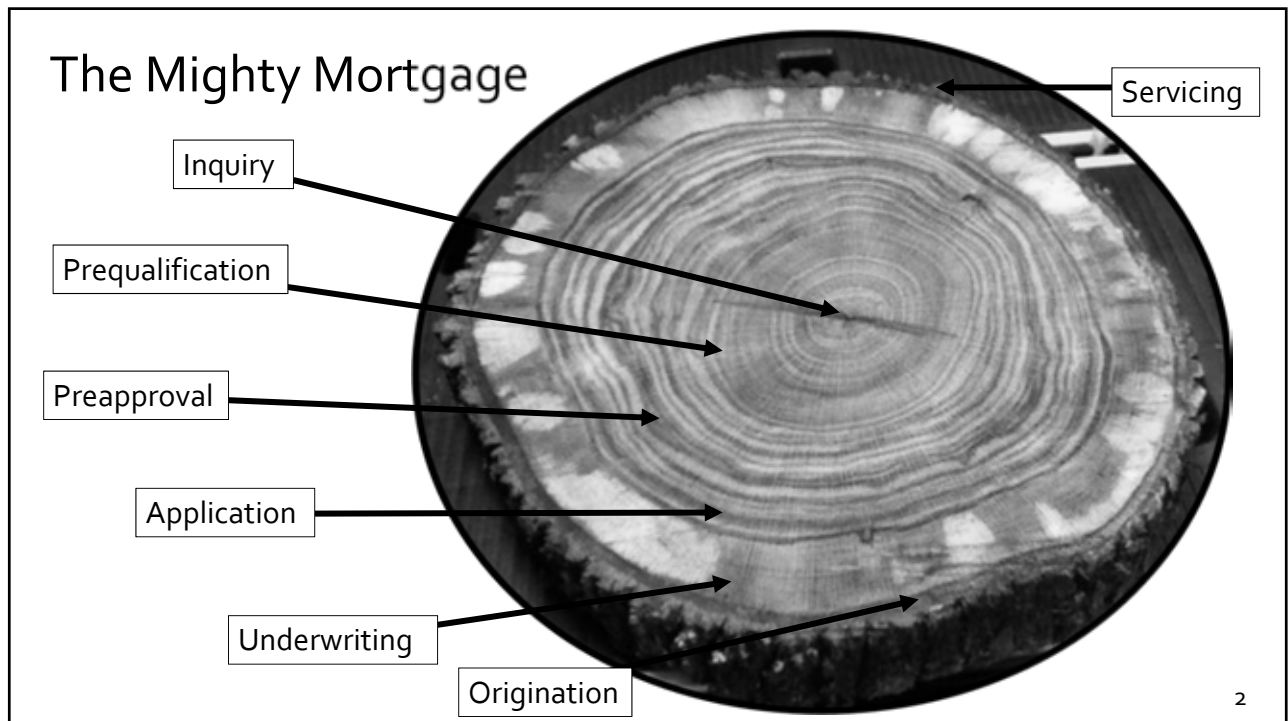


The Mighty Mortgage

Studying the Rings of the Mortgage Tree

Patti Blenden, Financial Solutions
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The Mighty Mortgage

- The recent evolution of a mortgage loan has been incredible!
- Just as the “mortgage rings” could map the changes occurring over time due to competitive, social and regulatory pressure, the mortgage rings could also depict the complexity of the layers required to comply with applicable mortgage laws, regulations and requirements.
 - FIRREA in 1986
 - 2010 Mortgage Update – RESAP, GFE, etc.
 - Dodd Frank Act
 - 2013 - 2014 Mortgage Reform
 - 2014 Truth in Lending RESPA Integrated Disclosures (TRID)

3

Applications



What Constitutes an Application?

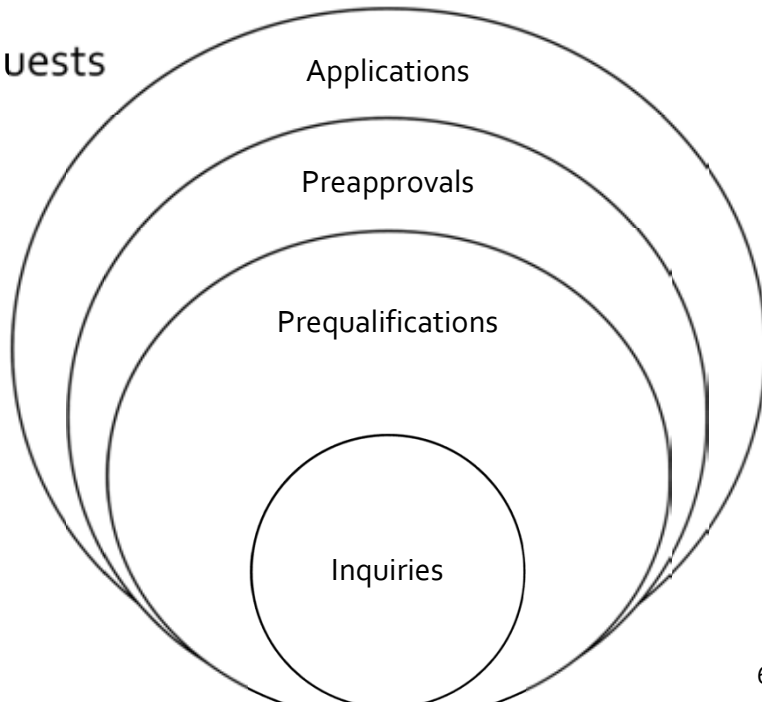


- Credit Inquiry
- Prequalifications and Preapprovals
- Application
 - Equal Credit Opportunity Act (ECOA) – Reg B
 - Principal residence written application
 - Joint applications
 - Real Estate Settlement Procedures Act (RESPA) – Reg X Application
 - Truth in Lending Act (TILA) – Reg Z
 - Primary residence application
- Application Participants
 - Borrower & Co-Borrower
 - Cosigner
 - Guarantor
 - Other Parties

5

Mortgage Credit Requests

Each step in the progression adds additional information with a higher level of detail and verification.



6

Inquiry, Prequalification or Application?

- Regulation B Commentary §1002.2(f)-3
- ***“Whether the inquiry or prequalification request becomes an application depends on how the creditor responds to the consumer, not on what the consumer says or asks.”***



7

Equal Credit Opportunity Act (ECOA) – Reg B ECOA's Purpose

- Promote the availability of credit to all creditworthy applicants without regard to a prohibited basis.
- Notify applicants of action taken on their applications.
- Report credit history in the names of both spouses on an account.
- Retain records of credit applications.
- Collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans.
- Provide applicants with copies of appraisal reports used in connection with credit transactions.

8

ECOA's Golden Rules

- A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.
- A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.
- A creditor shall take written applications for the dwelling-related types of credit covered by section 1002.13(a)
- A creditor shall provide any written disclosures or information required by this regulation in a clear and conspicuous manner and, except for the disclosures required by §1002.5 and §in a form the applicant may retain.
 - Disclosures may be made in languages other than English, provided they are available in English upon request.

9

Equal Credit Opportunity Act (ECOA) – Reg B Primary Residence Written Application

- **§1002.4(c) Written applications.**
- **(c) *Written applications.*** A creditor shall take written applications for the dwelling-related types of credit covered by §1002.13(a).
- **§1002.13(a) Information for monitoring purposes.**
- **(a) *Information to be requested.*** (1) A creditor that receives an application for credit primarily for the **purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling...**

10

Equal Credit Opportunity Act (ECOA) – Reg B Commentary Applicant Signature on the Application

- **Regulation B Commentary to §1002.4(c) -1**
- Model application forms are provided in Appendix B to the regulation, although use of a printed form of any kind is not required. **A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision.** The creditor may complete the application on behalf of an applicant **and need not require the applicant to sign the application.**

11

Equal Credit Opportunity Act (ECOA) – Reg B Commentary Application

- **Regulation B Commentary to §1002.2(f) -1 Application.**
- **General.** A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.
- **Regulation B Commentary to §1002.2(f) -2 Application.**
- **Procedures used.** The term “procedures” refers to the **actual practices followed by a creditor for making credit decisions as well as its stated application procedures.** For example, if a creditor's stated 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's procedures are to accept both oral and written applications.

12

Equal Credit Opportunity Act (ECOA) – Reg B Commentary Application

Regulation B Commentary to §1002.2(f) -3

3. When an inquiry or prequalification request becomes an application. A creditor is encouraged to provide consumers with information about loan terms. However, **if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must then comply with the notification requirements under §1002.9 [Notifications].**

- Whether the inquiry or prequalification request becomes an application depends **on how the creditor responds to the consumer, not on what the consumer says or asks.** (See comment 9–5 for further discussion of prequalification requests; see comment 2(f)–5 for a discussion of preapproval requests.)

13

Equal Credit Opportunity Act (ECOA) – Reg B Commentary Application

▪ Regulation B Commentary to §1002.2(f) -4 Application.

4. Examples of inquiries that are *not* applications. The following examples illustrate situations in which only an inquiry has taken place:

- i. A consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan-to-value ratio, and debt-to-income ratio.
- ii. A consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and the amount of the downpayment, then gives the consumer the rate.
- iii. A consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan-to-value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.
- iv. A consumer calls to ask about terms for a loan to purchase vacant land and states his income and the sales price of the property to be financed, and asks whether he qualifies for a loan; the employee responds by describing the general lending policies, explaining that he would need to look at all of the consumer's qualifications before making a decision, and offering to send an application form to the consumer.

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Equal Credit Opportunity Act (ECOA) – Reg B Commentary Application §1002.2(f) -5

5. **Examples of an application.** An application for credit includes the following situations:

- i. A person asks a financial institution to “preapprove” her for a loan (for example, to finance a house or a vehicle she plans to buy) and the institution reviews the request under a program in which the institution, after a comprehensive analysis of her creditworthiness, issues a written commitment valid for a designated period of time to extend a loan up to a specified amount. The written commitment may not be subject to conditions other than conditions that require the identification of adequate collateral, conditions that require no material change in the applicant's financial condition or creditworthiness prior to funding the loan, and limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional application (such as certification of a clear termite inspection for a home purchase loan, or a maximum mileage requirement for a used car loan). But if the creditor's program does not provide for giving written commitments, requests for preapprovals are treated as prequalification requests for purposes of the regulation.
- ii. Under the same facts as above, the financial institution evaluates the person's creditworthiness and determines that she does not qualify for a preapproval.

15

Equal Credit Opportunity Act (ECOA) – Reg B Commentary Application §1002.2(f) -6

6. **Completed application—diligence requirement.** The regulation defines a completed application in terms that give a **creditor the latitude to establish its own information requirements**. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application.

- For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or a telephone number to verify employment, the creditor should contact the applicant promptly. (But see comment 9(a)(1)–3, which discusses the creditor's option to deny an application on the basis of incompleteness.)

16

Equal Credit Opportunity Act (ECOA) – Reg B Commentary Application

- **Regulation B §1002.2(f)**
- **(f) *Application*** means an **oral or written request for an extension of credit** that is made in accordance with procedures used by a creditor for the type of credit requested.
- The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit.
- A ***completed application*** means an **application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested** (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). **The creditor shall exercise reasonable diligence in obtaining such information.**

17

Taking Applications & Requesting Information, §1002.5

- The golden rule of applications is NEVER, EVER, discourage a customer from applying for credit.
- Ask – and document – what kind of credit the customer wants.
 - Except for loans that are subject to monitoring data collection, this is not a regulatory requirement.
 - Documentation is an essential element of fair lending analysis – and defense.
- Always ask and document:
 - What loan amount the customer wants.
 - What type of loan the customer wants.
 - What the customer intends to do with the loan (loan purpose.)
 - Whether the customer wants individual or joint credit.

18

Taking Applications & Requesting Information, cont.

- Requests for information
 - Creditors may ask any information that isn't prohibited.
 - All information requests should be related to the credit application.
 - For fair lending, always ask all customers the same questions.
 - Some information must be collected:
 - Monitoring information is required when the loan is to purchase or refinance a dwelling that is occupied or to be occupied by the applicant.
 - Always identify your customer (Customer Identification Program)
 - Unless the loan is HMDA-reportable, do not make a copy of the applicant's driver's license.
- Prohibited information – you may not ask information about a **SPOUSE**, Unless:
 - The spouse will be permitted to use the account,
 - The spouse will be contractually liable on the account,
 - The applicant is relying on the spouse's income to qualify for credit,
 - The applicant lives in a community property state,
 - The applicant is relying on marital income (alimony, child support, or separate maintenance).

