

## Financial Institution Regulatory Environment: Overview of Financial Services Regulations

**Presented by:**

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## Agenda

- Overview of Principal Regulations (not all-inclusive!)
  - Lending (General)
    - Equal Credit Opportunity Act (ECOA - Reg. B)
    - Fair Credit Reporting Act (FCRA - Reg. V)
    - Truth In Lending Act (TILA - Reg. Z)
    - Loans to Insiders (Reg. O)
    - Military Lending Act
    - Servicemembers Civil Relief Act

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## Agenda

- Overview of Principal Regulations (not all-inclusive!)
  - Lending (Mortgage)
    - Truth In Lending Act (TILA - Reg. Z)
      - Ability to Repay and Qualified Mortgages (ATR/QM)
      - HOEPA and Higher Cost Mortgages
      - Truth in Lending/RESPA Integrated Disclosures (TRID)
      - Loan Originator Compensation (LO COMP)
      - Valuation Independence
      - Right to Rescind
    - Real Estate Settlement Protection Act (RESPA - Reg. X)
      - Unearned Fees
      - Escrow Management
      - Mortgage Servicing and Loss Mitigation
    - Home Mortgage Disclosure Act (HMDA - Reg. C)

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### Agenda (Cont.)

- Uniform Commercial Code (Articles 3 & 4)
  - Article 3 - Negotiable Instruments
  - Article 4 - Bank Deposits and Collections
- Deposit/Operations:
  - Electronic Funds Transfer Act (EFTA - Reg. E)
  - Expedited Funds Availability Act (EFA - Reg. CC)
  - Truth In Savings Act (TISA - Reg. DD)
  - Unfair, Deceptive, Abusive Acts and Practices
  - Bank Secrecy Act (BSA)
    - Lending and Deposits
  - Office of Foreign Asset Control (OFAC)
    - Lending and Deposits
  - Privacy (GLBA)

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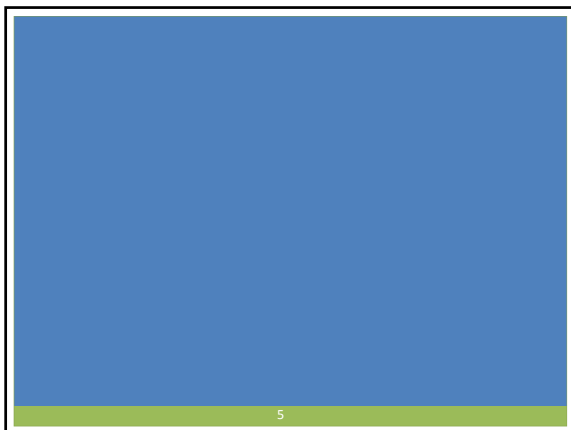
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### Equal Credit Opportunity Act ("ECOA") 15 U.S.C. 1691; Reg. "B" - 12 C.F.R. 1002

- Prohibits discrimination with respect to any aspect of a credit transaction based on sex, marital status, race, color, religion, national origin, age, receipt of public assistance benefits, or good faith exercise of rights under Consumer Credit Protection Act.
- Applies to business as well as consumer loans
- Applies to ALL phases of a transaction

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**Equal Credit Opportunity Act (“ECOA”)**  
15 U.S.C. 1691; Reg. “B” – 12 C.F.R. 1002

- Requires creditor to send adverse action notice with reasons for adverse action.
  - Adverse action defined in 12 C.F.R. 1002.2(c) and 15 U.S.C. 1691(d)(6).
  - Includes denial and granting credit on terms different from that requested
- Can be violated through disparate treatment or disparate impact
- Has been used as basis of reverse redlining and other claims based on granting credit to protected borrowers on less favorable terms than warranted.

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**Fair Credit Reporting Act –**  
15 U.S.C. 1681; Reg. V

- Governs collection, assembly and use of consumer report information
- Provides framework for credit reporting system in U.S.
- Enacted in 1970
  - Amended with Consumer Credit Reporting Reform Act (1996)
  - Fair and Accurate Credit Transactions Act (2003)

