



2022 IMA Mortgage Compliance Update

Presented by
Ronette Schlatter, CRCM

Oct. 18, 2022

1



- Limited housing inventory
- Rising construction costs resulting in fewer new builds
- Delays in closings due to supply chain issues & provider availability
- Increasing interest rates environment (eliminating refi market)
- Media focus on inflation / recession
- Intense regulatory scrutiny

Oct. 18, 2022

2



Compliance Considerations in these Challenging Times

- Generating leads
 - Advertising
 - RESPA Section 8
- TRID disclosures
 - Rate Extensions
 - Rate Buy downs
 - No or low cost loans
 - Lender credits
- ARM loan reminders
 - Disclosure timing
 - ATR-QM considerations
- Fair lending considerations
 - Appraisal Bias
 - Reconsideration of Value requests
 - Redlining

Oct. 18, 2022

3



Regulation Z Advertising Rules

- Ads must reflect terms actually available
- Required disclosures must be “clear & conspicuous” if triggered in ad
 - With equal prominence and in close proximity to the advertised rates/payments triggering the disclosures
- Reg. Z Advertising rules apply to:
 - Print ads
 - Radio ads
 - Internet ads
 - Branch posters/banners
 - Open house flyers
 - Social media ads and posts
 - Podcasts & Blogs
 - Any message that promotes a credit transaction!

Oct. 18, 2022

4



Regulation Z Advertising Rules

Terms that trigger additional disclosures:

- Number of payments or repayment period
- Amount of any payment
- Amount of any finance charge
- For credit sale transactions only, amount or % of down payment

For example:

- “30-year rates as low as 4.95% APR”
- “Why pay rent when you can own your own home for less than \$1,000/month with a Iowa Bank home loan?”
- “\$1,000 closing cost special on mortgage loans”

Required disclosures:

- Amount or percentage of down payment
- Terms of repayment over term of loan (# of payments, frequency & amount, including balloon)
- Annual Percentage Rate, using that term and fact rate will increase, if applicable

Oct. 18, 2022

5



Regulation Z Advertising Rules

- Additional disclosures required if ad states:
 - A simple interest rate and more than one rate will apply over the loan term, then disclose:
 - Each rate that will apply (apply index + margin if applicable)
 - Period each rate will apply
 - APR
 - A payment amount
 - Each payment that will apply, including balloon payment
 - Period each payment will apply
 - Payment do not include taxes & insurance

With EQUAL prominence & in CLOSE proximity

Oct. 18, 2022

6





Regulation Z Advertising Rules

- Reg. Z also prohibits
 - Misleading use of term “fixed” rates and payments
 - E.g., disclosing ARM loan as “3.25% fixed rates for 60 months”
 - Correct: “ARM loan features fixed rate of 3.25% for 60 months, then adjusts annually after”
 - Misleading comparisons
 - E.g., “save \$300 per month on a \$300,000 loan”
 - Misrepresentation about government endorsement
 - Unless loan is VA, FHA or RD loan
 - Misleading use of term “counselor”
 - Misleading claims of debit elimination
 - E.g., “Refinance today and wipe your debt away!”



Regulation Z Advertising Rules

- Record Retention: Two years
 - Applicable to all “advertisements”
 - **Social media posts** (on bank or personal MLO pages if promoting credit products)
 - Take caution when responding to post comments!
 - Podcasts – Blog posts
 - Open house flyers
 - Letters sent to prospective borrowers
 - Joint advertisements w/ realtors





RESPA Section 8

- Prohibited Payments / Referral Fees
 - No person may give and **no person may accept** any fee, kickback **or other thing value** per an agreement or understanding, oral or otherwise, for a referral for a settlement service related to a federally related mortgage loan
 - A company may not pay any other company or the employees of any other company for the referral of settlement service business



RESPA Section 8

No **Person** may give...

- Bank
- Individual MLOs/Mortgage brokers
- Realtors
- Title service providers/Attorneys
- Appraisers
- Other settlement service providers

No **Person** may accept...