19

Taking Applications & Requesting Information, cont.

- Prohibited information – you may not ask **MARITAL STATUS**, Unless:
 - When the applicant applies for individual unsecured credit, you may not ask the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state.
 - Do not ask whether the applicant receives marital income (alimony, child support, separate maintenance) unless and until they are notified that they need not reveal such income unless relying on it to qualify for credit.
- Prohibited information – **OTHER SPECIFICS** you may not ask:
 - Do not ask the sex of the applicant
 - Do not ever ask about birth control practices, or intentions for childbearing or child rearing
 - Do not ask about the applicant's race, color, religion, or national origin unless the information is required for a mortgage loan.
 - When training lenders, teach the golden rule: *Don't ask any questions of any applicant that you wouldn't ask of all applicants.*

20

Taking Applications & Requesting Information, cont.

- Some information that could appear to be discriminatory is allowed because it is essential for underwriting the loan application.
 - We may ask the applicant to list all liabilities, including accounts which the applicant holds or has held in another name.
 - We may ask the applicant(s) how many dependents he/she/they have.
 - We may ask about the applicant's immigration status – buy only to determine the applicant's legal status in this county and our legal remedies, should we need them.
 - These questions are allowed if we ask all applicants for the same information and we do not seek or use the information in a discriminatory way.
- We may consider all information that is **RELEVANT TO CREDITWORTHINESS** – unless the information is prohibited.
 - We may ask the applicant's age if the age is in any way relevant to their ability to repay or their qualifications for credit.
 - We may ask the number of dependents.
 - We may ask whether the applicant is obligated to pay alimony.

21

Collecting Government Monitoring Information (GMI)

Field	ECOA – Reg B	HMDA – Reg C
GMI-Covered Transactions	Applies to applications for credit primarily for the purchase or refinance of a dwelling to be occupied as a principal residence.	Broader in coverage than Reg B. GMI required for most closed-end purchase or refinance mortgage loans, home-improvement loans, and optional for home equity lines of credit.
Purchase Transaction Requirements	The principal residence purchase loan must be secured by the principal residence.	The purchase loan may be secured by any dwelling.
Refinance Transaction Requirements	The principal residence refinanced loan must be secured by the principal residence.	The old loan and new refinance transaction must be secured by any dwelling, not necessarily the same dwelling or dwelling being purchased.
Ethnicity	X	X
Race	X	X
Sex	X	X
Marital Status	X	
Age	X	

22

Types of Loans Subject to GMI Collection

	ECOA – Reg B	HMDA – Reg C
Loans subject to GMI	Purchase and refinance loans secured by a dwelling that is, or will be, applicant's principal residence.	Purchase and refinance loans secured by a dwelling. HELOC reporting is optional.
Home-purchase loan	Not defined in Regulation B.	A loan secured by and made for the purpose of purchasing a dwelling.
Dwelling	Residential 1-4 family structure, with or without real estate.	A residential structure, with or without real estate of any # of units.
Home-improvement loan	Not applicable; GMI not required.	Secured by dwelling lien for purpose (whole or part) of repairing, rehabilitating, remodeling or improving dwelling or the real property. Non-dwelling-secured must be classified as a home improvement loan.
Home equity line of credit (HELOC)	Not applicable; GMI not required.	Open-end credit plan secured by a dwelling as defined in Regulation Z.
Refinancing	Existing note satisfied and replaced by new note by same borrower. If at same creditor, may request GMI but not required.	Both the existing obligation and the new obligation are secured by liens on dwellings.

23

Credit Decisions



24

Equal Credit Opportunity Act – Regulation B Credit Decision

- Timing of Decision: ECOA- Reg B Commentary to §1002.9(a)(1)
- Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the **creditor has 30 days in which to notify the applicant of the credit decision.**

- As a general rule, when underwriting, we may consider any information so long as it is not used to discriminate against an applicant on a prohibited basis. §1002.6
- Without the regulation’s specific permission, do not consider a prohibited basis in making a credit decision.

25

Reg B: Evaluating Applications, §1002.6 Age

- Some factors are closely related to prohibited information but also bear on the applicant’s creditworthiness. For these, we follow special procedures.
 - **Age.** Discrimination based on age is strictly prohibited. But the applicant’s age can be connected to certain qualifications.
 - We may consider age to favor an elderly applicant (age 62 or older.)
 - We may consider the applicant’s youth – especially for the ability to enter into a legally binding contract.
 - We may not use statistics to estimate the applicant’s life expectancy – no matter how old they are.
 - We may not base or credit decision on availability credit life, health, accident disability or other credit-related insurance.

26

Reg B: Evaluating Applications, §1002.6 Income

- **Income.** Some income, such as social security income, is specifically protected under Regulation B. Other income must sometimes get special treatment because receiving the income can be connected to a prohibited basis, such as marital status. The general rule is based on common sense. When evaluating income, we may consider:
 - The reliability of the income.
 - How long the applicant will receive the income.
 - Whether to include future income.
 - Whether the source of income is reliable and consistent.
- We must not discount or refuse to consider income because its' nature or source is related to a prohibited basis.
 - Income from public sources
 - Marriage-related income
 - Age-related income
- There is special treatment for tax-free income.

27

Reg B: Evaluating Applications, §1002.6 National Origin

- **National Origin:** Discrimination on the basis of the applicant's national origin is strictly prohibited.
 - Although we cannot consider the applicant's national origin, we may consider the applicant's immigration status.
 - No matter what the individual's status in the country, we may not discriminate against them because of their national origin.

28

ECOA & Reg B Evaluating Applications, §1002.6

- **ECOA** has special rules on how to consider the applicant's credit history. These rules are designed to be sure that applicants, such as married women, who have accounts under another person's name, receive full and fair consideration of their credit history.
 - We must consider information the applicant presents that indicates the history does not accurately reflect the applicant's creditworthiness.
 - We must consider information reported in the name of applicant's spouse that the applicant can demonstrate reflects her/his creditworthiness.
 - For both of these rules, the burden of proof is on the applicant. We must use fair and reasonable standards when we consider information that the applicants puts forward.
 - NOTE: The FACT Act now brings in identity theft information that the applicant may produce.

29

Evaluating Applications, §1002.6 Credit Scores

- **Credit Scores**
 - ECOA definition: An empirically derived, demonstrably and statistically sound credit scoring system is:
 - Developed using sample groups of the creditor's own applicants or a comparable applicant group,
 - Developed for the purpose of evaluating the creditworthiness of applicant's,
 - Developed and validated using accepted statistical principles and methodology; and
 - Periodically revalidated using appropriate statistical principles and methods.



30

Evaluating Applications, §1002.6 Credit Scores, cont.

- ECOA restricts how credit scoring systems may consider applicant age.
 - *In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.* §1002.6(b)(2)(ii)
- This definition exists for the purpose of triggering credit score notices. As long as the scoring system does not consider applicant age, the system does not have to meet ECOA's criteria.
- If a creditor uses either type of credit scoring system to make a credit decision, some of the reasons for adverse action must be taken from the scoring system
- FACT Act defines credit score as:
 - A numerical value or a categorization
 - Derived from a statistical tool or modeling system
 - Used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors.

31

ECOA Signature Rules, §1002.7

- The Basic Signature Rule applies to both consumer and commercial credit:
 - We must offer individual credit to qualified applicants.
 - We must offer joint credit to jointly qualified applicants.
 - We may not require a signature of a person other than the applicant unless the qualifications of an additional person are needed to qualify for the credit.
 - The most important way to comply is to evaluate first the information that the applicant provides.

32

ECOA Signature Rules, §1002.7 **Individual Credit**

- **Individual credit** applications: Everything depends on the applicant's qualifications.
 - We may not require additional signatures if the applicant is individually qualified for the credit requested.
 - The applicant's marital status does not affect this rule.
 - The nature or ownership of security property that is offered or that we request does not affect this rule.
 - When taking security in property, signatures must be limited to those needed to perfect our security interest.

33

ECOA Signature Rules, §1002.7: **Jointly-Owned Property**

- IF **Jointly-Owned Property** is needed to support the loan, we may require signatures – only on instruments necessary – to prove access to the property in the event of death or default.
 - Hard and fast rule: A joint financial statement is not a joint application. No exceptions!

34

ECOA Signature Rules, §1002.7: **Secured Credit**

- **Secured Credit:** If the applicant requests secured credit, we must not ask for or request the signature of the applicant's spouse unless:
 - We need the signature to perfect our security interest.
 - In this case, we may only require the spouse's signature on instruments needed to perfect security.
 - NOTE: The most common serious violation of Regulation B is spousal signatures for business purpose loans. Without any documentation that the spouse was a co-applicant, the presence of the signature is now presumed to be a violation.

35

ECOA Signature Rules, §1002.7 **Community Property States**

- Special rule for **Community Property States**.
 - State law determines the authority of each spouse to sign for credit.
 - Signing a credit instrument obligates the community, not just the person who signs the note.
 - The married applicant applies as a representative of the community.
 - The test is management and control of sufficient property to qualify for the credit requested.

36

ECOA Signature Rules, §1002.7 Joint Credit

- Applications for **Joint Credit**
 - When taking applications from married co-applicants, most creditors combine the income and obligations of the co-applicants.
 - When we take applications from unmarried co-applicants, we must treat them the same way we treat married applicants.
 - When two people apply for credit, we consider the combined income, assets and debts in the same way whether the applicants are married to each other or not.

37

Equal Credit Opportunity Act – Regulation B Joint Applicants

- **Federal Register 3/18/03, Vol. 68 No 52 Page 13151**
- **The statement of reasons for adverse action must be specific and indicate the principal reason(s) for the adverse action.** General statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient. Consider the following example:
 - Joint applicants A and B are denied credit due to applicant B's poor credit history. A general statement saying, "Applicant B did not meet the creditor's standards of creditworthiness" would be insufficient. A more specific reason such as "Applicant B has delinquent past or present credit obligations with others" would be required.
- The requirement of providing specific reasons for adverse action is intended to prevent creditors from discriminating based on a co-applicant's or guarantor's age, race, sex or other prohibited basis as well as to educate and inform the consumer as to exactly why credit was denied.
- **There is no Privacy between co-applicants.**

38

ECOA Signature Rules, §1002.7 Co-signers & Guarantors

▪ Co-Signers and Guarantors

- Applicants choose how and with whom they apply for credit. The creditor decides whether or not the application, as presented by the applicant(s) qualifies for the loan requested.
 - If an additional party is needed, you may request a co-signer or guarantor.
 - It is not necessary to suggest a co-signer, but if you do, you should be consistent in how you treat all applicants.
- ***You may not – ever – require the co-signer to be the spouse.***

39

ECOA Signature Rules, §1002.7 Co-signers & Guarantors, cont.

- You may not impose discriminatory requirements on cosigners.
 - Treat co-signers under the same rules as applicants.
 - You may not impose signature requirements on a cosigner or guarantor that you cannot impose on the applicant.
- There is no exemption for business purpose loans.
 - Business loan applicants have the same protections and obligations as consumer applicants. We may not discriminate against business loan applicants for any reason on any prohibited basis.
 - There are special rules for providing adverse action notices to commercial loan applicants – but nothing else!
 - All signature rules apply to business-purpose loan applications. This includes the cosigner rules.

40

ECOA Signature Rules, §1002.7 Co-signers & Guarantors, cont.

- Signing for business loans is where most signature violations occur.
- If a business purpose loan needs additional support or security, do not request that a spouse or spouses of the applicants sign or guarantee the note.
 - Do not request a spousal signature or guarantee even if you are only requesting it to increase the borrower's commitment to the loan.
 - Requesting a spousal signature violates your borrower's rights and it violates the rights of the borrower's spouse. The result is not additional security, but a lawsuit against us.
 - For additional support take a security interest in the business or personal property, but limit signatures to the security instrument.

41

ECOA Notification of Action Taken, §1002.13

- When we take an application from a consumer we also take on an obligation to tell the customer whether we will approve or deny their application or whether we might make the loan on other terms or conditions.
- For every application that we take, we must make a decision unless the customer actually withdraws the application.
 - There are several different types of notices, based on whether we approve the application, make a counter-offer, take adverse action or the applicant withdraws the application.
- Key definition: **Adverse Action**
 - A refusal to grant credit in "substantially the terms requested" unless the creditor makes a counter-offer that the applicant accept
 - A termination of an account or unfavorable change in terms that does not affect a substantial portion of a class of a creditor's accounts; or
 - A refusal to increase the amount of credit in response to a request.