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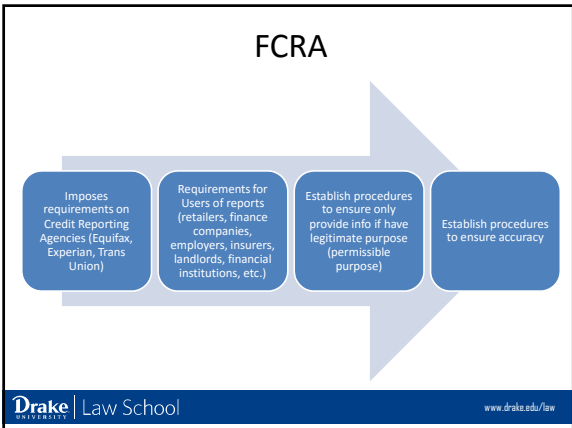
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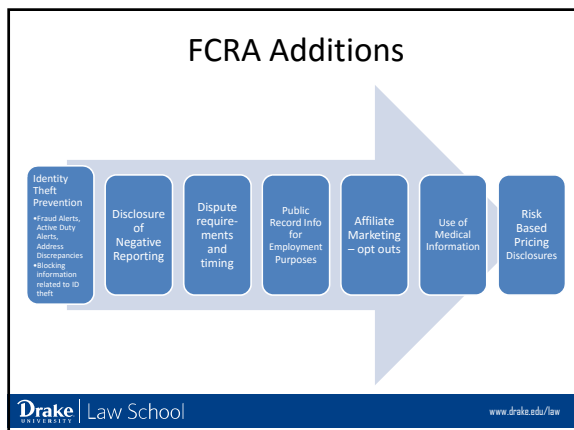
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### TILA Overview

15 U.S.C. 1601 - 1665b; Reg. (Z) – 12 C.F.R. 1026.1 -1026.60

- Adopted in 1968 as part of Consumer Credit Protection Act. Revised Extensively in 1980
- Primarily a disclosure statute, although some substantive provisions.
- Covers transactions for personal, family or household purposes, with security interest in real property, principal dwelling or over \$50,000, made by “creditor” who “regularly extends credit”
- Has separate rules for open and closed-end credit.
  - Includes rules on changes to credit card accounts and billing errors

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### TILA Overview

15 U.S.C. 1601 - 1665b; Reg. (Z) – 12 C.F.R. 1026.1 -1026.60

- Mandates disclosure of certain credit terms, including Amount Financed, Finance Charge and APR in a certain format, and before “consummation of the transaction.”
- Does not set a usury ceiling.
- Appendix to reg. has forms that provide some immunity from liability
- Private right of action
- Assignee liability for violations apparent on face of the disclosure statement.
  - Assignees always liable for rescission
  - Expanded Assignee liability under HOEPA

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### Loans to Insiders – Reg. O 12 U.S. C. 248(a), 375(a) and 375(b)

- Federal Reserve Board Regulation
- Governs any extension of credit made to executive officer, director or principal shareholder
  - Also covers bank holding company if bank is subsidiary, and any other subsidiary of that bank holding company
- Adds reporting requirements concerning extensions of credit to EO or principal shareholders (or related interest)

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### Reg. O – General Prohibitions

Credit must be made on substantially same terms (interest rate/collateral) and

Follow credit underwriting procedures not less stringent than for comparable transactions

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No more than normal risk of repayment/no unfavorable features (e.g. interest only)

Exception: can participate in benefit/compensation program available to employees

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### Reg. O Elements

Prior approval of loans is required if triggered by regulation

Sets Individual Lending Limit

Sets Aggregate Lending Limit
 

- Reduced requirements for member banks with deposits less than \$100 million

Places restrictions on payment of overdrafts
 

- \$1,000 or less provided account not overdrawn for > 3 business days and EO/Director is charged normal fee

Additional requirements for Executive Officers

State Law interaction

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### Military Lending Act/SCRA

- Provide protection to Military Personnel/Dependents in need of credit
  - MLA: Applies to new loans after Active Duty
    - Restrictions on fees, Disclosure requirements
    - Bank is responsible for identification
  - SCRA: Applies to loans originated prior to Active Duty status
    - Reduction in interest rates/fees
    - Protections from foreclosure/repossession
    - Borrower responsible for notification

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### MLA (as amended in 2015)

Consumer Credit

- Excludes Residential mortgage, purchase transactions, non-consumer purpose or greater than \$54,600 (Reg. Z)
- Excludes transaction where applicant is not covered borrower

Covered Borrower

- A regular or reserve member of the armed services serving on active duty under a call/order for a period of more than 30 days, or member serving on Active Guard and Reserve Duty
  - Includes dependents according to 10 USC 1072
- Safe Harbor: Database <https://mla.dmdc.osd.mil> or credit report

