



CPAs & BUSINESS ADVISORS

COMMERCIAL LENDING AND COMPLIANCE

... IT DOES APPLY!

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AGENDA

- Equal Credit Opportunity Act/Regulation B Appraisals Rules
- ECOA/Fair Housing Act – Fair Lending Considerations
- CRA Importance of Documentation
- Fair Credit Reporting Act
- Bank Secrecy Act – Beneficial Ownership Rules/5th Pillar
- Regulation O
- Home Mortgage Disclosure Act
- Flood Disaster Protection Act



APPRAISAL REQUIREMENTS UNDER REGULATION B

ECOA – REGULATION B

Purpose

- Ensure borrowers have the ability to review a valuation of the property prior to getting a loan
- Clarifies lender requirements for providing appraisals and valuations to borrowers.

ECOA – REGULATION B

Applicability – 1002.14(a)(1)

- Closed-end and open-end loans to be secured by a first lien on a dwelling
- Consumer purpose
- Business purpose

ECOA – REGULATION B

Dwelling – 1002.14(c)

- 1-4 family residential structure
- Includes mobile or other manufactured homes even if not secured by real property

Valuation - 1002.14(b)(3)

- Any estimate of the value of a dwelling

ECOA – REGULATION B

Disclosure

- Provide applicants with notice of right to receive appraisal within three days of application
- Model Form C-9 in Appendix

➤➤➤ Right to Receive a Copy of Appraisals C-9

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.

ECOA – REGULATION B

Provide applicants a copy of appraisal or other written valuations developed in connection with an application for credit secured by a first lien on a dwelling.

- Promptly upon completion of the appraisal; or
- Three days prior to loan consummation for closed-end credit and account opening for open-end credit;
- Denials - Must provide promptly upon completion or if the borrower has waived the deadline within 30 days of denying application.

ECOA – REGULATION B

- Applicants may waive 3-day timing requirement and agree to receive a copy of appraisal at or before loan closing
- Waiver must be received 3 business days prior to closing

ECOA – REGULATION B

- Creditors cannot charge for providing copies of appraisals or valuations
- Creditors may pass on the cost of the appraisal
- Copies of appraisals may be provided electronically in accordance with E-Sign rules

Equal Credit Opportunity Act (ECOA) Valuations Rule - Small Entity Guide

https://files.consumerfinance.gov/f/documents/201401_cfpb_compliance-guide_ecoa_juftx4F.pdf

ECOA – REGULATION B

Adverse Action Notices

- \$1 Million or less in gross revenue – timing and content the same as consumer – but may be orally or in writing – within 30 days
- More than \$1 Million on gross revenue – orally or in writing within a reasonable time
 - Written statement of reason for AA and the ECOA notice if the applicant makes a written request with 60 days.



FAIR LENDING CONSIDERATIONS

FAIR LENDING HOT BUTTONS

- Applicant
- Guarantor (spousal guarantees)
 - Cannot require spousal signature or signature of another person if applicant qualifies for credit alone
 - May require a co-signer or guarantor may not require that it be the spouse.
- Demographics

FAIR LENDING LAWS

- HMDA – Data Collection
- CRA – Data Collection
- Equal Credit Opportunity Act – ECOA
 - Requires that a creditor does NOT discriminate on a prohibited basis in any aspect of the credit transaction.
- Fair Housing Act
 - Prohibits discrimination in any transaction related to housing, including the sale and rental of residential real estate

APPLICATION CONSIDERATIONS

- Receipt of public assistance
- Age (may consider if old enough to enter into a contract)
- Part-time, annuity, pension, and child support income
- Receipt of complaints – under consumer protection act cannot be considered

SPOUSAL INQUIRIES

May request information if:

- Spouse will be permitted to use the account
- Spouse will be contractually liable on the account
- Spouse income is relied on for repayment
- Applicant resides in a community property state
- Loan collateral is located in a community property state

Marital Status

- May not ask if application is for individual unsecured credit
- If other than individual, unsecured credit, may ask using “married, unmarried, and separated”

JOINT APPLICANTS

Intent to apply jointly must be evidenced in the file

- Joint financial statement alone are not evidence of intent to apply for joint credit
- Signatures on a promissory note is not evidence of intent to apply for joint credit
- Method to establish intent for joint credit must be distinct
- Creditors may require spousal signatures on documents necessary to make collateral available in the event of default.