42

ECOA Notification of Action Taken, §1002.13, cont.

- **Counter-Offer** occurs when we offer credit on terms other than what the consumer requested. This could be an offer:
 - For a lower loan amount.
 - With additional conditions, such as mortgage insurance.
 - With a higher interest rate or higher fees

- A **Withdrawn Application** is one on which we take no action because the customer cancelled the request for credit. Withdrawals occur when:
 - The customer fails to pick up the check.
 - Tells us they got the loan from someone else.
 - Takes other steps to cancel the application.
 - It is not a withdrawal when the customer “withdraws” the application in response to a counter-offer from the lender.

43

Notification of Action Taken, §1002.13, cont.

- There are **Timing Requirements** for making decisions and sending the notice. We must send the notice:
 - Within 30 days of receiving a completed application or taking adverse action on an incomplete application.
 - Within 90 days of a counter-offer if the applicant did not accept it.

- The **Approval Notice** is the easiest. It is usually in the form of an approval letter. It could be as simple as a verbal notice – “Hey, great news. You are approved for credit!”

44

Notification of Action Taken, §1002.13, cont.

- When we take some form of **Adverse Action**, we have to give the applicant more information. Most important, when we deny any application, we have to explain the denial to the customer by giving them reasons for our action.
 - The adverse action notice helps the customer understand weaknesses in their credit qualification. It also tells the customer where the weakness was – their credit history, the security property, insufficient income, or somewhere else.
 - With the information in the notice, the consumer is able to evaluate the fairness of our decision, based on what they know about themselves.
 - With the information in the notice, the consumer can identify mistakes in the information we used.

45

Notification of Action Taken, §1002.13, cont.

- The **Adverse Action Notice** must contain several items of information. These include:
 - Creditor name, address and contact information.
 - The type of action taken on the application.
 - The reasons for adverse action, or a statement that the applicant has the right to obtain reasons.
 - A statement of the applicant's credit rights under the Equal Credit Opportunity Act.
 - Giving reasons for adverse action also makes us look carefully at our decision to make sure it was correct and fair. When we prepare an adverse action notice, we must select the factors or reasons from the consumer's application that led to or caused our denial.

46

Notification of Action Taken, §1002.13, cont.

- When we give the reasons for **Denial**, we must provide all of the **principle** reasons. A principle reason is one that caused the denial, either by itself or together with another factor.
 - We must be clear and **specific** in how we explain the reason. The customer must be able to understand the problem in their credit qualifications.
 - We don't have to give more than 4 reasons, but we must tell the applicant every factor that led to the denial – at least up to 4.

47

Notification of Action Taken, §1002.13, cont.

- There is not definitive formula for selecting reasons for **Adverse Action**. Instead, a great deal of judgment is involved.
 - Selecting reasons also requires a lot of knowledge about how credit decisions are made.
 - Reasons for adverse action may come from more than one source, such as the application, the credit report, and an appraisal.
 - NOTE: The Fair Credit Reporting Act also requires adverse action notices but these are not quite the same as the ECOA adverse action notices.

48

Notification of Action Taken, §1002.13, cont.

- A **Counter-Offer** is an offer of credit that is less favorable than the terms or amount that the applicant requested.
 - There are two ways to give a counter-offer notice. One way is to simply offer the changed terms.
 - The second choice merges the approval letter and the adverse action notice into one document.

49

Notification of Action Taken, §1002.13, cont.

- Special rule for **Business Loan Applications**.
 - For businesses with gross revenues of \$1,000,000 or less:
 - Disclose at time of application that applicant has a right to a written notice of ECOA rights and reasons for adverse action.
 - For applications by phone, we may provide this notice orally.
 - We may give the applicant a statement of action orally – it need not be in writing.
 - For businesses with gross revenues in excess of \$1,000,000: we may give the applicant an oral notification.
 - This must be within a reasonable time of making the decision.
 - If the applicant requests it within 60 days of our notification, we must give a written statement of reasons.

50

Notification of Action Taken, §1002.13, cont.

- If the **Application Remains Incomplete**, in spite of our efforts to get the applicant to complete it, we may:
 - Deny for incompleteness; or
 - Send a notice of incompleteness. If we send this notices, we must:
 - Specify the information we need in order to make a decision;
 - Specify a reasonable date by which the applicant must provide the information, and
 - Tell the customer that without the information, we cannot continue processing the application.

51

Notification of Action Taken, §1002.13, cont.

- **Multiple Creditors and Indirect Applications**
 - Applications may come to us through a loan broker or car dealer who is shopping the application to more than one creditor. When this happens, there may be two or more creditors that review the application.
 - If one of the creditors approves the application, none of the other creditors have an obligation to send adverse action notices even though they would have denied the application.

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Notification of Action Taken, §1002.13, cont.

- **Multiple Creditors and Indirect Applications, cont.**

- If none of the creditors approves the application, they must all send an adverse action notice. Each creditor can send the notice directly to the applicant or can send the information to the applicant through the loan broker or dealer.
- Unless we send notices to all applicants, regardless of what other creditors do, we must have agreement with the broker or dealer that the broker or dealer will provide notifications. Under this agreement, we must always give the broker or dealer our reasons for adverse action so that they can prepare the notice if all creditors deny the application

53

ECOA Account Rules, §1002.7 (a) & (b)

- Creditors must allow applicants to open accounts in the name of choice.
 - There are two qualifications on this rule.
 - The name must be legal
 - The creditor may require the applicant to always use the same name with that creditor.
- Applicants have special rights when there is a joint open-end account.
 - Pre-ECOA, a common practice was to require widows and divorcees to re-apply for credit when the husband disappeared from the scene.

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ECOA Account Rules, §1002.7 (a) & (b), cont.

- When the applicant is contractually liable on the account, Regulation B specifically prohibits taking certain actions on an account because the applicant has:
 - Reached a certain age
 - Retired, or
 - Changed her/his name or marital status
- In any of the above situations, the creditor may not:
 - Require a reapplication
 - Change the terms of the account, or
 - Terminate the account
- There are two limited exceptions to this protection. The creditor may require a reapplication or take other action if:
 - The creditor has information that shows the applicant is unable or unwilling to repay, or
 - The credit granted was based in whole or in part on income of the applicant's spouse and information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

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Furnishing of Credit Information, §1002.10

- This rule applies only to creditors that report credit information. The purpose of the rule is to ensure that anyone who is contractually liable on a credit account has the credit reported in their name. The result is that for a single account, you may have to make two reports.
- Creditors that furnish credit information shall designate:
 - New accounts to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (or other than as a guarantor, surety, endorser, or similar party); and
 - Existing accounts to reflect such participation, within 90 days after receiving a writing request to do so from one of the spouses.

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Furnishing of Credit Information, §1002.10

- Routine reports to a credit bureau must be in a format that enables the credit bureau to accept and use the information in the name of each spouse
- If you receive an inquiry about an account, such as from another creditor, you must furnish the information in the name of the spouse about whom the information is requested.
 - John and Mary have a joint account. Mary is buying a car and has applied for a car loan. The lender asks you to verify credit information that Mary has provided. You must provide information about Mary, including accounts that are joint with John, in her name – and not in John's name

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Record Retention, §1002.12, cont.

- Records that you must keep include:
 - All applications
 - Government monitoring information
 - Any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request
 - A copy of the notification of action taken, and the statement of specific reasons for adverse action; and
 - Any written statement submitted by the applicant alleging a violation of the act or this regulation.
- There is a special records retention rule for self-tests.
 - Retain all records about the self-test for 25 months after the self-test is completed.

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Record Retention, §1002.12, cont.

- There is a special records retention rule for pre-screened solicitations.
 - The retention period is 25 months after date on which the offer of credit is made.
 - You must keep:
 - The text of any pre-screened solicitation;
 - The list of criteria the creditor used to select potential recipients of the solicitation; and
 - Any correspondence related to complaints (formal or informal) about the solicitation.

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Fair Credit Reporting Act (FCRA)

- Governs the collection, assembly, and use of consumer report information and provides the framework for the credit reporting system in the United States
- Implements disclosure obligations on users of consumer reports
- Requires fair, timely, and accurate reporting of consumer credit information
- Restricts the use of consumer reports and requires the deletion of certain obsolete information

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Fair & Accurate Credit Transactions Act (FACTA)

- Substantive amendments to FCRA in 2003
- Created many new responsibilities for
 - Consumer Reporting Agencies (CRA)
 - Consumer Report Users and Furnishers
- New Disclosure Requirements
- Identity Theft Provisions
- Improved Consumer Access to and the Accuracy of Consumer Report Information

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Protects Consumers

- Individuals are the focus of the FCRA/FACTA rules and regulations
 - Applicants
 - Borrowers
 - Insured Consumers
 - Employees
 - Guarantors (limited coverage)
- Does not generally apply to transactions with business entity or non-personal purposes
 - Few exceptions



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Consumer Report

Communication bearing on individual's **credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living** that is used to evaluate eligibility for:

- Consumer credit or insurance for personal, family or household purposes
- Employment purposes or
- Other "Permissible purposes"

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Permissible Purpose

- In response to court order or Federal Grand Jury subpoena
- In accordance with consumer's written instructions
- To persons the CRA has reason to believe intends to use report in a:
 - Credit or insurance transaction,
 - Employment decision,
 - Eligibility for a government license or other benefit, or
 - Otherwise legitimate business need for the information
- In connection with a State or local child support enforcement agency

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Consumer Report Prohibitions



- Consumer Reports cannot generally include stale information (usually 7 years)
 - Judgments and Tax Liens
 - Collection Accounts and Charge Offs
 - Bankruptcies (10 years)
- Medical information providers' specifics (name, address, phone #) special circumstances, such as the consumer consents to disclosure
- Generally listed after sent to collection agency with a generic description (Medical Payment Data", etc.)

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Consumer Report Contents

- Consumer Reports must include (as applicable)
 - Credit score and key negative factors
 - Notice if the consumer report is being disputed by the consumer
 - Notice of address discrepancy process and address
 - Notice of fraud alerts placed by consumer
 - Identification of accounts closed by the consumer

66

Medical Information

- Information created by or derived from a health care provider or the consumer that relates to the past, present, or future:
 - Physical, mental, or behavioral health or condition
 - The provision of health care
 - The payment for health care



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Medical Information

- CRAs may not furnish medical information, unless:
 - Consumer consent (insurance);
 - Written consumer consent and the information must be relevant, (credit or employment); or
 - The information must be limited account status information (no way to ID the nature of the service, provider, etc.)
- Obtaining and using unsolicited medical information
 - If medical information received during the determination of credit eligibility is willingly provided by the consumer without being requested by the creditor to provide the information
 - Creditor may only use this information in accordance with the financial exception rule

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Financial Information Exception

- Creditors may obtain and use medical information in connection with determination of consumer's eligibility for credit, so long as:
 - Information is of a type routinely used for credit decision (debt amount, purpose and use of proceeds, etc.);
 - Information used in a manner comparable to non-medical information in a credit transaction; **AND**
 - Creditor does not take consumer's physical, mental, or behavioral health, condition or history, type of treatment or prognosis into account in credit decision

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Nine Specific Exceptions for Obtaining & Using Medical Information

1. Determination of legal capacity
2. Comply with applicable legal requirements
3. Determine if consumer qualifies for special credit program or credit related assistance
4. Detecting or preventing fraud
5. Making a decision in financing medical products or services
6. Upon specific request to use medical information
7. Determine if a forbearance practice or program is triggered by a medical condition or event
8. Determine consumer's eligibility for triggering or reactivating a debt cancellation or suspension agreement if medical trigger
9. Determine consumer's eligibility for triggering or reactivating a credit insurance product if medical trigger

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Affiliate Marketing Rules

FCRA Section 624
FACTA Section 214

- **Section 624** gives a consumer the right to restrict an entity without a pre-existing business relationship from using certain information obtained from an affiliate to make a solicitation to that consumer
 - **Affiliate:** Any person that is related by common ownership or common corporate control with another person
- Consumer must be given notice and a reasonable opportunity and simple method to opt out for marketing purposes
- These rules focus on use of the information by affiliates, not the sharing of information between affiliates

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Consumer Information Categories