- Bank
- Individual MLOs/Mortgage brokers
- **Current/previous customers**
(refer a friend promotions)
- Any settlement service provider (including but not limited to those shown to left)

RESPA Section 8

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Things of value includes...</p> <ul style="list-style-type: none"> • Cash payments • Waived or reduced fees • Chances to win items • Trips or Event tickets • Free or reduced lease/rent rates • Free or reduced ads | <p>For a referral...</p> <ul style="list-style-type: none"> • Oral or written action • Affirmatively influencing selection of provider • When consumer will pay charge for settlement service |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|



NO deminis amount!

Oct. 18, 2022

11



RESPA Section 8

- Rule does NOT prohibit payments:
 - For normal promotional and educational activities that are not conditioned on the referral of business **and that do not involve the defraying of expenses otherwise incurred** by persons in a position to refer settlement services
 -  Luncheon to educate all interested local realtors on new first time home buyer program
 -  Sponsorship of (paying for) regular monthly realtor luncheons
 - By an employer to its own employees for any referral activities

Oct. 18, 2022

12





TRID Disclosure Challenges

Rate Lock Extensions

- No new disclosure required **by TRID** if:
 - Honoring rate beyond LE rate lock expiration date,
 - New written rate lock agreement w\ borrower is NOT executed, AND
 - Bank is NOT charging a fee for extension
 - **Check investor rules**



TRID Disclosure Challenges

Rate Lock Extensions

- New disclosure required if:
 - Entering into new written rate lock agreement w/ borrower (same or different rate)
 - Or charging a rate lock extension fee
 - Relocking rate impacts HPML and QM Priced-based determination as both are based on “last rate set date”
- Re-disclosure format
 - Use Loan Estimate if rate is relocked BEFORE Closing Disclosure is issued
 - May use Closing Disclosure if rate is locked after CD is issued or on the same day CD is to be issued

Oct. 18, 2022

15  IOWA BANKERS
ASSOCIATION

TRID Disclosure Challenges

Interest Rate Buy Downs

- The points paid by borrower to the creditor to reduce the interest rate must be itemized separately, **as both a percentage of the loan amount and a dollar amount**
- Using the label “__% of Loan Amount (Points).”
- Must be included in APR calculation
 - Could impact HPML & ATR Price-based QM status
- Fair Lending impacts
 - Establish & follow pricing procedures to establish discount pricing
 - Document procedures were followed

Oct. 18, 2022

16  IOWA BANKERS
ASSOCIATION



TRID Disclosure Challenges

- Lender Credits or Absorbing fees
 - If creditor incurs a cost but does not charge borrower, creditor has “absorbed” the fee & has disclosure options:



- Option 1:
 - Absorbed fees are not disclosed on the Loan Estimate
 - All costs incurred MUST be disclosed on the Closing Disclosure
 - Absorbed costs incurred in connection with the transaction must be disclosed on the Closing Disclosure in the “Paid by Others” column in the Loan Costs or Other Costs table
- Option 2:
 - Disclose all costs as normal on Loan Estimate with offsetting Lender Credit on both Loan Estimate & Closing Disclosure
 - Caution: Lender Credits generally cannot be reduced from LE to CD



TRID Disclosure Challenges

- No Cost / Low Cost Loan Promotions

If lender is...	Service/Cost is disclosed on LE:	And on the CD:
Absorbing fee	Not detailed	In Paid by Others column
Offsetting specific settlement service (providing specific Lender Credit)	As normal w/ offsetting Lender Credit (negative amount) in Cash to close table	Disclose costs covered by the specific Lender Credit on the appropriate line, in the “Paid by Others” column
Offsetting specific dollar amount but not specific service (providing general Lender Credit)	Disclose service & cost as normal w/ offsetting Lender Credit (negative amount) in Cash to close table	Disclose costs covered by general Lender Credit on appropriate line in the “Paid by Borrower” column with offsetting aggregate credit (negative number) to cover all Lender paid fees on Lender Credit line in Section J



ARM Loan Reminders

- Added disclosure requirements
 - CHARM booklet
 - Provides general info about ARMs
 - Program disclosure for each program applicant expresses interest
 - Provides specific information about product
 - Index, margin, rate change caps, etc.
 - Be careful in “negotiating” terms of ARM loan because you could create a separate product – which requires **ALL** new disclosures
 - AIR table on LE and CD
 - Product specific based on current rates

Provide AT the time the application is provided or w/in 3 days if application is take over phone or by mail



ARM Loan Reminders

- Impact on Determining QM Status
 - If rate may change during first 5 years of loan term, measured from 1st payment date:
 - When CALCULATING APR for purpose of determining rate spread between applicable APOR and loan’s APR
 - Use highest rate possible in first 5 years as rate applicable for ENTIRE LOAN TERM
 - Do not use composite/blended rate
 - This APR used for QM determination ONLY!
 - Not disclosed to consumer!