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### Coverage

Credit for Personal, Family, Household Use (Consumer Credit - Open and Closed End)

Not Subject to Exclusion Below:

- Residential Mortgage
- Purchase/secured by motor vehicle
- Purchase/secured by personal property
- Exempt from Reg. Z (over limit)
- Not Covered Borrower

MLA Applies

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### MLA Requirements

- MAPR Calculation and Disclosure
  - MAPR no greater than 36%

<b>Include:</b> <ul style="list-style-type: none"><li>Interest</li><li>Service Charges</li><li>Renewal Charges</li><li>All insurance</li><li>Participation Fees</li><li>Application Fees</li></ul>	<b>Exclude:</b> <ul style="list-style-type: none"><li>Late Payment Fees</li><li>Taxes/Fees Paid to Public Officials</li><li>Default Fees</li><li>Participation Fees – open-end credit (not credit cards) subject to a \$ limit</li></ul>
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- Calculated per Reg. Z
  - Closed-end: 1026.22(a)(1) and Appendix J
  - Open-end: 1026.14(c)-(d)

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### MLA Prohibitions

**Unlawful to:**

- Require covered borrower to waive right to legal recourse
- Require covered borrower to submit to arbitration or impose other onerous legal notice provisions
- Demand unreasonable notice as condition for legal action
- Require as a condition of the loan an allotment to repay
- Prohibit prepayment of loan and/or charge prepayment penalty
- Use a check or other method of access for repayment except
  - May require EFT to repay (unless prohibited by law)
  - Require direct deposit of salary as condition of eligibility
  - Take a security interest in funds deposited AFTER extension of credit

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### SCRA

- The Soldiers and Sailors Civil Relief Act of 1940
- Protect and safeguard the civil rights of military servicepersons who are away from their homes during a period of active duty.
  - amended in 1991 to add protections against discrimination when seeking protection under the Act
  - Amended December 2003 to clarify certain provisions and areas of protection.
  - re-titled 'The Servicemembers Civil Relief Act' in December 2003.
    - legal proceedings and certain types of transactions are temporarily suspended from enforcement against military servicemembers who have been called to military service.

Servicemembers are also offered certain protections in relation to rent, mortgages, liens, leases, life insurance, taxes, etc. This outline only covers those protections that could affect a financial institution's dealings with a servicemember.

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### SCRA

**Purpose:**

- To provide for, strengthen and expedite the national defense through protection extended by the Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the nation
- To provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of the servicemembers during their military service.

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### SCRA

The flowchart details the following provisions of the SCRA:

- Also applies to Servicemembers and dependents
- Different definition of dependent
- Applies to Existing Loans
  - Made PRIOR to active duty
  - Can apply to commercial loans as well
- Reduction in Interest Rate/Fees
  - Re-amortize payment back to date of service
  - Forgiveness of Interest
- Prohibition on legal action without court approval
- Notice requirements – reminder of protection

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### TILA – Special Rules for Mortgage loans

- Ability to Repay/Qualified Mortgage Rule
  - Dodd Frank added an ability to repay requirement
  - The Qualified Mortgage Rule (QM) sets forth certain presumptions about ability to repay.
    - If A QM and NOT a higher priced mortgage – QM is CONCLUSIVELY presumed to comply with the ATR requirement
    - If Higher priced (including a HOEPA loan) – rebuttable presumption that loan complies with the ATR requirement.

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### TILA – Special Rules for Mortgage loans

- Qualified Mortgage is:
1. Generally a QM has a DTI of 43% or less ([See appendix Q](#)); or
  2. GSE Eligible; or
  3. Small Creditor originated
- AND
1. No negative amortization
  2. No interest only loans
  3. No balloon
  4. Not longer than 30 years
  5. No “No doc” loans
  6. No points and fees over 3% except “bona fide discount points.”
    - Points and fees defined at 12 C.F.R. 1026.32(b)(3)
  7. Slightly different limits for loans under \$100,000.

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### TILA – Special Rules for Mortgage loans

- Two kinds of high cost mortgages with special rules.
- HOEPA mortgage. Two “triggers”
  - **Interest rate trigger:** Covers loans where the “APOR”<sup>\*</sup> exceeds the average prime offer rate for a comparable transaction by:
    - 6.5 percentage points higher for first liens
    - 8.5 percentage points higher for second liens
  - **Points and fees trigger:**
    - 5% for loans of \$20,000 or more
    - The lesser of 8% or \$1,000 for loans less than \$20,000
- HOEPA requires early disclosures and limits on certain terms; enhanced damages, rescission and assignee liability.

