



Federal Law

TEST PREP PRESENTATION



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Fair Lending, Fair Housing & ECOA



**ANY PERSON WANTING TO
APPLY FOR A MORTGAGE
MUST BE ALLOWED TO DO
SO, UNLESS THEY ARE
UNDER 18.**



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ECOA (Regulation B)



Protected Classes:

- 1) Sex
- 2) Religion
- 3) National Origin
- 4) Color
- 5) Age
- 6) Race
- 7) Marital Status
- 8) Public Assistance





Things to Avoid:

- **You cannot** have different pricing or underwriting standards for different genders.
- **You can** only ask if the borrower is married, unmarried, or separated.

Things to Avoid:

- **Race and Color** can never be used in considering a loan, whether for underwriting or pricing.





Things to Avoid:

- No wording can be used to label a person old or indicate that a 70-year-old borrower would not be considered for a 30-year loan.



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Things to Avoid:

- **Religion and National Origin** – No matter how a person is dressed, you cannot ask the borrower anything about either of these.



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Things to Avoid:

- If a person who is on Public Assistance wants to apply for a mortgage, you must consider the public assistance if it meets underwriting guidelines for income.



Things to Remember about ECOA:



30 Days from when you have a complete Underwriting Package, the underwriting decision must be made, whether it is approved, cancelled, or rejected.



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Things to Remember about ECOA:



The Appraisal must be delivered to the borrower **no less than three business days before closing.**



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Things to Remember about ECOA:



Adverse action – Within 30 days from a loan being rejected or cancelled, a notice must be sent to the borrower, explaining why.



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Home Mortgage Disclosure Act (HMDA – Reg C)

- All companies that underwrite or fund loans must file a HMDA report quarterly, as of 2020.
- Mortgage brokers may be exempt.





Home Mortgage Disclosure Act (HMDA – Reg C)

- This is for every loan that has an application.
- The agency that collects the data is FFIEC.



How the Fair Housing Act Differs:

The discriminatory items are very similar to ECOA, with three exceptions:

- **Disability** – You cannot refuse a borrower from applying for a loan because they are physically or mentally disabled.

How the Fair Housing Act Differs:

Age is exempt for two reasons:

- Reverse mortgages require you to be 62 years of age or older.



How the Fair Housing Act Differs:

- You have to be 55 or older to own or live in a 55 or older subdivision.





How the Fair Housing Act Differs:

- **You cannot refuse a loan application because of** the size of family or tell a pregnant woman that you may not be able to count her income because she is going on maternity leave.



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HOEPA Requirements:

- Mandatory mortgage insurance over 80% LTV, escrows for taxes and insurances for five years, counseling, and a full appraisal are all required.



Higher-Priced (Section 35 of TILA)

- Triggers are 1.5% for first mortgages.
- 3.5% for 2nd mortgages with no fee trigger.



Things to Know About: The Fair Credit Reporting Act (FCRA)



- Every consumer has the right to **at least one free credit report** each year. They can get more, but at least one is required.
- **Do not give the tri-merge credit report** to the borrower; it is for underwriting only.



Things to Know About: The Fair Credit Reporting Act (FCRA)



Credit Score Disclosure –

- List **all three of the credit agencies** with contact information so the borrower can contact them for errors or disputes.



Things to Know About: The Fair Credit Reporting Act (FCRA)



**Experian, Equifax, and
TransUnion are the credit
agencies.**



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Fair & Accurate Credit Transaction Act (FACTA)

- **Amended FCRA**
- Implemented Credit freezes and Fraud Alerts



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Credit Freezes and Alerts

- Borrowers are allowed to file a Fraud Alert and Freeze their credit **at no cost**. Make sure it is with all three agencies.
- If the borrower freezes their credit, **they will have to unfreeze their credit** before you can pull credit. Unfreeze all three agencies.



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The Red Flags Rule under FACTA



- **Enforced by the FTC**



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The Red Flags Rule under FACTA



- If you call into your bank, credit card company, or other companies to change your personal information, **they cannot change it unless the company sends you an e-mail or letter asking if you requested the changes.**



The Red Flags Rule under FACTA



- Unless you respond, they will make the changes.



The Red Flags Rule under FACTA



- **All companies must train all employees** on how to identify a breach of security and alert the Compliance Officer.



The Red Flags Rule und FACTA



- **Within 30 days of the alert**, the company has to send a letter to everyone in the data base telling them there was a breach and what your company is doing to protect them.