Regulatory Category	Regulatory Restrictions
"Experience" or "Transaction" information – transaction history with your bank, average deposit or loan balances, overdraft status, source of deposits, loan payment history, insurance policy and premium information, trust account arrangements, etc.	* No GLBA "sharing" opt-out required to share Experience and Transaction history between affiliates IF NOT for marketing purposes * FCRA opt-out required for "marketing" purposes
"Other" information – information requested on an application, personal financial statements, third party source information, credit reports, etc.	* GLBA opt-out must be provided to share Other information for any purpose
"Eligibility" information - Any information from any account applications, third party sources like credit reports, financial statements, transaction histories with an affiliate, other account data, etc.	*Includes both Experience/Transaction <u>and</u> Other information categories. * Opt-out requirements determined by the individual categories in the 2 previous rows

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Solicitation Examples

Characteristics of Solicitation	Qualify under Affiliate Rules?
Statement stuffer inserted into all deposit account statements rendered during each of the cycles for a month	No
Marketing piece distributed to the general public without using eligibility information communicated by an affiliate. For example, television and magazine advertisements, Internet, ATM and billboard advertisements	No
Telemarketing call, direct mail, email, or other form of marketing communication addressed to a specific individual based on the individual's eligibility information received from an affiliate of the entity marketing the product or service	Yes
Educational seminars, bank customer appreciation events, focus group invitations, and similar forms of communication IF the individuals are invited based on eligibility information received from an affiliate and IF the seminar is used to interest the consumer in purchasing investment products or services	Yes

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Initial Notice and Opt-Out Requirement

- May not use affiliate eligibility information unless:
 1. Clearly and conspicuously disclosed that you may use eligibility information for **marketing**;
 2. Consumer is provided reasonable opportunity and simple method to opt out; **AND**
 3. Consumer has not opted out.
- Consumer should be given a menu of options, including an option to opt-out of all solicitations

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Opt-Out Notice Requirements

Clear, Concise and Accurate

- Name of the bank or a common name of all entities, “ABC Group of Companies”
- List of affiliates or affiliate groups who would use the information
- Description of types of eligibility information that may be used
- Statement that the consumer may limit the use of the information for at least 5 years and that upon opt-out expiration, the consumer may renew the opt-out
- A reasonable and simple method to opt-out
- If notice sent to consumers already opted-out of marketing solicitations, notice must include a statement that the consumer is still covered by his or her previous opt-out

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Exceptions to Initial Notice and Opt-Out

- Solicitations to pre-existing customers
- To facilitate communications to an individual to whom you provide employee benefit or other services, under a contract with the employer
- To perform services **on behalf of** an affiliate, as long as the communication by the affiliate is permitted
- In response to a consumer’s communication about the bank’s products or services
- In response to a consumer request or authorization to receive solicitations, or
- If compliance with this subpart prevents your compliance with State insurance laws pertaining to unfair discrimination in any State

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Time, Duration and Renewal of Opt-Out

- Consumer may opt out at any time
- Opt-out must be effective for at least 5 years beginning when opt-out election is received, unless consumer later revokes opt-out
- Bank may **not** make covered solicitations after opt-out expires until consumer notified and provided opportunity to opt-out again
- Renewals of opt-out must last for at least 5 years

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“Reasonable Opportunity”

- Regular Mail: 30 days from date notice is mailed
- Internet Posting: 30 days from the consumer’s acknowledgement of notice on a site where consumer has obtained a product or service
- Electronic Mail: 30 days after the e-mail is sent to a consumer that has agreed to receive disclosures by e-mail
- In Person or Electronic Transaction: At time of transaction if required to decide before proceeding with the transaction

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Consumer Disclosure Categories

- Consumer Reports used for Employment
- Negative Information Notice
- Prescreened Consumer Reports
- Mortgage Lender Credit Score Notices (MLCSN)
- Risk-Based Pricing Notices (RBPN)
- Credit Score Exception Notices (CSEN)
- Adverse Action Notices (AAN)
- Debt Collector ID Theft Communications

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Negative Information Notice

- Notify consumer prior to, or within 30 days after, reporting negative information to a CRA
 - Notice may be provided generally
 - Notice may be provided with other disclosures
 - Inclusion in Privacy Notice or on Consumer Loan Late Notice is common
 - Regulation V provides two model notices to choose from (one for **before** and another notice for **after**) and provides a safe harbor if model language used

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Prescreened Offers

- Any credit or insurance transaction offer that was not initiated by the consumer
- Establish credit criteria **BEFORE** you request the list!
- Prescreened list is obtained from consumer reporting agency of individuals qualifying under predetermined credit criteria and who have not opted-out of such solicitations
- Financial institution must make a “firm offer of credit or insurance”
- Allowed to deny some individuals if not creditworthy or insurable or unable to furnish required collateral if underwriting criteria determined in advance is applied consistently

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Prescreened Offer Disclosure

- When presenting a ‘firm offer’ of credit or insurance, the creditor must disclose that:
 - The consumer’s report was used
 - The offer was made because the consumer satisfied the criteria for the offer
 - Credit may not be approved if the consumer does not, in fact, meet the criteria or provide required collateral
 - Right to opt-out of future prescreenings exists and how the consumer should exercise the right to opt- out
- Provide the “short notice” and the “long notice” with each written consumer solicitation

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Prescreened Offer Short Form

- Clear and conspicuous in “simple and easy to understand” language and can **only** contain the following:
 - Statement of consumer’s **right to opt out** of credit solicitations
 - **Toll-free phone #** for consumer to call to opt out
 - Statement directing consumer to the **long form** notice using the **exact** title of long form notice
- Larger font than principal text on page, no smaller than 12 point type. Electronic form must be larger other on page.
- Short form must be on front page of principal promotional document and must be located in distinct manner
 - Distinct type style (bold, italics, underlined, contrasting color, etc.)

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Prescreened Offer Long Form “PRESCREEN & OPT OUT NOTICE”

- Must contain language required by FACTA and not contain any other information that interferes or distracts from the required disclosures
- Long form notice must be clear and conspicuous in the solicitation and must be in a type size no smaller than the principal text and never smaller than 8 point type
- Must begin with “PRESCREEN & OPT-OUT NOTICE” set apart from other text, (i.e., including blank line above and below the statement and by indenting both left and right margins)
- Type style must be distinct from principal marketing message and set apart from the other text
 - Distinct type style (bold, italics, underlined, contrasting color, etc.)

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Various Credit Score Disclosures

- Notice to Home Loan Applicants (NHLA)
 - Use H-3 instead which incorporates NHLA and CSEN requirements
- Risk-Based Pricing Notice (RBPN) at Application
 - H-1: When no credit score is obtained on consumer report
 - H-6: When credit score is obtained on consumer report
- Risk-Based Pricing Notice (RBPN) at Account Review
 - H-2: When no credit score is obtained on consumer report
 - H-7: When credit score is obtained on consumer report
- Credit Score Exception Notice (CSEN) for Home Loan Applicants (intended to replace NHLA) – Model H-3
- Credit Score Exception Notice (CSEN) for Other Loans
 - H-4: For other loans when applicant credit score is available
 - H-5: For any loans when applicant credit score is not available
- Adverse Action Notices (AAN)

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FCRA 609(f)(2)(A) – Credit Score

- (i) Means a numerical value or a categorization derived from a statistical tool or modeling system
 - Used by a person who makes or arranges a loan
 - To predict the likelihood of certain credit behaviors, including default ...; and
- (ii) Does not include any
 - Mortgage score or
 - Rating of an automated underwriting system that considers one or more factors **in addition to** credit information, including but not limited to, the loan to value ratio, the amount of down payment, or the financial assets of a consumer

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Proprietary Score Exemption

- A “numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behavior”
- Credit score does NOT include proprietary scoring or automated underwriting rating systems that consider factors in addition to credit information, including the LTV ratio, the down payment amount, or the financial net assets of the consumer
- A bank using its proprietary model that considers non-consumer report factors would only be required to disclose the credit score obtained from the external third party

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Credit Score Disclosure by Mortgage Lenders FCRA 609g Notice

- **Consumer purpose open-end or closed-end loans** to natural persons secured by 1-4 family residential real properties trigger the requirement to provide credit score disclosures to the individual applicant(s)
- Deliver to the consumer “as soon as reasonably practicable” after obtaining score, but no later than closed-end loan closing or open-end loan’s first transaction
- Provide to **all** mortgage-related lending applicants where a credit score is obtained, regardless of whether the loan is approved or denied
 - *Only 1 notice required, even if scores pulled multiple times*
- **The H-3 Model Credit Score Exception Notice (CSEN) was intended for all applicants, incorporating the FCRA 609g!**

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FCRA 609-g Notice

- When a credit score is used in the evaluation of consumer purpose residential real estate loans or lines of credit, User must disclose to all applicants:
 - **Notice to Home Loan Applicant** narrative
 - Name, address and phone number of CRA
 - Consumer's score and range of possible scores
 - Date the score was obtained
 - Up to 4 (possibly 5) key factors that influenced the score calculation
 - 5th factor **ONLY** if "Excessive Inquiries" is a factor, but not included in the top 4 negative factors

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Basic Risk-Based Pricing Notice Statements

1. A consumer report includes information about credit history and the type of information included in that history
2. Consumer is encouraged to **verify accuracy and dispute any inaccurate information**
3. Identifies each consumer reporting agency that furnished a report used in credit decision
4. Federal law gives the consumer right to obtain free copy of consumer report for 60 days after receipt of RBPN
5. Informs consumer how to obtain a consumer report from consumer reporting agency identified in the notice and providing contact information including toll-free number
6. Direct consumers to the web sites of FRB and FTC to obtain more information about consumer reports
7. Terms offered (such as APR) have been set on information from a consumer report
8. Terms may be less favorable than terms offered to consumers with better credit histories

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Basic Credit Score Disclosure Statements

1. A statement that a credit score is a number that takes into account information in a consumer report, that consumer's credit score was used to set terms of credit offered, and that a credit score can change over time to reflect changes in consumer's credit history
2. The **actual credit score** used in making the credit decision and the date it was obtained
3. The comparable **range of possible credit scores** under the model used to generate the credit score
4. All of the **key factors** that adversely affected the credit score, which shall not exceed four factors, except that if one of the key factors is the number of consumer report inquiries, the number of key factors shall not exceed five
5. The name of the consumer reporting agency that provided the credit score and contact information

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RBPN and CSEN Notices Model Forms Provided in Appendix H

- H-1 Model form for **risk-based pricing notice (RBPN)**
 - Useful for consumer reports pulled without credit scores
- H-2 Model form for **account review RBPN**
- H-3 Model form for **credit score exception notice (CSEN)** for credit secured by 1-4 units of residential real property
 - Incorporates all of the requirements of FCRA 609g
- H-4 Model form for **CSEN** for loans not secured by 1-4 residential real property
- H-5 Model form for **CSEN** for loans where **credit score is not available**
- H-6 Model* **RBPN with credit score information**
- H-7 Model* **RBPN account review with credit score information (key factors)**

*Effective 7/21/11 implementation of Dodd Frank Act amendments

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Risk-Based Pricing Notice (RBPN)

- Creditor must provide “risk-based pricing notice” when consumer report is used to determine risk-based pricing for personal, family or household purposes (at **initial credit approval** or **account review** when APR is increased)
 - H-1: Consumer report is used, but no credit score on report
 - H-6: Consumer report and credit score used at application
 - H-7: Consumer report and credit score used at account review
- RBPN is required when information in consumer report may have affected consumer’s credit terms and conditions when “material terms” ***offered*** are **less** favorable than the most favorable terms generally available
- It is intended to complement the existing adverse action notice provisions of the FCRA that provides access to a free consumer report – it’s all about improving report accuracy!