<sup>\*</sup>APOR = Average prime offer rate is based on Freddie Mac Weekly Survey Rate and [Spread between APOR and relevant loan can be calculated at www.ffiec.gov/ratespread](#)

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**TILA – Special Rules for Mortgage loans**

Higher Priced mortgage

- closed end transaction secured by the consumer’s principal dwelling where the APR exceeds the average prime offer rate (“APOR”) for a comparable transaction as of the date the interest rate is set by:
  - 1.5 percentage points higher for first liens with a principal obligation that **does not** exceed the maximum principal obligation eligible for purchase by Freddie Mac;
  - 2.5 percentage points higher for first liens with a principal obligation that **does** exceed the maximum principal obligation eligible for purchase by Freddie Mac;
  - 3.5 percentage points higher for loans secured by subordinate liens
- No points and fees trigger

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**TILA – Special Rules for Mortgage loans**

- Requires escrow for property taxes and insurance before loan closed for some but not all lenders
  - An escrow account does not have to be set up for creditors who:
    - make ~~more than 50% of their~~ loans on properties located in “rural” or “underserved” counties
    - originate fewer than 500 covered transactions in the year
    - have assets of under \$2 billion 12 C.F.R. 1026.35(b)(2)(iii)(A).
    - The CFPB list of these counties can be found [here](#)
- The escrow account can only be cancelled when the debt is paid off or, after five years from consummation, after a request from the consumer if the unpaid principal is less than 80% of the original value of the property and the consumer is not delinquent.

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**TILA – Special Rules for Mortgage loans**

- Before extending a higher-priced mortgage the lender has to obtain an appraisal.
  - Two appraisals required for properties flipped in the previous 90 days where price has jumped by more than 10%, or flipped between 91 and 180 days previous to the sale and the price has jumped by more than 20%.
  - The consumer can’t be charged for the second appraisal.
- The Higher-priced mortgage rules cannot be evaded by structuring a mortgage as an open-end credit extension. 12 C.F.R. 1026.35(d).

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### TILA – Integrated Disclosure Rule

- Know Before You Owe
  - Closed-end, consumer purpose, secured by real property
    - Also now includes cooperative units even if not real property under state law
    - Includes trusts for estate/tax planning purposes
  - Application (only six pieces of info)
    - Name, stated income, SSN, property address, estimate of property value, mortgage loan amount
    - Cannot require validation documents
    - Cannot collect fee other than for credit report


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### TRID – Loan Estimate



- Loan Estimate – 3 business days after application
- Estimate Expiration – 10 business days or Intent to Proceed
- Revisions allowed if “valid changed circumstance”
- Tolerances Apply:
  - Fees that cannot increase – paid to creditor/mortgage broker, affiliate, transfer taxes, no shopping capabilities
  - Fees that can increase 10% (aggregate) – where creditor allows customer to shop
  - Fees that can increase in any amount – services not required by creditor
- Shopping List – provide if permit consumer to select provider for required services


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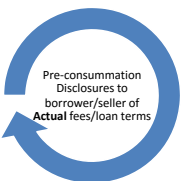
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### TRID – Closing Disclosure



- Received by consumer 3 business days prior to consummation
- Tolerances apply:
  - Fees that cannot increase – same as LE
  - Fees that can increase 10% (aggregate) – same as LE except only include fees where provider selected from list
  - Fees that can increase any amount – fees not required by creditor or fees where provider was not on list


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### TRID Liability?

- Rule unclear on what triggers creditor liability vs. technical violation
  - Consumer has ability to sue
  - Monetary reimbursement, rescission issues
- Ability to correct errors
  - Non-numerical clerical – 60 days after consummation
  - Tolerance (Good Faith) refund – 60 days after consummation
  - If amount actually paid by consumer is different– 30 days after consummation

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### Loan Originator Compensation

- General provisions:
  - Prohibits LO compensation based on loan terms
  - Permits certain contributions to retirement plans, bonuses, etc.
  - Prohibits LOs from receiving compensation from both the consumer and another person
- Coverage:
  - Closed-end, consumer credit secured by dwelling
    - All liens, 1-4 family units, condos, coops

