copy or send electronically using the E-sign or UETA statutes (as supplemented by the FRB's interim rules once compliance becomes mandatory).



How Do These Rules Apply In An Internet Setting?



CONTINUED

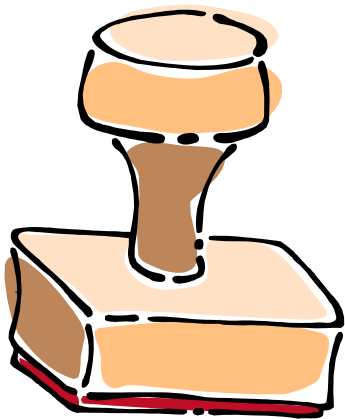
- RESPA Disclosures.
 - Prequalifications. The same rule as applies to TILA.
 - Delivery. Paper delivery or may use E-sign/UETA.

How Do These Rules Apply In An Internet Setting?



CONTINUED

- ECOA Disclosures.
 - Prequalifications and Preapprovals.
 - Attempt to avoid reaching a credit decision by not permitting the consumer to request a specific loan amount, type of credit, or specific credit terms.
 - If the site operator obtains information that shows consumer would not qualify for any credit (e.g., the consumer is currently in bankruptcy or has no income), it may be impossible to avoid an adverse action.

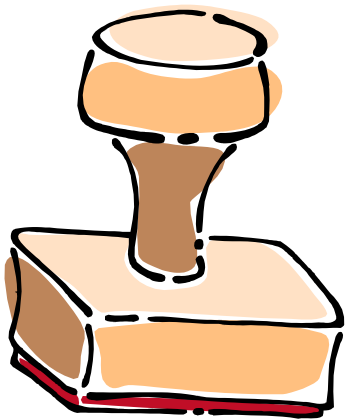


How Do These Rules Apply In An Internet Setting?



CONTINUED

- If the site operator permits the consumer to request a certain loan amount or interest rate, and based on consumer's credit score or other information, consumer will not qualify for the loan amount or interest rate, it may be argued that an adverse action has been taken, in which case a notice should be delivered.

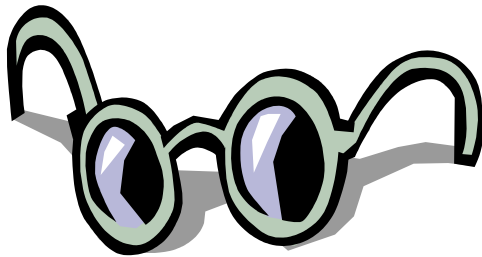


How Do These Rules Apply In An Internet Setting?



CONTINUED

- Use of Filters.
 - Filters are used to prequalify a consumer for loans.
 - If determine consumer cannot qualify for any loan offered by a lender, it may be argued that the lender has reached an adverse credit decision and should deliver an adverse action notice. But the lender may be blind to the filtering process and have no knowledge that the consumer's information was passed through the filter.

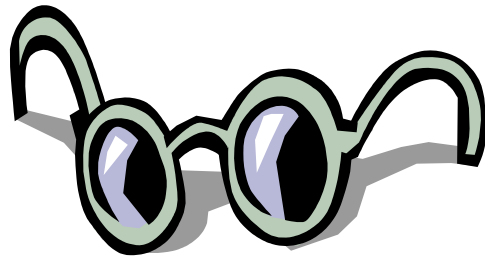


How Do These Rules Apply In An Internet Setting?



CONTINUED

- Turn to arranger of credit and multiple creditor rules discussed earlier.
- Many lenders take position there is no disclosure obligation in this setting, as the use of a filter is analogous to a broker using a lender's underwriting guides to see if an applicant might qualify.



How Do These Rules Apply In An Internet Setting?



CONTINUED

- HMDA Reports.
 - Multilender Sites.
 - HMDA generally applies only to those making loans and not to pure mortgage brokers.
 - Prequalifications and Preapprovals.
 - The definition of "application" under ECOA and Regulation B (such as the distinction between and "inquiry" and an "application") are generally applicable to the definition under HMDA and Regulation C.

How Do These Rules Apply In An Internet Setting?



CONTINUED

- Exception to this general rule. Prequalification requests are not applications for purposes of Regulation C, even if they would otherwise be treated as applications under Regulation B. A "prequalification request" under HMDA is a request by a prospective loan applicant for a preliminary determination as to whether the prospective applicant would likely qualify for credit under an institution's standards, or how much credit the applicant might obtain.

How Do These Rules Apply In An Internet Setting?



CONTINUED

- Need not report such requests for HMDA purposes



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