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RBPN Definitions

- **“Material Terms”** primarily intended to mean APR
 - If credit cards, purchase APR excluding promotional or penalty rates
 - If no APR or the APR is not based on the consumer report, then the term is the one with the most impact on the consumer (i.e. annual fee or deposit required, etc.)
- **“Similar Types of Credit”** means one or more credit products with similar features that are designed for similar purposes
 - Examples include categories such as student loans, unsecured credit cards, secured credit cards, new automobile loans, used automobile loans, fixed-rate mortgage loans, and variable-rate mortgage loans

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Identifying Consumers to Give a RBPN for Non-Mortgage Loans

1. **Case-by-case basis** – on an individual basis, decide if a consumer has received material terms that are materially less favorable to others
2. **Credit score proxy method** – determine a cutoff score representing the point where about 40% of consumers have higher credit scores and 60% have lower credit scores; recalculated every 2 years
 1. Creditor can establish a different cutoff based on history
3. **Tiered pricing method** – assigning consumers to one of a discrete number of pricing tiers based in whole or in part on a consumer report

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Risk-Based Pricing Notice Exceptions

- None required if an **adverse action notice** is provided when credit is denied
 - Provide an **adverse action with credit score info**
- Prescreened solicitations are excluded
- If you do not use a consumer report or a credit score to price your loans based on risk, you do not have to provide RBPN! But be very certain that you price loans at the rates and terms stated in your rate sheet!
 - Exceptions should be based only on other factors such as overall relationship or other non-credit criteria

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Timing of Risk-Based Pricing Notice

- **Closed-End Mortgage Loans RBP Notice:** before loan closing but after credit decision **AND** at same time as Credit Score Disclosure
- **Open-End Mortgage Loans RBP Notice:** before first transaction, but after the credit decision **AND** at same time as Credit Score Disclosure
- **Closed-End Non-Mortgage Loans RBP Notice:** “as soon as reasonably practicable” after credit score has been obtained, but at latest, on or before loan closing
- **Open-End Non-Mortgage Loans:** before first transaction, but after credit score obtained
- **Instant Credit:** either earlier of first mailing after decision or within 30 days of credit decision
- **Account Review:** at time the decision to increase APR is communicated to consumer, but no later than 5 days after, effective date of APR change

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Credit Score Exception Notice (CSEN)

- No need to apply a mind-blowing test to establish score or APR cutoffs, provide notice to all consumers who receive offers of credit
- Notice must explain that a credit report was used, include the credit score along with general info about credit reports and scores
 - Provide explanation where the consumer ranks in comparison to other consumers.
- Must also give at account review if review is based in part on consumer credit report

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Multiple Credit Scores

- If creditor obtains 2 or more credit scores for an individual to be used in setting credit terms:
 - Disclose the score that was used to determine the credit terms
 - If averaging multiple scores, choose one of the scores to disclose – OR- at your option, disclose more than one or all of the other scores obtained with the appropriate information regarding the source of the score

99

Multiple Consumers

- In an approved transaction involving 2 or more consumers, creditor must provide a notice to each consumer to satisfy FCRA disclosure requirements
 - Whether the consumers have the same address or not, the person must provide a **separate** notice to each consumer if a notice includes a credit score(s)
 - Each separate notice that includes a credit score(s) must contain **only** the credit score(s) of the consumer to whom the notice is provided, and **not** the credit score(s) of the other consumer
 - If the consumers have the same address, and the notice does **not** include a credit score(s), a person may satisfy the requirements by providing a single notice addressed to both consumers

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Guarantors & Cosigners

- Honor the permissible purpose provisions, assisting individual in correcting his or her consumer report, etc.
- Not required to provide a RBPN or CSEN to a **non-applicant** guarantor, cosigner, surety, or endorser
- Creditor may be required, however, to provide a RBPN **to the consumer** to whom it grants, extends, or otherwise provides credit, even if creditor only uses consumer report or credit score of guarantor, co-signer, surety, or endorser
- When creditor uses a credit score only of a guarantor, cosigner, surety, or endorser to set the terms of credit, do **not** include non-applicant's credit score in the general application or account review RBPN provided to the consumer

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Issue Either RBPN Or CSEN – Not Both

- **Risk-Based Pricing Notice (RBPN):** Oral, written or electronic **to each applicant or applicants at same address** after credit pricing decision is made and loan will be **originated**
 - Issued to **approved** applicants receiving less than best terms
- **Credit Score Exception Notice (CSEN):** Written notice sent **separately to each consumer** as soon as reasonably practicable after obtaining credit score, but before loan closing or first transaction in open-end credit
 - Issued to all applicants instead of the RBPN select group
- RBPN and CSEN disclosures issued by person (entity) to whom the credit is initially payable

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Quick Summary of Credit Score Disclosure Requirements

- **Approved Credit on Best Terms**

- CSEN, if used instead of RBPN for non-mortgage loans
- CSEN always for mortgage loans
- Loan Approval Communication

- **Approved Credit on Less than Best Terms**

- CSEN or RBPN for non-mortgage loans
- CSEN always for mortgage loans
- Loan Approval Communication

- **Denied Credit**

- CSEN, if used instead of RBPN for non-mortgage loans
- No RBPN for non-mortgage loans, if CSEN instead of RBPN
- CSEN always for mortgage loans
- AAN, including new credit score section if you denied based on credit score

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Fair Credit Report Act (FCRA) – Regulation V and FCRA 615 Denied Applications

- Fair Credit Reporting Act (FCRA) requires consumer notification of the use of a consumer credit report when adverse action is taken in whole or in part on an application for credit, deposit account or other products or services.
 - If any condition or term is imposed that would not have otherwise been required to approve the request based on a consumer report, a **denial** requiring disclosure occurred.
- A denial also includes situations where applicant required to put more money down, obtain a co-signer or guarantor, add more collateral, shorter maturity or other similar increased underwriting requirement.
- If a deposit account is closed, a check is returned unpaid, or any other negative action based on a consumer report information, an adverse action notice is required.

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Adverse Action Credit Score Disclosure

- If a creditor takes adverse action based upon a credit score, the additional information that must be provided to the consumer includes:
 - Credit score,
 - Information about the credit score, and
 - The four (and sometimes five) key factors that adversely affected the credit score
- The Adverse Action Notice (AAN) should contain **separate** lists of the ECOA reasons for the adverse action and FCRA key factors of the credit score, even if they are repetitive.
- ***Remember Reg B requires you to disclose all principal reasons, but its commentary suggests that more than 4 is not helpful to the consumer. Some of us in the industry disagree if indeed additional criterial would cause me to deny the request.***

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Guarantor or Co-Signer Adverse Action Notices

- As with the risk-based pricing credit score notice, only the person to whom the credit score relates should receive the credit score notice
 - Guarantors not entitled to RBPN or CSEN or AAN
- While an applicant must receive AAN and a guarantor or co-signer need not, the applicant should not receive the credit score of guarantors or cosigners even if their score was a factor in the adverse action
 - Simply state as a reason in ECOA section of AAN that the guarantor's or co-applicant's score was too low –
 - Do NOT disclose anyone's score to another individual

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Who Receives the Notices?

Risk-Based Pricing Notices

- RBPN: separate notice to all co-applicants - - OR--CSEN: separate notice to all co-applicants
- No notice required to guarantors

Adverse Action Notices

- ECOA: notice only to primary applicant
- FCRA: notice to all applicants on whose credit score the decision is based
- No notice required to guarantors
- FCRA: separate notice to all applicants including credit score (in sealed, separate envelopes)

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Assume in each case that the lender pulled a credit report and obtained a credit score.

Information Source of Information Causing Denial	ECOA Adverse Action Notice Elements Required	FCRA Adverse Action Notice Elements Required
Denial based on property value	Give reason for denial or provide statement that may request reasons.	None required. Neither credit report nor score contributed to denial.
Denial based on problem in credit history, score OK.	Give reasons for denial or provide statement that may request reasons.	Provide FCRA notice but not the credit score notice.
Denial based on credit history and score.	Give reasons for denial or provide statement that may request reasons. One or more reasons must come from the credit score.	Provide FCRA notice and credit score notice.
Denial based on credit scores of both co-applicants.	Give reasons for denial or provide statement that may request reasons. One or more of the reasons must come from the credit scores.	Give FCRA notices to both co-applicants. In each notice provide the individual's credit score and reasons.
Denial based on credit score of one co-applicant; Other applicant's score OK.	Give reasons for denial or provide statement that may request reasons. One or more of the reasons must come from the credit score.	Give FCRA notice including credit score information to applicant whose low score caused the denial. Do not provide the score to the other applicant.
Denial based on credit score of guarantor, applicant's information OK.	Give reasons for denial or provide statement that may request reasons.	Guarantor's are not applicants for purposes of FCRA notices. No notice needs to go to the guarantor.
Denial based on proprietary score, credit report and credit score OK.	Give reasons for denial or provide statement that may request reasons. Reasons must come from the proprietary score.	If no reasons for denial came from the credit history, there is no FCRA notice required. However, if the proprietary score meets the FCRA definition, the credit score notice is required.
Denial based on both proprietary and bureau score.	Give reasons for denial or provide statement that may request reasons. Reasons must be taken from both scores.	Give the FCRA notice and the credit score notice. If the proprietary score meets the FCRA definition, that score and related reasons must be included.

Note: when the request for credit is denied, you must always provide an ECOA adverse action notice which includes the reasons for denial or advises the consumer that they may request the reasons.

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Debt Collector ID Theft Communications

- If a financial institution is collecting debts of a third party, not their own, these provisions apply
- Upon notice that information relating to a debt being collected may be fraudulent or may be the result of identity theft, the financial institution must notify the third party creditor
- If the consumer debtor requests information, the collecting entity must provide all of the information the consumer debtor would otherwise be entitled to if the consumer wished to dispute the debt under other FCRA provisions

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Identity Theft Protection Efforts

- “Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003” (“Red Flags”) mandatory compliance 11/1/2008
- Identity Theft
 - A fraud committed or attempted using identifying information of another without authority
- Identifying Information – unique to you!
 - Name, SSN, DOB, etc.
 - Driver’s license ID # or Passport #
 - Biometric data (fingerprints, iris scans, voice print)
 - Unique electronic ID #, IP address or routing number
 - Telecommunication ID information or access device

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Identity Theft Protection Efforts

- Inventory “Covered Accounts” and Related Risks
 1. Covered Accounts
 - Consumer accounts
 - Any other account with foreseeable risk to the customer or safety and soundness to the institution
 - Will you include small business accounts too?
 2. ID Theft Risks
 - Appendix lists some examples, but each financial institution must independently consider these and any other applicable risks, and how to detect and mitigate the risks appropriately

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Disposal of Consumer Information

- **Consumer Information** : Any record (paper, electronic, or other) about an individual that is a consumer report or is derived from a consumer report or a compilation of such records
 - Credit reports, loan files, memos to loan committees
 - Underwriting worksheets and other supporting documents
- Financial Institutions must comply with information security standards resulting from Gramm-Leach-Bliley Act

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Identity Theft Protection Efforts

- Truncations on Card Account Receipts
 - May not print or show more than 5 digits of account numbers
 - May not print or show expiration date
- Requirement applies only to electronically prepared receipts, handwritten or card imprint receipts are not subject to these requirements
- For ATMs, POS terminals or other machines in operation before 01/01/05, requirement was effective 12/04/06
- For ATMs, POS terminals or other machines in operation on or after 01/01/05, effective date is installation date

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Identity Theft Protection Efforts

- **Criminal Liability** - Up to 2 years imprisonment and/or \$5,000 fine
 - Knowingly and willfully obtaining consumer report information from a CRA under false pretenses; or
 - Employees of CRAs knowingly and willfully providing consumer report information to unauthorized users
- **Annual Credit Report** – each individual is entitled to one free complete credit report every 12 months, upon request
 - www.annualcreditreport.com
- Free report does not include credit score, but a “credit score disclosure” is available for a small fee

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Consumer Fraud Alerts

- Nationwide consumer reporting agencies have established alerts to assist users and consumers when fraud is known or suspected
- Three levels of alerts to notify creditors that additional due diligence is warranted
 - Initial Fraud Alert
 - Extended Fraud Alert
 - Military Alert
- **Best Practice:** Implement a process that makes it mandatory to place an alert similar to the national alert system on your bank records and teller system

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Initial Fraud Alerts

- Any consumer who believes he or she is about to be or has been a victim of credit fraud may instructs the nationwide consumer reporting agencies to place a fraud alert on credit report
- Bureau can request proof of identity as authorization
 - Individual or a Representative of affected identity
 - Spouse is authorized, but NOT a credit repair clinic
- Alert displayed 90 days unless revoked by requestor plus 1 additional free credit report

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Extended Fraud Alerts

- At the consumer's direct request after proof of status as a victim of identity theft, the bureaus must place the extended alert following verification of the requestor's identity
- Alerts are effective for up to 7 years unless revoked earlier by the consumer
- Individuals automatically excluded from prescreenings for credit or insurance for 5 years

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Proof of Identity Theft

- Defined term in the law and regulations
- Police report or similar document from a law enforcement agency
- Entitled to 2 free credit reports within 12 months of the fraud alert
- Entitled to same consumer disclosures from the CRA within 3 business days

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Military Alerts

- Active duty military personnel stationed in foreign countries may request that an “Active Duty Alert” be placed on credit report for at least 1 year from date of request
- Requires proof of identity
- Must be automatically excluded from all prescreenings for credit or insurance for 2 years

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Fraud and Active Duty Alerts