Gramm-Leach- Bliley Act (GLBA – REG P)

Everything about this
law is about
PRIVACY.



How Do We Handle NPI?



- Companies have to inform the consumer what they do with their NPI (Non-Public Personal Information).
- Do they share it, sell it, or give it away?



How Do We Handle NPI?



- The borrower is allowed to OPT Out, **30 days from the notice**, which stops the company from sharing their data.





Phishing or Pretexting

Phishing or Pre-texting –Obtaining personal information by illegal process.

- Example: Receiving a text, claiming to be from the IRS, asking for your Social Security number.



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How the Safeguards Rule Applies to You:

- Regulated by FTC.
- Whenever you are not using your files, they are to be locked up in a desk drawer or filing cabinet.



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How the Safeguards Rule Applies to You:

- If your files are on a computer, there must be a lock-out after a few minutes.
- All files must be kept **for three years and** Closing Disclosures (CD) **for five years.**



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What to Know About Do Not Call (DNC):



- Enforced by Federal Trade Commission (FTC).
- **Fines up to \$40,000 per violation.**
- If you pull data from the Do Not Call data base, it cannot be over 30 days old.



Who is Exempt from Do Not Call (DNC):



- Existing business relationship – **You can call for 18 months**, even though the consumer is on the DNC.



Who is Exempt from Do Not Call (DNC):



- **You can call for 90 days on a Pre-Qual.** All solicitation calls to a person on the DNC must be documented and kept for two years.





Internal Do-Not-Call List

If a consumer requests this via letter or e-mail, they don't want marketing solicitations. The company must maintain an internal DNC list, so all employees know that person is not to be called.



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Truth in Lending Act (TILA – Regulation Z)

8 Topics Under TILA:

1. MDIA – Mortgage Disclosure Improvement Act
2. Advertising
3. HOEPA
4. Loan Estimate (LE)



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Truth in Lending Act (TILA – Regulation Z)

- 5. Annual Percentage Rate
- 6. Qualified Mortgage
- 7. Loan Officer Compensation
- 8. CHARM Booklet



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What is MDIA?



- **3/7/3** – 3 business days from application, the borrowers are to receive the disclosures.
- Closing has to **wait 7 business days** from the signed Intent to Proceed.



What is MDIA?



- **3 business day delay** from the changes to the CD, a new CD is issued if the loan program changes, prepayment penalty is added, or the APR tolerances are exceeded (1/8% on a fixed or 1/4% on an ARM).



Advertising Under TILA

- Company name, NMLS number, phone number, and address must be on all marketing materials, as well as the Equal Housing logo and an APR if there is a number on the advertising (Mortgage amount, interest rate, ETC.)





HOEPA: Home Ownership Equity Protection Act

- It is under Truth-in-Lending and REG Z (**Section 32**).
- Covers Predatory Lending, Abusive Lending Practices, Negative Amortization, Prepayment Penalties, Balloon Lending, Subprime Lending, Equity Stripping, and Ability to Repay (ATR).

HOEPA: Restrictions

- **Balloons** – Minimum of 5 years.



HOEPA: Restrictions

- **No Prepayment Penalties** allowed by Fannie Mae, Freddie Mac, FHA, VA, or USDA. Prepayment Penalty applies if you pay the loan off within the first 2 to 3 years.





Average Prime Offer Rate (APOR)

- Issued weekly by **FFIEC** for 30, 25, 20 and 15-year terms.
- The index is added to the High-Cost and Higher-Priced Lending Triggers.

HOEPA Triggers

- Triggers are:
6.5 for first mortgages.
- 8.5% for 2nd mortgages and 5% fee trigger.



HOEPA Triggers Example



- If the APOR index for a 30-year fixed, first mortgage loan is 4.00%, you would add the index to the first mortgage trigger of 6.5% = 10.5%.
- Your Annual Percentage Rate (APR) cannot exceed 10.5%. The loan could not be locked; thus not closed.





Delivering the Loan Estimate:

- Must be delivered **within 3 business days** from signed application.
- Must include all costs, fees, and terms of the loan.
- If mailed, it must be documented that it was mailed within 3 days.



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Defining Annual Percentage Rate (APR)

The cost of the loan includes all costs for the loan, interest paid, and MI insurance over the life of the loan.



Talking about QM:



There are two options to meet QM requirements and give Safe Harbor to the mortgage company and MLO, showing they proved the Ability to Repay.



