FAIR LENDING

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Fair Lending

"A commitment to treat all mortgage applicants with fairness and equality"

There was a time when a word of promise was more meaningful than the signing of a note. When property owners needed to borrow money to build a home, farm or ranch, they pledged their land as collateral.

The highly documented mortgage banking industry as we know it today began around the time of the Second World War. As our veterans returned home to their families, newly constructed homes awaited them. These eager borrowers were given an opportunity to finance their homes at favorable rates and terms made possible through loan guarantee programs.

The post war housing boom prompted the expansion of mortgage transactions calling for considerably more paperwork than the traditional promissory note. Participating in real estate transactions were land developers, homebuilders, real estate brokers, mortgage lenders, title insurance companies, and of course, borrowers.

Added to this list would be the insurer, guarantor or secondary market agency. Prospective homebuyers were faced with more paperwork, more service providers and more costs.

It was not uncommon during this period for borrowers to arrive at the closing of their new home and have to pay unexplained fees or added finance charges. The mortgage industry was in need of rules to help borrowers understand financing terms, identify service providers and disclose all settlement costs.

Fair Lending

During the 1950s and 1960s, neighborhoods began to flourish. Access to these prospering suburban communities for many was obstructed due to racism and other forms of discrimination.

Character judgments of borrowers were the criteria for approval by lenders; for example, the salaried income of a married woman was not counted, assuming that she would soon leave her job to have children.

The industry was in need of rules to compel lenders toward equal treatment of applicants and equal treatment of their income. Concerned citizens and consumer advocacy groups sought ways to assist and protect future homebuyers.

The response was enactment by Congress of a series of federal statutes, each intended to restore the trust in real estate conveyances, and give encouragement to those who were being wrongly treated.

A summary of each of the statutes begins with the Fair Housing Act, signed one week after the death of Rev. Dr. Martin Luther King, Jr.

Summary of Fair Lending Regulations

1. Equal Credit Opportunity Act (ECOA) Regulation B (1974)

The Equal Credit Opportunity Act prohibits lenders from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, if they are a recipient of public assistance and the exercise of rights under the Consumer Credit Protection Act.

2. Fair Housing Act (FHAct) (1968)

A civil rights law, the Fair Housing Act prohibits discrimination in the sale or rental of a residential property on the basis of race, color, religion, handicap, sex, familial status or national origin. Any person who is in the business of selling, brokering, appraising, or lending money on real property must comply with the Fair Housing Act.

3. Fair Credit Reporting Act (FCRA) (1970)

Under the direction of the Federal Trade Commission, the Fair Credit Reporting Act was formed to protect credit applicants against improper disclosure or handling of consumer credit history. A consumer's credit information must be held in confidence by credit agencies and businesses who extend credit or give loans to consumers, such as a mortgage lender. The Act prohibits lenders from disclosing to third parties (such as realtors or property sellers) any information contained on an applicant's credit report.

4. Fair and Accurate Credit Transactions Act (FACTA) (2003)

The Fair and Accurate Credit Transactions Act was enacted to enhance the ability of consumers to combat identity theft; to increase the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive.

Introduction to Fair Lending Regulation

5. Flood Disaster Protection Act (1973)
The purpose of the Flood Disaster Protection Act (1973) and the National Flood Insurance Act (1968) is to provide federal disaster relief assistance in areas designated as special flood hazards by FEMA.

6. Home Mortgage Disclosure Act (1975)
The Home Mortgage Disclosure Act was enacted by Congress so that the public could monitor the lending activity of a financial institution to determine whether the credit needs of their local communities were being served. Lenders must report demographic data as well as geographic data on all loan applications.

7. Real Estate Settlement and Procedures Act, Regulation X (RESPA) (1974)
The Real Estate Settlement and Procedures Act applies to all lenders dealing with federally related mortgage loans for the financing of 1 to 4 family properties, including condominiums, cooperative apartments and mobile homes. Under RESPA, mortgage lenders must provide a written estimate of settlement charges within three business days.