- Intended to notify you that the consumer doesn't authorize any new credit plans with a few exceptions
- You will have to complete additional procedures to validate that you are talking to the right individual BEFORE issuing credit
- **Key Point:** Fair lending discrimination based on exercise of rights under the Consumer Credit Protection Act (CCPA) could occur:
 - **How?** Creditors have denied applications for credit based simply on the presence of fraud or active duty alerts on applicant's consumer reports
 - **Why?** No steps were taken to verify the identity of the applicants before denying applicants based on the existence of fraud alerts
 - **Result?** The practice constitutes discrimination based on the exercise of rights under the CCPA

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Information Available to ID Theft Victims

- Victims may request transaction info from Furnishers
 - In writing, at a specified address
 - Include relevant transaction information
- Furnisher must reasonably identify the consumer
- Furnisher may require evidence (police report, Affidavit)
- Furnisher must provide relevant information within 30 days (1 copy to victim at no charge)
- Furnisher may also provide relevant information to law enforcement agency investigating the crime

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Information Available to ID Theft Victims

- Upon being informed of ID Theft, CRA must provide consumer within 30 days after receipt of notice
 - Summary of rights and contact information
 - Documentation of transaction that consumer believes to be fraudulent
- CRA must **block** ID Theft information within 4 days, if:
 - Consumer provides proof of identity
 - ID Theft Report is provided
 - Information to be blocked is properly identified
 - Statement that transactions are not the consumer's

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Blocking ID Theft Information

- CRA must notify Furnisher:
 - Information may be the result of ID Theft
 - An ID Theft Report has been filed
 - A block of that info has been requested
 - Effective dates of block
- CRA may decline or rescind a block if:
 - The consumer requested the block in error
 - The consumer made a material misrepresentation
 - The consumer received goods, services or money

Furnisher must investigate and respond within 30 days to consumer along with correcting information if truly ID theft

- If validated, Furnisher may resume reporting

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Identity Theft Protection Efforts

- Furnisher may refuse to provide information to supposed identity theft victim if
 - No confidence in the consumer's identity
 - Reasonable belief the request misrepresents facts
 - If only information available is internet navigational data (cookies, etc.) regarding contact with websites or online services

Identity theft mitigation strategies

- Deter, Detect, Defend
 - Disposal of Consumer Information
 - Fraud Alerts
 - Blocking Reporting of ID Theft Information
 - Truncated Card Account Numbers
 - Annual Credit Report
 - Criminal Penalties

124

General Record Retention

Employment purposes: retain records for 2 years

Other purposes: retain records of recipients of consumer reports for 6 months



125

Enforcement Provisions - Civil

- 1) Civil liability for willful non-compliance
 - Actual damages
 - Court costs and attorney's fees
 - Punitive damages
- 2) Civil liability for negligent noncompliance
 - Actual damages
 - Court costs and attorney's fees
 - No private right of action for duty to provide accurate info for ID Theft red-flag provisions or requirements to make info known to ID theft victims
 - No civil liability for notification of negative credit report requirements or for risk-based pricing notice

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Reg B Notifications

§ 1002.9 Notifications.

- (a) *Notification of action taken, ECOA notice, and statement of specific reasons.* (1) *When notification is required.* A creditor shall notify an applicant of action taken within:
 - i. 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;
 - ii. 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;
 - iii. 30 days after taking adverse action on an existing account; or
 - iv. 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

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Reg B Notification to Business Credit Applicants

§ 1002.9 Notifications. (3) **Notification to business credit applicants.** For business credit, a creditor shall comply with the notification requirements of this section in the following manner:

- i. With regard to a business that had **gross revenues of \$1 million or less in its preceding fiscal year** (other than an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit), a creditor shall comply with paragraphs (a)(1) and (2) of this section, except that:
 - A. The statement of the action taken may be given orally or in writing, when adverse action is taken;
 - B. Disclosure of an applicant's right to a statement of reasons may be given at the time of application, instead of when adverse action is taken, provided the disclosure contains the information required by paragraph (a)(2)(ii) of this section and the ECOA notice specified in paragraph (b)(1) of this section;
 - C. For an application made entirely by telephone, a creditor satisfies the requirements of paragraph (a)(3)(i) of this section by an oral statement of the action taken and of the applicant's right to a statement of reasons for adverse action.

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Reg B Notification to Business Credit Applicants

§ 1002.9 Notifications. (3) *Notification to business credit applicants.*

(ii) With regard to a business that had **gross revenues in excess of \$1 million in its preceding fiscal year** or an extension of trade credit, credit incident to a factoring agreement, or other similar types of business credit, a creditor shall:

- A. Notify the applicant, within a reasonable time, orally or in writing, of the action taken; and
- B. Provide a written statement of the reasons for adverse action and the ECOA notice specified in paragraph (b)(1) of this section if the applicant makes a written request for the reasons within 60 days of the creditor's notification.

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Reg B Incomplete Applications

§ 1002.9 Notifications. (c) *Incomplete applications.* (1) *Notice alternatives.* Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

- (i) Of action taken, in accordance with paragraph (a) of this section; or
- (ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

130

Reg B Oral Notifications and Withdrawals

§ 1002.9 Notifications. (3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information. If the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

- **(d) *Oral notifications by small-volume creditors.*** In the case of a creditor that did not receive more than 150 applications during the preceding calendar year, the requirements of this section (including statements of specific reasons) are satisfied by oral notifications.
- **(e) *Withdrawal of approved application.*** When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

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Reg B Adverse Action

§1002.2 (c) ***Adverse action.*** (1) The term means:

- i. A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;
- ii. A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or
- iii. A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

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Reg B Adverse Action Exclusions

§1002.2 (c) **Adverse action.** (2) The term does not include:

- i. A change in the terms of an account expressly agreed to by an applicant;
- ii. Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account;
- iii. A refusal or failure to authorize an account transaction at point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;
- iv. A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or
- v. A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2) of this section.

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Statement of Credit Denial, Termination or Change

Lender: Applicant: Date:

Old FCRA Section

Consumer Reporting Agency Name	Mailing Address	Telephone Toll Free	Web Address

Principal Reasons for Credit Denial, Termination or Change

<input type="checkbox"/> Credit Application Incomplete <input type="checkbox"/> Insufficient Number of Credit References Provided <input type="checkbox"/> Unreliable Type of Credit References Provided <input type="checkbox"/> Unable to Verify Credit References <input type="checkbox"/> Temporary or Irregular Employment <input type="checkbox"/> Unable to Verify Employment <input type="checkbox"/> Length of Employment <input type="checkbox"/> Income Insufficient for Amount of Credit Requested <input type="checkbox"/> Excessive Obligations in Relation to Income <input type="checkbox"/> Unable to Verify Income <input type="checkbox"/> Length of Residence <input type="checkbox"/> Temporary Residence <input type="checkbox"/> Unable to Verify Residence <input type="checkbox"/> No Credit File <input type="checkbox"/> Limited Credit Experience <input checked="" type="checkbox"/> Poor Credit Performance with Us	<input type="checkbox"/> De <input type="checkbox"/> Cr <input type="checkbox"/> Fu <input type="checkbox"/> Be <input type="checkbox"/> Na <input type="checkbox"/> Vc <input type="checkbox"/> We also obtained your credit score from the consumer reporting agency. Your credit score is a number that reflects the information in your consumer report. Key factors that adversely affected your credit score: • Your credit score: <input type="text"/> • Date: <input type="text"/> • Score range from a low of <input type="text"/> to a high of <input type="text"/> • Key factors that adversely affected your credit score: NUMBER OF BANK OR NATIONAL REVOLVING ACCOUNTS PROPORTION OF BALANCES TO CREDIT LIMITS IS TO HIGHER OF ACCOUNTS WITH DELINQUENCY AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH
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Disclosure of Use of Information Obtained from an Old FCRA Section

Our credit decision was based in whole or in part on information obtained from agencies listed below. You have a right under the Fair Credit Reporting Act to request a copy of the information obtained from these agencies. If you request it no later than 60 days after you receive this notice, we will provide it to you. If you request it more than 60 days after you receive this notice, we will provide it to you if you pay the cost of obtaining the information. If you do not pay the cost, we will not provide it to you.

Our credit decision was based in whole or in part on information obtained from a consumer reporting agency. Under the Fair Credit Reporting Act, you have a right to request a copy of the information obtained from this agency. If you request it no later than 60 days after you receive this notice, we will provide it to you. If you request it more than 60 days after you receive this notice, we will provide it to you if you pay the cost of obtaining the information. If you do not pay the cost, we will not provide it to you.

Old FCRA Section

Combined Adverse Action Notice

Questions

If you have any questions regarding this notice, you should contact:

Creditor's Name:

Address:

Telephone:

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

ECOA Section

FED: CONSUMER RESPONSE CENTER
 1100 WILSON ST., BOX 811
 KANSAS CITY, MO 64106

Old FCRA Section

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ECOA – Reg B Reasons for Action Taken

- **§1002.9(a)(2)(i): State the specific reason** for the action taken on the Adverse Action Notice
- Reg B Commentary to §1002.9(b)(2) -1
- A creditor must disclose **(all)** the principal reasons for denying an application or taking other adverse action. **The regulation does not mandate that a specific number of reasons be disclosed**, but disclosure of more than four reasons is not likely to be helpful to the applicant.

Statement of Credit Denial, Termination or Change

Lender	Applicant DATE TEST	Date AUGUST 23RD, 2011		
Property Address: XXXX XXXX XXXX, SC 29418		Application or Loan Number		
Reg B Section				
Description of Account, Transaction or Requested Credit. MORTGAGE LOAN				
Description of Action Taken.				
Principal Reasons for Credit Denial, Termination or Other Action Taken Concerning Credit				
<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Credit Application Incomplete <input type="checkbox"/> Incomplete Number of Credit References Provided <input type="checkbox"/> Unacceptable Type of Credit References Provided <input type="checkbox"/> Unable to Verify Credit References <input type="checkbox"/> Temporary or Irregular Employment <input type="checkbox"/> Unable to Verify Employment <input type="checkbox"/> Length of Employment <input type="checkbox"/> Income Insufficient for Amount of Credit Requested <input type="checkbox"/> Excessive Obligations in Relation to Income <input type="checkbox"/> Temporary Residence <input type="checkbox"/> Length of Residence <input type="checkbox"/> Unable to Verify Residence <input type="checkbox"/> No Credit File <input type="checkbox"/> Limited Credit Experience <input type="checkbox"/> Poor Credit Performance with Us </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Delinquent Past or Present Credit Obligations with Other Creditors <input type="checkbox"/> Court Action or Judgment <input type="checkbox"/> Garnishment or Attachment <input type="checkbox"/> Foreclosure or Repossession <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Manner of Asset Liquidation on Credit Bureau Report <input type="checkbox"/> Value or Type of Collateral not Sufficient </td> </tr> </table>			<input type="checkbox"/> Credit Application Incomplete <input type="checkbox"/> Incomplete Number of Credit References Provided <input type="checkbox"/> Unacceptable Type of Credit References Provided <input type="checkbox"/> Unable to Verify Credit References <input type="checkbox"/> Temporary or Irregular Employment <input type="checkbox"/> Unable to Verify Employment <input type="checkbox"/> Length of Employment <input type="checkbox"/> Income Insufficient for Amount of Credit Requested <input type="checkbox"/> Excessive Obligations in Relation to Income <input type="checkbox"/> Temporary Residence <input type="checkbox"/> Length of Residence <input type="checkbox"/> Unable to Verify Residence <input type="checkbox"/> No Credit File <input type="checkbox"/> Limited Credit Experience <input type="checkbox"/> Poor Credit Performance with Us	<input type="checkbox"/> Delinquent Past or Present Credit Obligations with Other Creditors <input type="checkbox"/> Court Action or Judgment <input type="checkbox"/> Garnishment or Attachment <input type="checkbox"/> Foreclosure or Repossession <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Manner of Asset Liquidation on Credit Bureau Report <input type="checkbox"/> Value or Type of Collateral not Sufficient
<input type="checkbox"/> Credit Application Incomplete <input type="checkbox"/> Incomplete Number of Credit References Provided <input type="checkbox"/> Unacceptable Type of Credit References Provided <input type="checkbox"/> Unable to Verify Credit References <input type="checkbox"/> Temporary or Irregular Employment <input type="checkbox"/> Unable to Verify Employment <input type="checkbox"/> Length of Employment <input type="checkbox"/> Income Insufficient for Amount of Credit Requested <input type="checkbox"/> Excessive Obligations in Relation to Income <input type="checkbox"/> Temporary Residence <input type="checkbox"/> Length of Residence <input type="checkbox"/> Unable to Verify Residence <input type="checkbox"/> No Credit File <input type="checkbox"/> Limited Credit Experience <input type="checkbox"/> Poor Credit Performance with Us	<input type="checkbox"/> Delinquent Past or Present Credit Obligations with Other Creditors <input type="checkbox"/> Court Action or Judgment <input type="checkbox"/> Garnishment or Attachment <input type="checkbox"/> Foreclosure or Repossession <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Manner of Asset Liquidation on Credit Bureau Report <input type="checkbox"/> Value or Type of Collateral not Sufficient			
Reg B Section				
Disclosure of Use of Information Obtained from an Outside Source				
<p><input type="checkbox"/> Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why you have obtained credit or you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.</p>				
Old FCRA Section				

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Equal Credit Opportunity Act (ECOA) – Regulation B Statement of Specific Reasons Upon Request

- **Reg B §1002.9(a)(2)(ii)**
- Provide a statement that the creditor will give the specific reasons for the action taken within 30 days of an applicant's request, if the request is dated within 60 days of the creditor's original notification of action taken.
- If the creditor provides the consumer with a statement of the action taken and informs them of their right to request the specific reasons for the action within 60 days of the notification, the creditor should document the specific reasons for the action so they will be available if requested by the applicant. If the applicant requests the specific reasons for the action taken, the creditor must provide the reasons within 30 days of the request.

