Subject: Affiliates’ Guide to Mortgage Rules and Regulations

Date: December 2013

The purpose of this legal advisory is to provide Habitat affiliates ("Affiliates") a summary of relevant federal laws and regulations that affect Affiliates’ mortgage lending. The new mortgage lending rules effective in January 2014 fundamentally impact portions of Affiliates’ mortgage lending practices, including many aspects of servicing, the ability-to-repay analysis, appraisal requirements and required background checks on family selection and origination staff (both paid and unpaid). Affiliates’ failure to comply with the relevant new and existing rules and regulations can lead to harsh fines, restrict Affiliates’ ability to leverage their mortgages, and negatively impact their relationships with donors and subsidy providers.

This legal advisory includes: (i) a discussion of recently-enacted federal regulations; (ii) templates; (iii) links to training materials; and (iv) links to government websites to assist Affiliates in complying with the relevant federal mortgage lending rules and regulations. Affiliates are also encouraged to review the resources provided by HFHI’s Mortgage Procedures and Regulations (MPAR) initiative in the MPAR University collection in My.Habitat. See http://my.habitat.org/kc/home/mpar. MPAR University provides access to on-line training courses, other training resources, MPAR FAQs, templates, and detailed guidance on the federal laws.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") created the Consumer Financial Protection Bureau ("CFPB") to protect American consumers from unfair, deceptive and discriminatory practices when purchasing financial services and products. In particular, the CFPB has the authority to monitor and enforce compliance with federal mortgage lending laws and regulations. Increased government regulation of the mortgage industry and harsh penalties for non-compliance make it imperative that Affiliates understand and comply with the laws outlined below. Affiliates are also encouraged to contact a local attorney who can provide guidance on state-specific laws related to mortgage origination and servicing.

FAIR HOUSING ACT ("FHA")

The FHA makes discrimination practices in residential real estate financing illegal. 24 C.F.R. § 100.5(a). Specifically, the FHA makes it unlawful for any person or entity to discriminate against any person because of (1) race, (2) color, (3) religion, (4) sex, (5) handicap (physical or mental disability), (6) familial status (i.e., minors in the household), or (7) national origin during any phase of a residential real estate financing transaction, including (1) advertising, (2) inquiry (pre-qualification), (3) application, (4) credit decision/origination, (5) housing design/construction, (6) credit servicing, and (7) credit
delinquency enforcement. The FHA is broad-reaching and applies to residential real estate lenders (including Affiliates), appraisers, landlords, real estate agents, and servicers (including Affiliates). Thus, under the FHA, Affiliates must treat similarly qualified credit applicants and borrowers/homeowners fairly in all phases of the residential real estate loan transaction.

The FHA does allow Affiliates to set qualification criteria for a lending/homeownership program. Affiliates, therefore, can follow the HFHI program guidelines, such as (1) need for housing (must be low income and in substandard housing); (2) ability to pay (must have sufficient stable income to own a home and make mortgage payments); and (3) willingness to Partner (must be able to do sweat equity with accommodations if necessary, attend classes, etc.). However, the FHA makes it illegal to set policies and procedures that discriminate based on one of the seven prohibited bases listed above. There are three types of illegal discrimination under the FHA:

- **Overt Discrimination**: Blatant discrimination linked to a prohibited basis. For example, a policy that does not make loans to unmarried women would constitute illegal overt discrimination.
- **Disparate Treatment**: Different treatment of similarly situated individuals, for lack of evidence to the contrary, can be attributed only to a prohibited basis. For example, an Affiliate would be engaging in illegal discrimination through disparate treatment if it charged similarly situated applicants different fees based on a prohibited basis or inconsistently applied policies related to obtaining credit reports.
- **Disparate Impact**: Occurs when a policy or practice, although applied consistently, has the effect of discriminating on a prohibited basis and is not justified by business necessity. For example, only selling to and financing homes for families that include 2 parents and at least one child and not creating policies and practices that allow for a “family” that may include a one person household or several unrelated people may constitute disparate impact. Affiliates and their employees need to be aware of and avoid the three types of illegal discrimination during all phases of a residential real-estate transaction, from advertising to loan servicing.¹

¹ The Home Mortgage Disclosure Act (“HMDA”) is another fair lending law. However, Affiliates do not need to comply with HMDA or Regulation C (which implements HMDA) because non-profit lenders are specifically excluded from HMDA. 12 U.S.C. §§ 1003.1(c), 1003.2. For reference, HMDA is a data collection and disclosure law that requires applicable financial institutions to maintain and annually report loan data related to home purchases, home purchase pre-approvals, home improvements, and refinance applications involving 1 to 4 unit and multifamily dwellings.
Both the U.S. Department of Housing and Urban Development and the CFPB enforce the FHA. Violations can lead to large fines against Affiliates.