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### LO Comp

Loan Originator:

- Taking application
- Arranging credit transaction
- Assisting consumer in applying for credit
- Offering/negotiating terms
- Making credit extension
- Broader than SAFE Act (MLO – takes app and offers credit)

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### LO Comp Restrictions

- Cannot be paid based on transaction terms (interest rate, fees, collateral type)
- Prohibited if paid, in whole or part, on mortgage-related business revenue
  - Other than Designated Tax-Advantage Plans
- Can be paid on loan amount, volume, quality of files, hourly rate, salary, predetermined fixed payment for every loan originated, % that close, etc.
- Limitation on Non-Deferred Profit-Based Payments:
  - 10% of LO's total compensation
    - Includes payments in cash, stock, based on fixed formula, etc.


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### Compensation Example

**Paid in calendar 2016:**


- \$10,000 bonus for 2015 activity
- \$80,000 in commissions for 2016 loans
- \$10,000 employer 2016 401(k) contribution
- \$10,000 bonus for 2016 activity to be paid in 2017

**2016 bonus limit**

\$80,000 commission  
+ \$10,000 401(k)  
+ \$10,000 2016  
= \$100,000

**Bonus paid in 2017 for 2016**

\$100,000  
    x 10%  
\$10,000 max bonus


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### LO Qualification Requirements

**Institution Duties:**

- Collect information on employees
- Determine employee is qualified & financially responsible
- Train employees

**Institutions must obtain:**

- Criminal background check
- Credit report
- NMLSR report of administrative, civil or criminal findings


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## Valuation Independence

- Valuation – estimate of value of consumer’s principal dwelling
- Prohibition on Coercion
  - Influence person preparing valuation (min/max value)
  - Withholding/threat of withholding payment
  - Implying future use depends on amount of value
  - Excluding person from future engagements if valuation does not meet predetermined threshold
  - Conditioning compensation based on consummation of transaction.

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## Valuation Independence




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## Valuation Independence - LO Interaction

- Prohibition on conflicts of interest
  - No direct or indirect interest, financial or otherwise in property
    - Loan officer cannot complete for own loan
- Prohibition on extending credit
  - If violation is known unless creditor documents with reasonable diligence that no material misstatement of value of principal dwelling

*Example: assume an appraiser notifies creditor before consummation that loan originator attempted to cause the value assigned to the consumer's principal dwelling to be based on a factor other than the appraiser's independent judgment, through coercion. If the creditor reasonably determines and documents that the appraisal does not materially misstate or misrepresent the value of the consumer's principal dwelling, the creditor may extend credit based on the appraisal.*

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### TILA – Special Rules for Mortgage loans

- Right to Rescind
  - Available only for non purchase money loans
  - Available until midnight of the third business day after the **last** of these:
    - 1) consummation of the loan
    - 2) delivery of the required rescission notice (1026.23(b) and appendix forms H-8 and H-9)
    - 3) delivery of the material disclosures
  - Cannot rescind more than 3 years after closing
  - Wipes out security interest on the home; leaves unsecured debt
  - Available against assignee to same extent available against originator

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### RESPA 1026.14 (12 U.S.C 2601) Unearned fees

- Prohibitions against kickbacks and unearned fees.
  - Cannot give or receive thing of value in exchange for a business referral on a federally related mortgage loan.
  - Can only earn \$ for services actually performed.

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### RESPA 1026.17 Escrow

- Escrow: account established/controlled by servicer to pay taxes, insurance, other charges for federally related mortgage loan.
  - Federally related mortgage loan: loan secured by lien on residential real property upon which a structure designed principally for occupancy of 1-4 families will be located/constructed

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### RESPA - Escrow

**Sets limits for escrow accounts**

- Lowest balance is no more than 1/6 of estimated annual payments (cushion)

**Sets specific disclosure requirements**

**Requires servicer to make timely payments (some exceptions apply)**

**Requirements to send initial (at account creation) and annual escrow analysis statement**

- Short-year statement for payoffs or resets

**Requires refund of surplus and allows collection of shortage/deficiency**

**Requirement to establish escrow for new loans**

- Small Service Exemption

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### RESPA 1026, Subpart C Mortgage Servicing