We cannot approve your request. If you would like a statement of specific reasons why your application was denied, please contact us at the address shown above within 60 days of the date of this letter. We will provide you with a statement of the specific reasons for our action within 30 days after receiving your request.

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Adverse Action Notices (AAN)

- When “adverse action” taken due (in part) to the consumer’s report, notify **every** consumer applicant contributing to decision to decline credit must receive:
 - Name and contact of CRA
 - Statement that the CRA did not make the decision
 - Inform consumer of the right to free copy of the report
 - Reiterate the consumer’s right to dispute inaccurate information contained in his or her consumer report
- Business individual applicants entitled to **both** AAN and credit score notices if consumer report is a factor in decision
 - Don’t forget Equal Credit Opportunity Act’s adverse action notice coverage for businesses with less than \$1 million in gross revenues

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Adverse Action: Third Party Information

Disclosure of Use of Information Obtained from an Outside Source

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency or agencies listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Old FCRA Section

- Only required when credit application is for a **consumer purpose** (personal, family, or household)
- When “adverse action” taken due (in part) to information from third parties (other than a CRA), notify the consumer:
 - Adverse action due to third party information
 - An explanation that the consumer may request the **nature** of the information within 60 days of notification
 - The specific information and where it was obtained need not be disclosed – bank must respond within a reasonable period of time

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Adverse Action: Affiliate Information

- When “adverse action” taken on a consumer request due (in part) to information from affiliates that is of the type covered by FCRA
 - Notice includes the Action taken and an explanation that the consumer may request the nature of the information relied upon to take the action
 - Consumer must make request in writing within 60 days of notice
 - Bank must respond within 30 days following receipt of customer’s written request

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FCRA – Reg V Consumer Reporting Agencies

Old FCRA Section

Statements of Credit Denial, Termination or Change [continued]

Consumer Reporting Agency Name	Mailing Address	Telephone Toll-Free	Web Address

- When a credit score is used in the evaluation of consumer purpose residential real estate loans or lines of credit, User must disclose to all applicants:
 - **Notice to Home Loan Applicant** narrative
 - Name, address and phone number of CRA

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FCRA – Reg V Credit Score Info

Be sure to check this box if a credit report was used in your adverse decision.

We also obtained your credit score from the consumer reporting agency and used it in making our credit decision. Your credit score is a number that reflects the information in your consumer report. Your credit score can change, depending on how the information in your consumer report changes.

- Your credit score:
- Date:
- Scores range from a low of to a high of
- Key factors that adversely affected your credit score:

New FCRA Section

NUMBER OF BANK OR NATIONAL REVOLVING ACCOUNTS WITH BALANCES
PROPORTION OF BALANCES TO CREDIT LIMITS IS TOO HIGH OR BANK REVOLVING
NUMBER OF ACCOUNTS WITH DELINQUENCY
AMOUNT OWED ON REVOLVING ACCOUNT IS TOO HIGH

If you have any questions regarding your credit score, you should contact: at
their address and telephone number above.

Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

Old FCRA Section

- When a credit score is used in the evaluation of consumer purpose residential real estate loans or lines of credit, User must disclose to all applicants:
 - Consumer's score and range of possible scores
 - Date the score was obtained
 - Up to 4 (possibly 5) key factors that influenced the score calculation
 - 5th factor **ONLY** if "Excessive Inquiries" is a factor, but not included in the top 4 negative factors

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ECOA – Reg B Creditor & Regulator

Statement of Credit Denial, Termination or Change [continued]

Questions

If you have any questions regarding this notice, you should contact:

Creditor's Name:

Address:

Telephone:

Notice. The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

FEIC CONSUMER RESPONSE CENTER
1100 WALSH ST, BOX #11
KANSAS CITY, MO 64106

ECOA Section

- **Reg B Appendix A - Federal Agencies to be Listed in Adverse Action Notices**
- APPENDIX A TO PART 1002—FEDERAL AGENCIES TO BE LISTED IN ADVERSE ACTION NOTICES
- The following list indicates the Federal agency or agencies that should be listed in notices provided by creditors pursuant to §1002.9(b)(1). Any questions concerning a particular creditor may be directed to such agencies. This list is not intended to describe agencies' enforcement authority for ECOA and Regulation B. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

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Record Retention Highlights

- ECOA – Adverse Action Notices (and all information used in the analysis of the application) must be retained for 25 months.
- FCRA – also addresses record retention requirements for users of consumer credit reports that utilize the information contained in those reports to make written credit solicitations. FCRA applies to mortgage brokers, for purposes of record retention, to the extent that mortgage brokers use consumer reports in connection with any transaction that is not initiated by the consumer. Under FCRA, any person who makes an unsolicited offer of credit to a consumer, based upon information contained in the consumer’s credit report, is required to retain the following for at least 3 years from the date on which the offer is made to the consumer:
 - The criteria used to select the consumer to receive the offer;
 - All applicable criteria bearing on the consumer’s creditworthiness that form the basis for determining whether or not to extend credit pursuant to the offer; and
 - Any requirement that collateral be furnished as a condition on the extension of credit.

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Managing the Dodd-Frank Act Appraisal Process

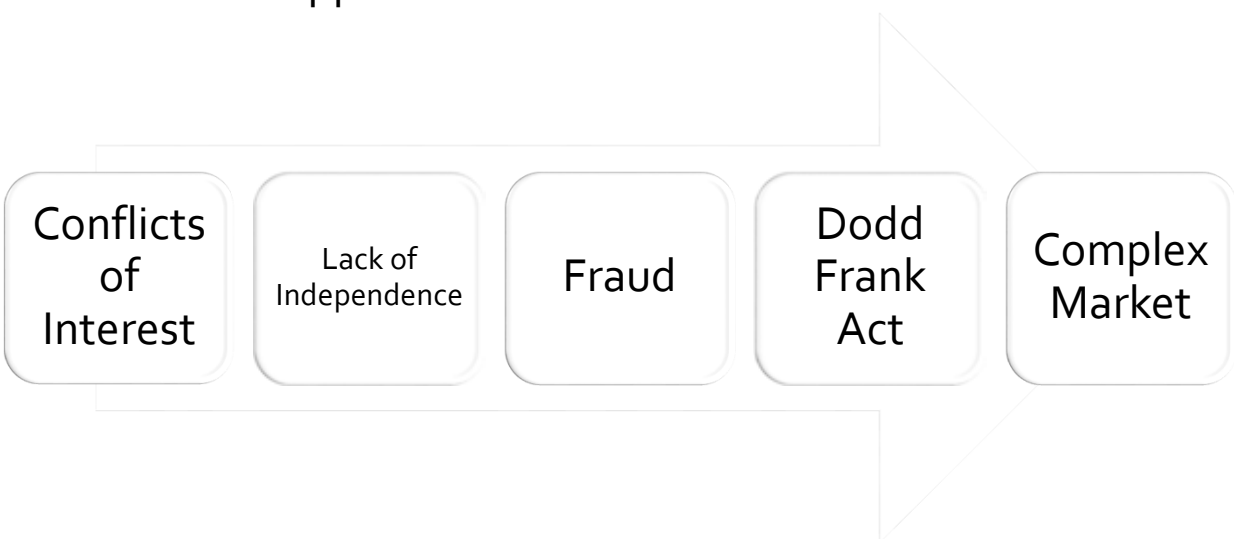
144

Dodd Frank Act Appraisal Amendments

- CFPB must promulgate regulations implementing changes to Equal Credit Opportunity Act (ECOA)
- The CFPB, federal banking regulators (FRB, FDIC, NCUA and OCC), and the FHFA (Agencies) must prescribe regulations to implement the appraisal requirements for “higher-risk mortgages”
- The Agencies must establish, by regulation, minimum AMC standards
- The Agencies, in consultation with the Appraisal Subcommittee and the Appraisal Standards Board of Appraisal Foundation, must promulgate AVM regulations regarding quality control standards
- The Agencies may issue regulations that ensure the portability of appraisals between lenders for loans secured by the borrower’s primary residence
- The Agencies may issue rules amending section 1110 of FIRREA to change the time period creditors will need to review appraisals

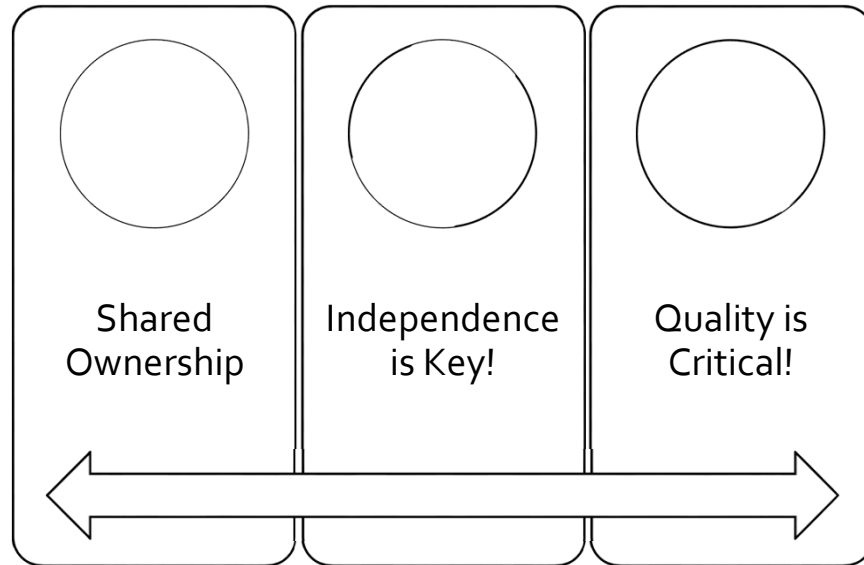
145

Evolution of Appraisal Issues



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Appraisal Principles Learned



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ECOA and Regulation B - Appraisal Amendments

Effective January 18, 2014

- ECOA is a fair lending law!
 - ECOA prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.
- Law applies to **both** consumer and commercial transactions
- **Only new requirement in the January 2014 mortgage reform amendments that applies to commercial transactions!**

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The New ECOA Rule

- Effective for applications received on or after January 18, 2014
- Notice of right to a copy – ***always provide***
- Copy of appraisal and other written valuations
 - Only required for 1st liens
 - Customer service issue: HELOCs and refinances?
- Timing of delivery
 - Applicants can waive advance copy in some cases



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Reg B § 1002.14 (a)

▪ NEW RULE

- A creditor shall provide an applicant a copy of all appraisals and other written valuations developed in connection with an application for credit that is to be secured by a **first lien** on a dwelling.
- A creditor shall provide a copy of each such appraisal or other written valuation promptly upon completion, or three business days prior to consummation of the transaction (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

▪ OLD RULE

- A creditor shall provide a copy of an appraisal report used in connection with an application for credit that is to be secured by a lien on a dwelling.
 - A creditor shall comply with either paragraph (a)(1) or (a)(2) of this section.
 - (a)(1) Routine delivery.** A creditor may routinely provide a copy of an appraisal report to an applicant (whether credit is granted or denied or the application is withdrawn). --
 - OR--**
 - (a)(2) Upon request.** A creditor that does not routinely provide appraisal reports shall provide a copy upon an applicant's written request.