Lastly, Affiliates should be aware that the FHA requires all Affiliates to post the “Equal Housing Lender Poster” in its front office. The Equal Housing Lender Poster states that the institution complies with the FHA and similar fair lending laws, describes the prohibited bases for which it is illegal to discriminate, and provides contact information to file an FHA complaint. An example of the Equal Housing Lender Poster can be found at http://www.hud.gov/offices/fheo/promotingfh/928-1.pdf. Affiliates must also include the equal housing opportunity logo on all applications and advertisements as a means of educating the public that the real estate financing and/or property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or natural origin. The equal housing opportunity logo (which size varies with application or advertisement size) can be found at http://portal.hud.gov/hudportal/HUD?src=/library/bookshelf11/hudgraphics/fheologo.

For more information on the FHA, see the American Bankers Association trainings on the FHA and Fair Lending Laws located in the following sub-collection on My.Habitat http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application~Process. For more information on how the FHA specifically applies to applicants and homeowners with disabilities, Affiliates should review the January 2013 Legal Advisory on “Fair Housing Act Protections For People with Disabilities” located at http://my.habitat.org/kc/download-detail/3e5ad/HFHI-Legal-Advisory-Fair-Housing-Act---Applicants-with-Disabilities-January-2013.

**EQUAL CREDIT OPPORTUNITY ACT (“ECOA”)**

While the FHA makes discrimination practices illegal in all phases of residential real estate financing (including origination and servicing), the ECOA makes it illegal for a creditor to discriminate in the origination of any credit transaction (including advertising, pre-qualification stage, application, and closing). The ECOA, which is implemented by Regulation B, applies to all “creditors.” 12 C.F.R. § 1002.1(a). All Affiliates who originate loans are considered “creditors” and must comply with ECOA requirements since they regularly participate in credit decisions, including setting the terms of credit. 12 C.F.R. § 1002.2(l). The ECOA prohibits discriminatory lending practices, and makes it unlawful for any creditor to discriminate against any applicant with respect to the applicant’s (1) source of income (i.e., whether the applicant receives public assistance), (2) race, (3) color, (4) religion, (5) national origin, (6) sex, (7) marital status, or (8) age in the origination of a credit transaction. Similar to the FHA, illegal discrimination can occur through overt discrimination, disparate treatment, or disparate impact. Creditors are allowed to ask applicants for this information in some situations (i.e., for government reporting), but
creditors may not consider this information when deciding whether to extend credit to an applicant or when setting the terms of the applicant’s credit.

In addition to the anti-discrimination requirements, the ECOA sets forth several deadlines by which Affiliates must communicate credit decisions to applicants and pre-applicants (in the pre-qualification stage). 12 C.F.R. § 1002.9. Certain of the ECOA deadlines and requirements will depend on when the Affiliate receives a “completed application.” The ECOA allows Affiliates to define “application” in their mortgage policies. Affiliates are strongly encouraged to create policies that state an application is not complete until the family selection process is finished, which may take several months to a year. For example, Affiliates can define “application” to include an initial credit check, home visits, sweat equity, and a final credit check. If Affiliates define “application” in their mortgage policies, then Affiliates are able to keep the application process open for several months while evaluating credit without having to send a notice of acceptance or denial to ensure compliance with ECOA. However, if “application” is not defined in the policy, then an application may be considered complete (for purposes of ECOA) when the Affiliate receives all the information that is regularly required in the mortgage industry to make a decision to extend credit. This “industry standard” that applies to conventional lenders does not always match the Habitat model and may require Affiliates to send a notice of acceptance or denial before they have fully evaluated a potential partner family.