- Extensive rules for delinquent loans – effective 1/10/2014 and significantly amended in August 2016.
- Specific early intervention after delinquency required
- Dictates procedures for processing loss mitigation applications
- Has several foreclosure prohibitions, including for first 120 days after delinquency
- New rules on transfer of servicing
- New rules on dealing with successors in interest
- Rules on error resolution, requests for information and request for payoffs

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### RESPA – Mortgage Servicing

- Small servicers are exempt from some of the mortgage servicing rules. A small servicer is:
- A servicer that, together with affiliates, services 5,000 or fewer mortgage loans and is the creditor or assignee for all of them.
- A servicer that is a housing finance agency as defined in 24 C.F.R. 266.5; or
- A nonprofit entity that services 5,000 or fewer mortgage loans for which the servicer or an associated nonprofit entity is a creditor.
- [Helpful CFPB guide linked here.](#)

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## HMDA – 12 U.S.C. 2801 et seq. Reg. C (1003)

- Purpose: enacted in 1975
  - Provide public loan data to assist:
    - In determining if FIs serve housing needs of communities
    - Public officials in distributing public-sector investments to attract private investments where needed
    - Identify possible discriminatory lending patterns

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## HMDA – Who Reports

Asset size as of 12/31 prior year of \$44 million+

Have home or branch office in Metropolitan Statistical Area (MSA)

Originate at least one home purchase loan in prior year

2017 – Originate 25 or more home purchase/refi in each of two preceding years

2018 – Originate 25 or more closed-end mortgage loans and/or 500 or more open-end lines of credit in each of two preceding years

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## HMDA – What to Report

### What to report:

- 2017 – originations, purchases, applications not resulting in origination (denial/withdrawn) in current calendar year
  - Must meet purpose test – purchase, refinance, home improvement
  - Secured by dwelling
- 2018 – originations, purchases, applications in current calendar year
  - Consumer purpose – funds used for any purpose
  - Commercial purpose – purchase, refi, home improvement
  - Ag purpose or Ag secured – exempted
  - Still must be secured by dwelling
  - Numerous data points added/revised

### When to report:

- March 1<sup>st</sup> following year
- Use CFPB Software
- Large reporters must report quarterly (delayed to 2020)

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### HMDA Penalties for Non-Compliance

**Resubmission of LAR**

- 3 or 4 errors in same data point (varies on volume)

**Civil Money Penalties/Enforcement Actions**

- Depends on:
  - Size of financial resources/good faith of person charged
  - Gravity of violation/failure to pay
  - Severity of risks to or losses of consumers
  - History of previous violations
  - Other matters as justice may require

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### UCC Articles 3 & 4

- Provides guidelines for check handling
- Promotes uniformity in check handling
- Sets out rules for when a check is properly payable out of a deposit account
- Allows for chargeback on returned checks
- In Iowa, found in Iowa Code Chapter 554

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### UCC Articles 3 & 4

- Intersection with Other Regulations:
  - Federal Reserve Board Reg. J – governs collection of items through Federal Reserve System (operating circulars)
  - Reg. CC governs check collection and availability of funds to depositor’s accounts
    - Amended July 1, 2018 to cover electronic check presentment and return
  - Check 21 – facilitates use of check images by allowing reprinting of “substitute checks” where necessary

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### UCC - Liability

- Outlines governing provisions describing liability of depository and accountholder
  - Variation by agreement is acceptable with limitations
- Major Duties/Standards:
  - Good Faith – honesty in fact and observance of reasonable commercial standards of fair dealing
  - Ordinary Care – Observance of reasonable commercial standards prevailing in area entity is located and type of business

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### Deposit/Operations Law

- EFTA – Reg. E (15 U.S.C. 1693 et seq) (1005)
  - Consumer regulation:
    - Protects consumers from unauthorized transfers
      - Error Resolution Process
    - Disclosure requirements on liability limitations
    - Remittance Transfers
    - Overdraft Protection – Opt-in for ATM and one-time debit card transactions
    - Covers electronic items – not paper
  - Business accounts governed by UCC Article 4A

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### Liability for Reg. E Errors

**Civil Penalties for non-compliance:**

- Actual damages sustained by the consumer
- Individual action: Restitution to consumer not less than \$100 or greater than \$1,000
- Class action suit: Fine up to 1% of bank's net worth or \$500,000, whichever is less
- Court costs and attorney fees

**Criminal Penalties:**

- individual liability includes a fine of up to \$5,000 and/or one year imprisonment.