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ECOA's Appraisal Rules

Fundamental Issue:

- Whatever the Creditor uses to establish the collateral property's value and the effect that value has on loan terms is of interest to the borrower
- Must share with applicant even if you don't use the appraisal or valuation or you only use it for a limited purpose

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Reg B Covered Transactions

- Business or commercial credit when it is secured by a first lien on a dwelling (as opposed to TILA, business credit is covered by ECOA and Regulation B).
- Open- or closed-end loans
- Reverse mortgages
- Temporary loans (i.e., bridge and construction loans)
- Loss mitigation activities (to the extent otherwise subject to Reg. B)
- Renewals (unless using a previously developed valuation)

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New ECOA Appraisal Rules

- A. Require creditors to notify applicants within three business days of receiving an application of their right to receive a copy of appraisals developed.
- B. Require creditors to provide applicants a copy of each appraisal and other written valuation promptly upon its completion or three business days before consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.
- C. Permit applicants to waive the timing requirement for providing these copies. Applicants who waive the timing requirement must be provided all required material at or prior to consummation or account opening, or no later than 30 days after the creditor determines the transaction will not be consummated or account will not be opened.
- D. Prohibit creditors from charging for the copy of appraisals and other written valuations, but permit creditors to charge applicants reasonable fees for the cost of the appraisals or other written valuations unless applicable law provides otherwise.

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Reg B - Right to Receive a Copy of Appraisals

- Creditors must notify applicants within 3 business days of receiving an application of their right to receive a copy of all written appraisals developed in connection with the application
- This provision is generally consistent with the proposed approach to the 3-business-day timing requirements for TILA-RESPA disclosures in the 2012 TILA-RESPA Proposal, and will be linked to that disclosure as the rulemakings are finalized.

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Form C-9—Sample Disclosure of Right to Receive a Copy of Appraisals

▪ NEW RULE

- We may order an appraisal to determine the property's value and charge you for this appraisal.
- We will promptly give you a copy of any appraisal, even if your loan does not close.
- You can pay for an additional appraisal for your own use at your own cost.

▪ **ALWAYS** GIVE NOTICE **AND** COPY

▪ OLD RULE

- You have the right to a copy of the appraisal report used in connection with your application for credit.
- If you wish a copy, please write to us at the mailing address we have provided.
- We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.
- [In your letter, give us the following information:]

▪ GIVEN **ONLY** IF **NOT** ROUTINELY PROVIDING COPY OF APPRAISAL

155

Reg B § 1002.14(b)(3) Valuation and Examples

- The term "valuation" means any estimate of the value of a dwelling developed in connection with an application for credit.
- Commentary: Examples of valuations include but are not limited to:
 - i. A report prepared by an appraiser (whether or not licensed or certified) including the appraiser's estimate or opinion of the property's value.
 - ii. A document prepared by the creditor's staff that assigns value to the property.
 - iii. A report approved by a government-sponsored enterprise for describing to the applicant the estimate of the property's value developed pursuant to the proprietary methodology or mechanism of the government-sponsored enterprise.
 - iv. A report generated by use of an automated valuation model to estimate the property's value.
 - v. A broker price opinion prepared by a real estate broker, agent, or sales person to estimate the property's value.
- *Attachments and exhibits.* The term "valuation" includes any attachments and exhibits that are an integrated part of the valuation.

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Reg B § 1002.14(b)(3) *NOT* Valuations

- Commentary
- *Other documentation.* Not all documents that discuss or restate a valuation constitute a “valuation”
- Examples of documents that discuss the valuation or may reflect its value but are not “valuations” include, but are not limited to:
 - i. Internal documents that merely restate the estimated value of the dwelling contained in an appraisal or written valuation being provided to applicant.
 - ii. Governmental agency statements of appraised value that are publically available.
 - iii. Publicly-available lists of valuations (such as published sales prices or mortgage amounts, tax assessments, and retail price ranges).
 - iv. Manufacturers’ invoices for manufactured homes.

157

Reg B Existing § 1002.2 (f) Application

- **Application** means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit.
- A **completed application** means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral).
- The creditor shall exercise reasonable diligence in obtaining such information.

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Reg B Renewals and Modifications?

- Requirements also apply to any application for renewal of an existing extension of credit to the extent that the creditor develops appraisals in connection with the renewal.
- **Commentary: Renewals.** New rule to provide copy applies when applicant requests renewal of an existing extension of credit and the creditor develops a new appraisal or other written valuation.
- New rule to provide copy does not apply if creditor uses appraisals and other written valuations previously developed for prior extension of credit.
 - **Best Practice:** Consider delivering copy anyway beginning in January 2014

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... Developed in Connection With...

- Specific to the current application for credit per Reg B
- Applies whether credit is approved or denied or if the application is incomplete or withdrawn
- Even if a creditor does not use a valuation, the creditor must still provide the valuation to the borrower if it was prepared in connection with this credit application
- For example:
 - Use a prior transaction's appraisal to complete an evaluation for a non-HPML transaction after January 18, 2014
 - HPML transactions require an appraisal after January 18, 2014
 - Use a prior transaction's appraisal without any adjustments

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§ 1002.14 (b)(2) Dwelling

- The term “dwelling” means a residential structure that contains **one to four units** whether or not that structure is attached to real property.
- The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home
 - Does not include motor vehicles



161

...Provide a Copy...

- “Provide” in this context means “Deliver”
- “Delivery” occurs 3 business days **AFTER** mailing or transmission to the applicant’s last known address or when indicated by evidence of actual receipt (e.g. email receipt, signed delivery receipt, etc.), whichever is earlier
 - Delivery may be electronic if it complies with E-Sign Act
 - If more than one applicant, copies need only be given to one applicant (who must be the primary applicant)

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...Promptly upon Completion...

- Creditor allowed to review and possibly request revisions or corrections to the appraisal
- **Completion** occurs the later of
 - When creditor receives **last version** of appraisal, or
 - When creditor has **reviewed and accepted** the appraisal or other written valuation with any required changes or corrections

DO send
revised copies



DON'T send
early drafts

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Reg B – Appraisal Clerical Errors

- If after providing applicant a copy, you later identify a clerical error, you may ask the applicant to waive delivery before settlement if:
 - Applicant has already received original appraisal or valuation
 - Changes are only clerical errors with no impact on estimated value
 - Changes do not alter value estimation calculation or methodology
 - Revised copy is delivered no later than closing or account opening

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Examples: Promptly upon Completion

- Sending a copy within a week of completion with sufficient time before consummation or account opening
- Sending a copy of a revised appraisal within a week after completion and with sufficient time before consummation or account opening
- Sending a copy of an AVM report within a week after its receipt and with sufficient time before consummation or account opening

Sufficient time: Use received 3 business days before closing as your targeted delivery!

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Examples: NOT Promptly Provided



Delay in sending an appraisal

- *Creditor reviews and accepts appraisal on Day 12*
- *Copy of appraisal sent to applicant(s) on Day 42*
- *Loan consummation or account opening on Day 50*



Delay in sending an AVM report while waiting for completion of a second valuation

- *Creditor receives and reviews AVM on Day 5*
- *Creditor orders and rejects first appraisal*
- *Revised appraisal received on Day 35*
- *Creditor provides copy of AVM and appraisal on Day 35*
- *Appraisal is prompt, AVM is not promptly provided*

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Multiple Valuations and/or Applicants

- Multiple Valuations:
- A copy of each valuation must be provided to applicant
 - New rule: “developed in connection with”
- Multiple Applicants:
- Allowed to send **notice** and **copy of appraisals or valuations** only to **primary** applicant
- One applicant may waive early delivery, but it must be primary applicant if readily apparent which is the primary
 - **Best Practice:** Designate in your procedures which applicant is to be considered the primary applicant – e.g., first one listed on application

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... Prior to Consummation...

- The term “consummation” means the time that a consumer becomes contractually obligated on a closed-end credit transaction [§ 1002.14 (b)(1)]
- Look to state law to determine when “contractually obligated”
- Credit vs. Sale
 - Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement.

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Reg B and Reg Z Waiver of Advance Copy

- **Reg B** allows applicants to waive the right to early copy, but requires copy at or before closing

- **Reg Z (HPML regulations)** does NOT provide for any waiver
 - If loan will be HPML, may not allow applicant to waive advance delivery
 - If creditor realizes after application loan will be a HPML, then you must not allow any waiver of advance copy

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Two Types of Timing Waivers

- Applicant can provide an affirmative oral or written waiver of timing requirement
 1. At least 3 business days prior to consummation (closed- end) or account opening (open-end)
 2. Within 3 business days of consummation or account opening for waivers that pertain solely to applicant's receipt of a copy of valuation that contains **only clerical changes** from a prior version previously provided to the applicant

Best Practice: Are you willing to accept any consent forms orally????

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Timing of Waiver and Delivery of Copy by Applicants

- Permitted to waive timing requirement
 - earlier of
 - “Promptly upon completion” or
 - “3 business days prior to” consummation or account opening)
 - and
 - agree to receive copies at or before consummation or account opening, *except where otherwise prohibited by law*
- If waived, must receive copy at or prior to consummation (closed-end loan) or account opening (open-end loan)
- If a waiver is provided and the transaction is not consummated, provide copies no later than 30 calendar days after determining consummation will not occur.

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No Reg B Business Days Definition

- Business Days
 - **Best Practice:** Use TILA Regulation Z’s business day definition
 - § 226.2 (6) **Business day** means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions
 - For purposes of rescission, eTIL submission, HPML’s, HOEPA loans, reverse mortgages, PELs, etc., the term means all calendar days except Sundays and the legal public holidays

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CFPB's Consumer Guide to New Rule

- Notice above included in the CFPB's "What the new ECOA appraisal and other valuations rule means for consumers" dated January 18, 2013, page 3

Should You Sign Away Your Rights?

A lender can ask you to "waive" your right to get a copy of valuations three business days before closing. This means you agree that the lender does not have to provide you with a copy three days in advance of closing. Even if you waive this right, the lender still has to give you a copy of any valuations. If you waive this right and your loan closes, the lender can then give you a copy two days before, one day before, or on the day of the closing.

Think carefully before you agree not to get a copy of valuations three days in advance of closing. For example, it could take time to look over all the information in an appraisal and decide whether it makes sense to you.

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Fees and Costs

- A creditor cannot charge fees (including photocopy, postage, or other costs) for copies or delivery costs
- A creditor may:
 - Under ECOA and RESPA allow recovery of cost of the appraisal or valuation, with no upcharge
 - Request up-front payment after applicant has expressed intent to proceed (RESPA)
 - Recover Appraisal Management Company (AMC) fees
- Creditors are allowed to charge admin costs for requests for duplicate or additional copies
- May charge for duplicate or additional copies of appraisal report itself
- Must deliver copy regardless of whether application is approved, denied or withdrawn, even if customer

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Managing ECOA Appraisal Compliance

Policy & Procedures

- Review application and underwriting processes to identify critical timing
- Clearly document timing requirements in policies and procedures
- Implement compliant E-Sign process
- Use secure email to transmit appraisals

Disclosure

- Update the notice form to comply with Reg Z's HPML rule as well as Reg B – ***promptly****
- Update procedure if not routinely providing copies now

Risk Mitigation

- Consider whether to send copies only on 1st liens or to provide copies for all 1-4 family transactions regardless of lien
- Identify internal points of vulnerability
- Review appraisal or AMC vendor contracts

**** Use Reg B disclosure version to comply with both!***

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Points of Vulnerability



- **Commercial Lending:** Many commercial purpose dwelling-secured loans are not 1st liens. Implement a process to identify **when and when not** covered by new rule.
- Even if the commercial loan is denied, you must provide the notice to the commercial applicant! There is currently no provision that will allow us to NOT send the disclosure.
- Multiple valuations will create more compliance challenges.
- Do your contracts with third parties restrict your use and sharing of appraisals or valuations that hinder compliance?

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Points of Vulnerability



- **Consumer TRID Loans:** The Appraisal notice language is included in the TRID LE disclosure. But, what if you deny a transaction during the initial 3-day window prior to issuance of LE?
 - *You must STILL provide the Right to a Copy of Appraisal Notice to consumer applicants if denied in early window.*
- Changes in pricing during consumer application could transform the transaction into a HPML after initial application. Implement a process to comply with stricter HPML requirements.
- Multiple valuations will create more compliance challenges.
- Do your contracts with third parties restrict your use and sharing of appraisals or valuations that hinder compliance?

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Financial Solutions

Patti Joyner Blenden
www.finsolinc.com
blendenpg@gmail.com



Thank you for your time and participation!