Trending Fair Lending Issues

- Redlining
 - Recent enforcement actions based on HMDA data & comparison of peer performance in market area
 - Trident Mortgage Company – July 2022
 - By volume, largest mortgage lender in Philadelphia majority minority neighborhood
 - However, number of applications from and loans made to minorities significantly under that of peers
 - Found to have redlined by:
 - Not sending its MLOs to work in minority neighborhoods
 - Developing marketing campaigns that avoided discouraged and ignored minority applicants
 - Distributing racist staff messages/emails
 - More than \$22M in CMP, loan subsidy program and advertising



Trending Fair Lending Issues

- Appraisal Bias
 - Increase in law suits & allegations of racial discrimination related to appraisals
 - Dec. 2021 CA case – 2nd appraised value nearly \$500,000 higher than initial value after removal of all indicators of Black owners
 - Industry response:
 - Property Appraisal & Valuation Equity (PAVE) Interagency Task Force – formed in 2021
 - Charged w/ examining role of racial bias in appraisals
 - FHFA bog, [Reducing Valuation Bias by Addressing Appraiser & Property Valuation Commentary](#) – Dec. 2021
 - Provided examples of racial & ethnic references in appraisals
 - CFPB rulemaking initiated in Feb. 2022 related to quality control standards for AVM – proposal expected Dec. 2022



Trending Fair Lending Issues

- Requests for Reconsideration of Value (ROV)
 - By borrower or by loan staff
- ROV could be:
 - Request to correct deficiencies
 - Method to provide missing or originally ignored information to the appraiser
 - Method to ask appraiser to consider new info unavailable during the original appraisal
 - A completely new appraisal assignment
 - All of the above



Trending Fair Lending Issues

ROV USPAP guidance: Missing or New Information or Appraisal Deficiencies

- If there are **deficiencies** or critical **information missing** from the appraisal, **the client** has every right, if not an obligation, to request the appraisal be corrected. It's possible that once the correct or missing information is added to the appraisal, the value will change. If that is the case the appraiser should correct and reissue a new appraisal.
- If **the client** would like the appraiser to consider **new information**, information **unavailable at the time of the original appraisal**, then the appraiser has received a request for a **new appraisal assignment**. The request for a new analysis of the appraisal problem is a request for a new appraisal despite what terms or phrases the client uses. This is an update of a prior assignment.

Oct. 18, 2022

25  IOWA BANKERS
ASSOCIATION

Trending Fair Lending Issues

HUD Guidance re: ROVs

- Underwriter or lender may request ROV when **new** data exists (e.g., comparable sales, contract sales, etc.) that appraiser did not use **but was available** as of effective date of appraisal
- Underwriter or lender may select comparable and request reappraisal. Request must be in writing and maintained by appraiser.
- It is appraiser's responsibility to decide whether to use new comparables and perform reappraisal.



Oct. 18, 2022

26  IOWA BANKERS
ASSOCIATION

Trending Fair Lending Issues

- Best practices to reduce appraisal bias risk
 - Recognize appraisal bias is a real possibility
 - Develop robust appraisal review process
 - Validate calculations for accuracy
 - Consider reasonableness of adjustments
 - Review comments for racial/ethnic bias references
 - If you don't have trained staff, outsource the review
 - Develop procedures for handling ROV requests
 - Requests / complaints from borrowers cannot be ignored
 - Handle requests in consistent manner
 - Incorporate clear communication processes w/ borrower
- Include appraisal bias in fair lending training & testing

Oct. 18, 2022

27  IOWA BANKERS
ASSOCIATION



 IOWA BANKERS
ASSOCIATION