8. Truth in Lending Act, Regulation Z (TILA) (1969)
An outgrowth of the Consumer Credit Protection Act of 1968, the Truth in Lending Act is implemented by the Federal Reserve Board's Regulation Z. The purpose of the regulation is "to promote the informed use of consumer credit by requiring disclosure about its terms and costs.“

Summary of Fair Lending Regulation

9. Truth in Lending Act, (TILA) Regulation Z (1969)
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10. Mortgage Disclosure Improvement Act (MDIA) (2008)
The Mortgage Disclosure Improvement Act was enacted as an amendment to Regulation Z, the Truth in Lending Act. MDIA regulates the time period in which the borrower must receive certain disclosures and when it is permissible to collect loan related fees from the borrower.

11. Home Ownership and Equity Protection Act (HOEPA) (1994)
The Home Ownership and Equity Protection Act imposed regulations and disclosure requirements for certain high cost home mortgages. Also known as Section 32 loans as codified under Regulation Z, the Truth in Lending Act.

12. Community Reinvestment Act (1977)
The Community Reinvestment Act affirms that financial institutions have an obligation to help meet the credit needs of their entire communities, including low and moderate income neighborhoods. CRA plans are made public and intuitions are assessed for their performance by their supervisory agency.

Forms of Discrimination

SUBTLE

Cancel or delayed appointment

Lack of information or follow through

OVERT

Refusal to take an application

Steering toward an unsuitable loan

DISPARATE IMPACT

When an otherwise neutral policy or practice burdens certain persons on a prohibited basis

DISPARATE TREATMENT

Differences in treatment that are not fully explained by legitimate factors

Fair Lending Origination Steps

Loan Program: Appropriateness of Program and Eligible Alternatives

The loan program must be appropriate to the borrower's financing needs as evidenced through the application and borrower's financial situation. Alternative programs for which the borrower is eligible should be made available.

Repayment Ability

The file should reflect the borrower's ability to repay, through the processing and underwriting steps of obtaining and reviewing credit report, paystubs, account information and asset as well as liability information.

Net Tangible Benefit

If the loan is a refinance, the program should reflect a tangible net benefit to the borrower such as a lower interest rate, lower payment or cash out of home equity.

Supporting Documentation Requests

Reasonable time must be allowed for the borrower to complete the processor and underwriter's requests for additional documentation. This is an area that in the past has been used as a barrier to take adverse action on loans where applicants have non-traditional forms of income and providing documentation became burdensome.

Fair Lending Processing Steps

Processing Steps and Treatment

Processing steps and treatment must be uniformly applied to all borrowers as outlined by lender's policies and procedures.

Departure from Credit Standards

Departures from credit standards must be explained. For example, if a borrower has non-traditional sources of credit, the file should be documented with letters of reference or acceptable statements. Underwriters should explain departures from credit standards or investor guidelines wherever possible.

Compensating Factors

Many loans may contain factors which are not apparent in the standard file documentation which can be highly favorable and reduce credit risk. All positive characteristics should be noted, documented in a memorandum, and refer to them as compensating factors when presenting a loan for approval.
Examples:

- Loan-to-Value is low
- Considerable liquid assets
- Reimbursed automobile or cost-of-living expenses from employer
- No outstanding debt
- Non-taxable income (retirement or social security)
- Excellent credit history

Information Collection on the Credit Application

ECOA requires certain government monitoring information be collected on the application which includes:

- Borrower gender
- Race, ethnicity, marital status and age
- Dwelling information and residency status

Per ECOA requirements it must be disclosed to the borrower that this information is being collected for fair lending compliance monitoring purposes and notification that ECOA prohibits discrimination based on race, color, religion, national origin, sex marital status, age, public assistance status, or exercise of rights under the Consumer Protection Act.

Borrower's Signature | Date

X

X. INFORMATION FOR GOV

The following information is requested by the Federal Government for certain opportunity, fair housing and home mortgage disclosure laws. You are not may neither discriminate on the basis of this information, nor on whether you is required to note race and sex on the basis of visual observation or surname review the above material to assure that the disclosures satisfy all require

BORROWER ☐ I do not wish to furnish this information

ETHNICITY ☐ Hispanic or Latino ☐ Not Hispanic or Latino

RACE ☐ American Indian or Alaskan Native ☐ Asian
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander ☐ White

SEX ☐ Female ☐ Male

To be Completed by Loan Originator

This application was provided:

☐ In a face-to-face interview
☐ In a telephone interview
☐ by the applicant and submitted by fax or mail
☐ by the applicant and submitted via e-mail or the Internet

SAMPLE

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Prohibited Activities

The lender **may not** require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under lender's standards for creditworthiness.