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Talking about QM:



Option one - **43% max debt-to-income (DTI)** and no more than 3% in fees.

Option two – **Approved Eligible** from Fannie or Freddie and must meet High-Priced Lending limits.





LO COMP

- Commissions are limited to MLO basis points of the loan amount.
- For Example: \$200,000 loan times 100 basis points = \$2,000 commission) **None of the terms of the loan can be used for the commission.**





LO COMP

- Bonuses - Based on number of loans originated or the dollar amount originated for a specific period.
- **Bonuses are limited to 10% of your last 12 months of compensation.**



When to Deliver a CHARMS Booklet:



- Must be delivered to all borrowers on any **ARM Loan within 3 business days from the signed application.**





Regulation N (MAP RULE)

**If you don't have what you are
advertising, don't advertise as if
you do.**



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Reg N

- **Do not use any words, sentences, or terms** that would give borrowers the impression that you offer certain incentives that you don't actually have, just to get them to apply for a loan with you.





REG N

Bait and Switch – Don't entice the borrower to call you for low advertised rates and then try to switch them to another loan program because you don't have the rate.



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Digital Delivery



- Does not include faxing or e-mail. DocuSign or eSign are okay.
- **You must have a signed approval from the Borrower with their consent for digital delivery.**



Digital Delivery



- The borrower can go back to hard copies upon request.
- To the best of your ability, you must determine if the borrower has the technical skills to consent to digital delivery.





Who Is the CFPB?

The agency that has the right to draft, implement, investigate, and enforce laws and regulations.



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What's In The Real Estate Settlement Procedures Act (RESPA, Reg X)?

- **Home Loan Tool Kit** – Must be given to all borrowers on Purchases.



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What's In RESPA?

HELOC – The booklet
“When Your Home is on
the Line” must be given
at the time of a HELOC
application.



What's in RESPA?



- **Closing Disclosure (CD)** – On a purchase, copies of the CD must be given to both the borrower and the seller.
- The borrower's copy has both the borrower and seller information.



What's in RESPA?



- The terms and costs are to match the LE, **with a 10% tolerance.**
- The borrower's copy is not to be given to anyone, unless authorized by the borrower.





What's in RESPA?

Section 8 – Nothing of value can be paid or received for referrals or Kickbacks.

Affiliated Business Disclosure must be delivered to the borrower at the time of the referral.



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What's in RESPA?

If a Realtor and an MLO or an MLO and their family **own as little as 1% of a third-party company** (ex. Title, credit or appraisal company), it must be disclosed.



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The HPA



HPA – Homeowners
Protection Act - Mortgage
Insurance (MI) Requirement
on all Conventional
Conforming Loans



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Things to Remember About The HPA



- Loans **above 80% LTV**, require MI.
- Once the loan reaches 80% LTV, **the borrower can request** the MI to be dropped. It is at the option of the lender to drop it or not.



Things to Remember About The HPA



- Once the loan reaches **78% LTV, the MI must be dropped.**





BSA/AML

- All employees must go through annual training to identify fraud or money laundering and what to do if it is detected.
- If detected, the file is to be turned over to the compliance officer or senior officer for determination if it should be filed as a **Suspicious Activity Report (SAR)**.



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BSA/AML

- If reported, the file must be kept in a secure place **for 5 years**, and the information is released to only law enforcement or FINCEN.



US Patriot Act

- All borrowers and donators of gift funds must be checked through **OFAC** to see if any of those involved are on the Federal Watch List.
- If someone is on the Federal Watch List, you must contact OFAC for approval to proceed with the loan.





What Are the Penalties?

- Red Flags - **\$3,500 per violation**, which may include an additional \$2,500 for FTC Fines,
- Violations of **RESPA's Section 8** anti-kickback, referral fees, and unearned fees may be subject to a **fine of up to \$10,000 and imprisonment for up to one year.**



What Are the Penalties?



The **Dodd-Frank Act** mandates that any person who violates, through any act or omission, any provision of Federal consumer financial law, penalties may be set out in three separate tiers:



What Are the Penalties?



First tier - For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty **may not exceed \$5,639** for each day during which such violation or failure to pay continues.



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What Are the Penalties?



Second tier - For any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty **may not exceed \$28,139** for each day during which such violation continues.



What Are the Penalties?



Third tier - For any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty **may not exceed \$1,127,779** for each day during which such violation continues.



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