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### Expedited Funds Availability Act (Reg. CC) 12 U.S.C. 4001-4004 and 12 U.S.C. 5001-5018

Consumer and Commercial Law

Applies only to transaction accounts

**Funds Availability Requirements**

- Maximum delay timeframes
- Based on method of deposit, in-person, exceptions apply

**Check Processing Rules**

- Effective July 1, 2018 includes electronic items
- Substitute Check requirements
- Warranties and indemnities

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### Truth In Savings Act (Reg. DD) 12 U.S.C. 3201 et seq

- Consumer Regulation
- Disclosure law
  - Advertising, new accounts, monthly statements, change in terms, bonuses
  - Requires consistent terminology
- Huge UDAP (FTC: Unfair and Deceptive Acts and Practices) and UDAAP Risk (CFPB: Added Abusive)

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### Reg. DD Trigger Rules - Advertising

**If Annual Percentage Yield is listed**

- If rate can change after opening (variable rate)
- Time APY is offered (or as of date)
- Minimum balance required to obtain APY
- If tiered, minimum balance for each tier
- Minimum opening deposit (if greater than minimum balance to obtain APY)
- Effect of fees (may reduce earnings)
- Features of Time Accounts (term, early withdrawal penalties)

**Modified rules for certain media**

- Television
- Radio
- Billboards
- Indoor signs

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### Reg. DD Advertising - Bonus

If advertise Bonus:

- Annual Percentage Yield
- Time required to obtain bonus
- Minimum balance to obtain bonus
- Minimum balance to open account (if greater than minimum balance to obtain bonus)
- When bonus will be provided

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### UDAAP Definitions - CFPB

**Unfair**

- Likely to cause or causes substantial injury to consumer
- Not reasonably avoidable
- Injury not outweighed by countervailing benefits

**Deceptive**

- Misleads or is likely to mislead customer
- Customer's interpretation is reasonable
- Misleading act/practice is material

**Abusive**

- Materially interferes with ability to understand product/service
- Takes unreasonable advantage of lack of understanding material risks/costs/conditions, inability to protect self, and reliance on person to act in own best interest

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## UDAAP/UDAP

Financial Institutions Exempt from Iowa Private Right of Action UDAP. (Iowa Code 714H)

- Financial institution definition “includes any bank incorporated under the provisions of any state or federal law, any savings and loan association or savings bank incorporated under the provisions of any state or federal law, and any credit union organized under the provisions of any state or federal law, and any affiliate or subsidiary of a bank, savings and loan association, savings bank, or credit union.” Iowa Code 714H.4(1)(a)(3).

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## UDAAP/UDAP

Guidelines:

- Have a formal process to monitor/respond to complaints
- Monitor charge backs or refunds
- Review complaints across product lines
- Don't advertise product that is not generally available
- Best Practices
  - *Factually based*
  - *Clearly, Prominently, Accurately*
    - *Costs/benefits/material terms*
    - *Related products/services – both optional and required*
    - *Material limitations or conditions*
  - *Key Terms*
  - *Fees, Penalties, Other Charges*
  - *Contract provisions for changes*
  - *Avoid terms not generally available*

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## Bank Secrecy Act

**Bank Secrecy Act, Title I and II, Public Law 91-508, 31 CFR 103**

Enacted October 1970; Amended:

- Money Laundering Control Act of 1986
- Annunzio-Wiley Money Laundering Act of 1992
- Money Laundering Suppression Act of 1994
- Technical amendments to exemption procedures in 1996 and 1998
- USA PATRIOT Act of 2001

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### BSA

#### Data Collection:

- CTR – Cash transactions > \$10,000**
  - Report within 15 calendar days
  - Exemptions Available
- MIL – Cash transactions to purchase monetary instrument => \$3,000**

#### Record Keeping:

- Transactions, signature cards, customer identification (CIP), extensions of credit, wire transfers, monetary instrument sales, CTR exempt persons, MSB activity, foreign accounts (foreign correspondents and PEPs), private banking due diligence

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### BSA

#### Information Sharing:

- Section 314(a) – with law enforcement (FinCEN requests)
- Section 314(b) – with other financial institutions (if registered)  
Money Laundering/Terrorist Financing
- Section 319(b) – expedited delivery of records (within five calendar days)

#### Customer Identification

- CIP – enacted after 9/11**
  - Facilitate prevention, detection and prosecution of money laundering and terrorist financing
  - Form reasonable belief as to true identity of customer
  - Collect name, address, DOB, identification number
  - Validation: documentary or non-documentary
- Beneficial Owners (new May 2018)**
  - Identify owners and control person of legal entity customers
  - 25% ownership, 1 person with control