Bank should have procedures to evidence intent to apply jointly and consistently apply among lenders and locations

GUARANTEES

- May require from partners, directors, or officers of a business or closely held corporation
- May require all officers of a closely held corporation to personally guarantee a corporate loan, but they may not require guarantees of spouses of married officers.



**COMMUNITY
REINVESTMENT ACT
(CRA) AND FAIR CREDIT
REPORTING ACT (FCRA)**

COMMUNITY REINVESTMENT ACT

- Adequate documentation –
Investment/Community Development/Lending Test
- Failure to report small business loans could
impact your CRA rating

FAIR CREDIT REPORTING ACT

- FCRA treats all consumer credit files pulled as consumer, regardless of the purpose of the loan.
- Permissible purpose for obtaining a consumer credit report.
- Requirements to provide the FCRA notice when a consumer's CR is used to take adverse action on an application.



**BANK SECRECY ACT —
BENEFICIAL OWNER
RULES/5TH PILLAR**

ELEMENTS OF CUSTOMER DUE DILIGENCE – 5TH PILLAR



Customer identification and verification (this is being met under the CIP rules).

Beneficial ownership identification and verification.

Understand the nature and purpose of customer relationships to develop a customer risk profile.

Ongoing monitoring for reporting suspicious transactions and, on a risk basis, maintaining and updating customer information.

CUSTOMER DUE DILIGENCE RULE

“Beginning May 11, 2018 a covered financial institution must identify and verify the identify of all legal entity customers at the time a new account is opened”

This is required at the time of a New Account and is change from the CIP requirements.



Definition of a Legal Entity Customer and Individual

A Corporation

A Limited Liability Company (LLC)

Other Entity created by filing a public document with the Secretary of State

A General Partnership

Any similar entity formed under the laws of a foreign jurisdiction

Definition of a Individual –
A Natural Person

LEGAL ENTITY CONSIDERATIONS

A person in a blue suit is using a tablet at a desk. There is a glass of water and a bar chart on the desk. The background is a blurred office setting.

Not required to conduct any legal analysis to determine whether or not a legal entity can be excluded from the beneficial owner rules! They are expected to (absent knowledge to the contrary) rely upon representations of these customers:

- Charities and Nonprofits – Excluded from the “Beneficial Owner” prong only.
- Unincorporated Associations, Sole Proprietorships and Trusts (unless statutory trusts filed with Secretary of State or similar office) are excluded (examples: Boy Scouts, Youth Sports Leagues).

Definition of “Beneficial Owner”

- Each individual who directly or indirectly owns 25% or more of the equity interests of a legal entity customer (ownership prong).
- An individual who has significant responsibility to control, manage or direct a legal entity customer (control prong).



KEY OBJECTIVES OF THE RULE

Identification of beneficial owners can be accomplished using the model Certification Form or any other means that collects the information on the form (The customer must certify to the information provided).

The bank can rely on the information provided by the customer provided that they have not knowledge of the facts that would reasonably call into question that information.

The bank then verifies the identity of the named individuals using standard CIP procedures.

OTHER CONSIDERATIONS

Beneficial Ownership Rule

- Exemptions for:
 - Automatically renewing certificates of deposit (CDs):
 - Customer's cannot add additional fund to the CDs
 - Specified Maturity Date
 - Cannot be withdrawn before maturity without incurring a penalty
 - Loan renewals:
 - Also includes Modifications and Extensions
 - May renew, extend, or otherwise modify the loan without substantively changing the terms or requiring additional underwriting.

BANK SECRECY ACT/OFAC

- Document the purpose of the proceeds – must be more than “business”
- Commercial Lending can be higher risk – know your customer
- Ensure that SAR and SAR investigation forms are completed and filed as needed
- Customer Due Diligence requires that you identify the beneficial owners of the business as well as determine the nature and purpose of the business, including expected transactions
- Check all parties against the OFAC list, including beneficial owners



**REGULATION O – LOANS
TO INSIDERS
HOME MORTGAGE
DISCLOSURE ACT
(HMDA)**

REGULATION O REMINDERS

- Bank must track and report the amounts loaned to each insider and monitor the activity.
- Should have procedures in place to limit the number of lenders that approve/deny insider activity
- All commercial lenders must be able to identify all insiders and their related interest and forward the request to the designated individual