Lenders **may not** request information about a co-applicant's alimony, child support or separate maintenance unless the income is a basis for repayment.

Guarantees:

Personal—lender **may not** require personal guarantees on a prohibited basis
Spousal—lender **may not** require the signature of a guarantor's spouse

Uniform Residential Loan Applic

This application is designed to be completed by the Applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower" as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☑ the income of assets of

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply

Borrower Co-Borrower

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:	☐ VA ☐ FHA	☐ Conventional ☐ USDA/Rural	☐ Other	Agency Case Number
Amount $	Interest Rate %	No. of Months	**Amortization Type:**	☐ ☐

Note the opening statement:
"completed with the lender's assistance"

ECOA

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Risk Based Pricing Notice

Pursuant to the FACTA amendment to FCRA, a consumer must receive a Risk Based Pricing Notice if a consumer report is used in connection with credit primarily for personal, family, or household purposes; and, based in whole or in part on the consumer report, provides credit to that consumer on material terms that are *materially less favorable than the most favorable terms available to a substantial proportion of consumers*.

Determining which Consumers Must Receive the Notice

In order to determine which consumers have received credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers, and therefore must receive a RBPN, creditors may utilize one of the following methods:

Case by Case Basis: Comparison of Material Terms

Credit Score Proxy: Provide a notice to each consumer to whom lender grants extends or provides credit whose credit score is lower than the cutoff point between 40% higher and 60% lower scores at which credit is granted.

Tiered Pricing: RBPN must be provided to each consumer who is not placed within the top pricing tier or tiers

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Risk Based Pricing Notice

The RBPN must contain the following additional content if a consumer's credit score is used in setting the material terms of credit:

The credit score used by the person in making the credit decision;

The range of possible credit scores under the model used to generate the credit score;

All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquires made with respect to the consumer report, the number of key factors shall not exceed five;

The date on which the credit score was created;

The name of the consumer reporting agency or other person that provided the credit score;

A statement that a credit score is a number that takes into account information in a consumer report, and that a credit score can change over time to reflect changes in the consumer's credit history.

When Consumers Must Receive the RBPN

The Credit Score Disclosure Exception Notice must be provided at the same time as the Credit Score information and Notice to Home Loan Applicant already required by the FACTA (as soon as reasonably practicable).

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Risk Based Pricing Notice

When the RBPN is Not Required:

The RBPN need not be provided in the consumer applies for specific material terms and is granted those material terms, or if the consumer is provided with an adverse action notice. In addition, an exception exists for loans secured by residential real property as described in the following section.

Credit Score Disclosure Exception Notice for Credit Secured by Residential Real Property

In lieu of providing the RBPN to some consumers as set forth above, for credit that is or will be secured by one to four units of residential real property, the creditor may opt to provide an exception notice to *every consumer* requesting a product for which the creditor uses risk-based pricing, even if the consumer would not otherwise receive a risk-based pricing notice. The notice contains supplemental information which must be provided on or with the Credit Score Disclosure already required by the Fair and Accurate Credit Transactions Act (FACTA).

Notice of Flood Hazard

Written notice must include:

- A warning that the building is in a special flood hazard area
- A description of the flood insurance purchase requirements
- A statement that flood insurance coverage is available under the NFIP
- A statement whether Federal disaster relief assistance may be available due to flooding

Timing of Notice—Must be provided before completion of the transaction

Record of Receipt—Lender will retain a record of the receipt while the lender owes the loan

Alternative Method of Notice—In place of providing a notice, the seller can provide notice

Use of Prescribed Form of Notice

Requirements

- Data is collected on a Loan Application Register (LAR) within 30 days after the end of each quarter in which the final action was taken
- LAR is submitted to the lender's supervisory agency March 1, the following year from when loan data was compiled
- Prepare a modified HMDA/LAR by removing loan numbers and dates, and make it available to the public by March 31, the following calendar year from the data compilation
- Post a notice of the availability of the HMDA data in the lobby of each branch office