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### BSA

#### Fraud Detection/Prevention

##### Anti-Money Laundering (AML) Program

- Appropriate training so that all employees understand methods of money laundering (placement, layering, integration)
- Customer due diligence
- Enhanced due diligence for foreign correspondent, private banking accounts, non-resident alien, high cash, HICTA, HIDTA, PEPs
- Other concerns: Elder financial exploitation, human trafficking, Marijuana businesses, insider abuse, cyber threats

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### BSA

#### Suspicious Activity Report

Transactions with no lawful purpose

- Attempted or completed
- Thresholds: \$5,000 with suspect; \$25,000 with no suspect, insider in any amount
- 30 calendar days to file with FinCEN (Financial Crimes Enforcement Network)

#### Identity Theft Prevention Program

Required annually  
Modified based on internal and external risks

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### BSA Compliance Program

- Written policy (BSA, AML, CIP), approved by Board
- Four Pillars (soon to be five)
  - Internal controls to assure ongoing compliance
  - Independent testing
  - Appropriate training
  - Appointment of individual(s) responsible for day-to-day monitoring
  - **NEW: Ongoing monitoring**

Required by law to develop risk-based procedures for conducting ongoing customer due diligence for understanding nature and purpose of customer relationship to develop risk profile and conduct ongoing monitoring

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### Penalties for Non-Compliance

- **Civil penalties** (may be assessed against the institution **and** the director, officer or employee):
  - Willful violation of recordkeeping provisions - \$1,000 per violation
  - Willful violation for failure to file report of currency shipment – up to amount of shipment
  - Willful violation for failure to file CTR – up to amount of the transaction
  - Other willful violations – up to \$100,000 per violation
- **Criminal penalties** (assessed to the person upon conviction):
  - Fines of from \$1,000 to \$500,000 depending on violation; imprisonment of from one to 10 years.

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### OFAC

- Office of Foreign Asset Control
  - Administered by US Department of Treasury
  - Economic and trade sanctions based on US foreign policy and national security goals
    - Against foreign countries and regimes, terrorists, international narcotic traffickers, those engaged in activities related to proliferation of weapons of mass destruction, other threats to national security, foreign policy or economy of US

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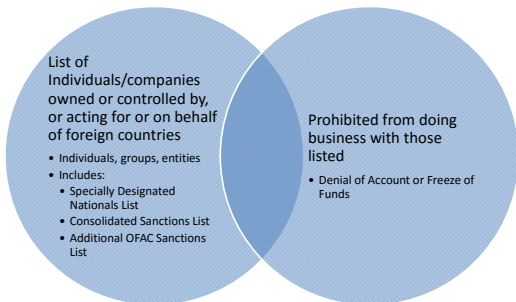
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### OFAC Sanctions List



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### OFAC Penalties

- Civil Penalties – set by program
  - Range from \$65,000 to \$1,075,000 for each violation
  - Majority of fines due to failure to block illicit transfers when reference to targeted country or SDN
- Criminal Penalties – if not inadvertent
- Regulatory violations
- Adverse Publicity

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### Privacy – Pubic Law 106-112, Stat. 1338

- Gramm-Leach-Bliley Act – requires FIs that offer consumers financial products/services to explain information-sharing practices and safeguard sensitive data
  - Disclosures to Consumers
    - Initial/annual privacy notices
    - Opt-out opportunities
  - Information Security Standards

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### Right to Financial Privacy – 12 U.S.C. ch. 35, 3401 et seq.




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### Other Regulations/Requirements

- Community Reinvestment Act (12 U.S.C. 2901 et seq.)
- Flood Disaster Protection Act (42 U.S.C. 4001 et seq.)
- UETA – E-Sign Act (15 U.S.C. Ch. 96)
- Reg. D – Reserve Requirements of Depository Institutions (12 U.S.C. 461 et seq.)
  - Limitation on pre-authorized transfers
- Safety/Soundness requirements
  - CAMELS Rating – Capital, Asset, Management, Earnings, Liquidity, Sensitivity
- Unlawful Internet Gambling Act (UIGEA – Title VIII of Security and Accountability For Every Port Act of 2006 -Reg. GG)
- Etc., Etc., Etc. . . . .




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Questions?



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