HOME MORTGAGE DISCLOSURE ACT

Covered Transactions

- Consumer closed-end mortgage loan, open end lines of credit and home improvement loans secured by a lien on a dwelling
- Business-purpose, closed-end loans and open-end lines of credit that are dwelling-secured and are home purchase loans, home improvement loans, or refinancing
- Assumptions, even if no new debt obligation is created

HOME MORTGAGE DISCLOSURE ACT

Excluded Transactions

- Lien on unimproved land
- Temporary financing (temporary financing is if the loan or line of credit is designed to be replaced by permanent financing at a later time).
- Primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan, a home purchase loan, or a refinancing.
- Primarily for agricultural purposes
- Covered loan for which the total dollar amount is less than \$500
- Purchase of covered loan as part of a merger or acquisition

HOME MORTGAGE DISCLOSURE ACT

Ag and Commercial Transactions:

- Ag – Loans that are for any purpose (such as purchase, home improvement or refinancing) of a dwelling that is on land used primarily for agricultural purpose are excluded from HMDA reporting.
 - Acreage does not matter
 - May use a reasonable standard to determine the primary use of the property and may select the standard to apply on a case by case basis.
- Commercial Loans – Purpose Driven
 - Purchase, Home Improvement or Refinancing
 - Mixed Purpose – Look at the Primary Purpose



FLOOD DISASTER PROTECTION ACT

PURPOSE

- Provide Federally-subsidized flood insurance in communities participating in the NFIP
- Require local jurisdictions to enact land use and flood control measures
- Require flood insurance on property located in SFHA's
- Provide notice of the risk of flooding and the availability of subsidized flood insurance to owners of property located in a SFHA

The background image shows a flooded area with several large, leafy trees in the middle ground. The water is a murky, brownish-green color, and the sky is a clear, light blue. The trees are partially submerged, with their lower branches and leaves in the water.

The Flood Disaster Protection Act –
enacted to restrict building in flood-prone
areas thus cutting disaster losses.

A bank that has committed to **make, increase, renew, or extend** a loan secured or to be secured by improved real estate or a mobile home must determine whether the collateral is or will be located in a special flood hazard area.

Special Flood Hazard Area – is identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards. These areas are identified on flood maps as zones “A” or “V”.

Loans affected by the Act

Consumer

Agricultural

Commercial

Mobile homes



Improved real estate – land with a building on it (walled & roofed).
The definition includes but is not limited to:

Residential
structures

Commercial
structures

Garages

Barns

Silos

Grain
storage bins



Exception to the Act

Loan amount of \$5000 or less **and**

Repayment term of one year or less

- **On December 21, 2018 the President signed legislation passed by Congress that extends the National Flood Insurance Program (NFIPs) authorization to May 31, 2019. and then...**
- **Extended to November 21, 2019.**
- **NFIP Rate Change effective April 1, 2019:**
 - **Flood premiums will increase upon renewal an average of 8.2%, not including additional fees, beginning April 1, 2019. Preferred Risk policies will increase 5%.**



The link below is for the FEMA W-18021 memorandum that address the changes.

- <https://nfipservices.floodsmart.gov/sites/default/files/w-18021.pdf>

Private Flood Insurance Acceptance

On Friday, January 25, 2018 the financial regulatory agencies released the final rule governing the acceptance of private flood insurance.

Effective date: July 1, 2019

Below is link to the final rule:

<https://www.fdic.gov/news/news/press/2019/pr19006a.pdf>



Private Flood Insurance Compliance Aid

“This policy meets the definition of private flood insurance contained in 42 U.S.C 4012a(b)(7) and the corresponding regulation.”





Buildings Under Construction – must be covered.

Mobile Homes – must be covered regardless of whether the land it sits on is owned or rented or whether the land secures the loan.

Required Coverage Amounts

- The outstanding principal balance of the loan or loans
- The insurable value of the structure if less than the loan amount (appraisal less land value)
- The maximum amount of insurance available under the program:
 - \$250,000 for residential structures (\$100,000 for contents)
 - \$500,000 for commercial structures (\$500,000 for contents)
 - **Condominiums** – insurable up to \$250,000 for each unit in a building



QUESTIONS

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THANK YOU

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