LOAN APPLICATION REGISTER Page___ of ___

Name Reporting Institution City, State, Zip

All columns (except Reasons for Denial) must be completed for each

Application or Loan Information	
Application or Loan Number	Date Application Received (mm/dd/yy)
Example of Loan Originated L | B | - | 6 | 8 | 7 | 4 | 3 | 9 | | | | | | |	01/15/2004
Example of Application Denied 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | - | 9 | 8 | 7 | 6 | 5 | 4 |	03/20/2004
| | | | | | | | | | | | | | | |	

Information to Collect

1. Loan or application number
2. Date application was received
3. Loan type
4. Property type
5. Purpose of the loan
6. Owner-occupancy
7. Pre-approval code
8. Amount requested
9. Action taken
10. Date action taken
11. Race of applicant and co-applicant
12. Ethnicity of applicant and co-applicant
13. Sex of applicant and co-applicant
14. Income used to qualify (in thousands)
15. Location of the property by MSA
16. State
17. County
18. Census Tract
19. HOEPA status
20. Lien status
21. Rate Spread

Applicant Information A = Applicant CA = Co-Applicant					Type of Purchaser of Loan	Reason for Denial (Optional)
Race or National Origin		Sex		Gross Annual Income in thousands		
A	CA	A	CA			
3	8	1	4	24	7	
5	4	2	1	55	0	4 1 5

Truth in Lending Disclosure Requirements

Finance Charge: A lender must disclose the finance charge, including any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor.

Use of Estimates: If any information is unknown to the lender, the disclosures shall be based on the best information available at the time, and it shall state it is an estimate.

Annual Percentage Rate (APR) : The APR is a measure of the cost of credit, expressed as a yearly rate.

Right of Rescission: A consumer has the right to rescind/cancel a credit plan in which a security interest is or will be retained on the consumer's principal dwelling. Lender must deliver two copies of a Notice of Right to Rescind.

Non-rescindable transactions include:

- –A residential purchase money mortgage transaction
- –A refinancing or consolidation by the same creditor

Home Ownership and Equity Protection Act (HOEPA)

HOEPA requires creditors to comply with its requirements if the APR at or before the loan consummation will exceed the yield on the comparable Treasury securities as of the 15th day of the month immediately preceding the month in which the application for credit is received by the creditor by more than 8 percentage points for first lien loans or 10 percentage points for second lien loans.

HOEPA sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount.

–The adjusted dollar amount shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1.

–This adjustment does not affect the new rules for "higher-priced mortgage loans" adopted in July 2008

Community Reinvestment Act (CRA)

The Community Reinvestment Act of 1977 affirms that financial institutions have an obligation to help meet the credit needs of their entire communities, including low and moderate income neighborhoods.

Information provided to the public under the CRA:

Institutions are required to have a CRA Statement for each local community served. Each Statement must be made available to the public, be updated and approved annually and must contain the following information:

- –A map showing the local community served
- –A list of the types of loans the institution is willing to make within the community.
- –A notice of the process by which the public can comment on the institution's CRA performance
- –Optional inclusion of a description of the institution's CRA efforts, such as how the institution has identified the community's credit needs and taken action.

Correspondence and Complaint File

- –Written comments from members of the public about the institution's CRA performance
- –Any response the institution has made to public comments
- –The institution's CRA Statements for the past two years

CRA Performance Evaluation

CRA Performance Evaluation

- –Must be made available to the public within 30 days of receipt by the institution from the regulator.

Performance evaluations are assigned by an institution's supervisory agency which include 12 assessment factors and an overall rating.

- –Activities conducted to ascertain the credit needs of the community
- –Extent of marketing in the community
- –Formulation of CRA policies and CRA performance review
- –Discouraging practices
- –Geographic distribution of credit extended
- –Evidence of discriminatory or prohibited credit practices
- –Record of opening and closing offices and services provided
- –Participation in development and investments in local community
- –Loan origination and purchase
- –Participation in government insured, guaranteed or subsidized loan programs
- –Ability to meet the credit needs of the community
- –Other factors as deemed necessary by the agency

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