- Within thirty (30) days of receiving a completed “application” (by industry standard or an Affiliate’s defined “application”), the Affiliate must send a notice of acceptance or denial. As noted above, Affiliates are encouraged to define “application” in their mortgage policies to allow them sufficient time to evaluate credit before having to send a notice to applicants.

- Even if an application is not complete (by industry standard or an Affiliate’s defined “application”), if the Affiliate takes an adverse action (either denies credit or unfavorably changes terms), then within thirty (30) days of making that decision the Affiliate must send an “Adverse Action Notice.” An Adverse Action Notice must be sent within thirty (30) days of the negative decision no matter the stage of the credit process (pre-qualification or application) and regardless of how “application” is defined in the mortgage policy. The Adverse Action Notice must contain specific information including the address of the Affiliate, exact reasons for denial of credit, and a paragraph summarizing the purpose and scope of the ECOA. A template Adverse Action Notice can be found at [http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process](http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process). The Fair Credit Housing Act (FCRA) (discussed below) also requires Affiliates to send Adverse Action Notices after credit denial if the

**ECOA requires Affiliates to send Adverse Action Notices within 30 days of denying credit no matter what stage of the credit process (pre-qual or application) and regardless of how “application” is defined in the mortgage policy.**
decision was based in whole or in part on a credit report or criminal background check. The template Adverse Action Notice meets the requirements for both the FCRA and the ECOA.

- If an Affiliate receives an incomplete application, then within thirty (30) days, the Affiliate must either (1) deny credit and send an Adverse Action Notice, or (2) send a “Notice of Incompleteness” and request additional information from the applicant.

- Affiliates must send an Adverse Action Notice within ninety (90) days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit during that time.

Additionally, a recently-enacted portion of the ECOA makes it easier for a borrower to review a property valuation before getting a loan. Effective January 2014, Affiliates must provide applicants two additional documents related to appraisals. 12 C.F.R. § 1002.14.

- **An Appraisal Disclosure Notice.** Within three (3) business days of receiving a completed application, Affiliates must notify applicants of their right to receive a copy of all written appraisals developed in connection with the application (including any estimate of the property’s value, and not limited only to formal appraisals). For example, the disclosure can state that “We may order an appraisal to determine the property’s value and may charge you for this appraisal. We will promptly provide a copy of any appraisal even if the loan does not close.” Affiliates are encouraged to provide the appraisal disclosure with the other initial disclosures under RESPA/TILA.

- **An Appraisal.** Affiliates must provide applicants with a free copy of all appraisals and other written valuations developed in connection with the credit application for a first-lien mortgage “promptly” and at least three (3) business days prior to loan closing. Affiliates may ask the borrower to waive the deadline so that any copies can be provided at closing, and may require a reasonable fee for the cost of the valuation. The appraisal requirements apply whether credit is extended or denied or if the application is incomplete or withdrawn.

For more information on the ECOA, see the American Bankers Association training on the ECOA located in the following sub-collection on My.Habitat http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application–Application-Process.

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2 Regulations interpret “promptly” to require Affiliates to provide a free copy of the appraisal within thirty (30) days of appraisal completion.
FAIR CREDIT REPORTING ACT ("FCRA")

The FCRA, which is implemented by Regulation V, was enacted to promote the accuracy, fairness and privacy of information in the files of consumer reporting agencies. It applies to consumer reporting agencies, as well as persons and entities who engage in particular activities such as procuring and using consumer reports. 15 U.S.C. §§ 1681 et seq.; 12 C.F.R. Part 1022. Accordingly, FCRA generally applies to Affiliates who use credit reports (whether for origination or servicing), but FCRA’s specific applicability will depend on particular activities performed by each Affiliate.

The FCRA requires Affiliates to give certain disclosures to an applicant when using any information from a “consumer report” as a factor in establishing the applicant’s eligibility for credit. “Consumer report” under FCRA includes credit reports and criminal background checks, both of which are frequently used by Affiliates. If an Affiliate denies an application and this decision is based in whole or in part on any information contained in a consumer report (i.e., credit report or criminal background check), then the Affiliate must provide oral, written, or electronic notice of the denial to the applicant, which notice must include specific information, including notice of the applicants right to obtain a copy of the credit report and his/her right to dispute the accuracy of the credit report. As discussed above, the ECOA also sets forth certain notice requirements when an Affiliate denies credit. Therefore, if an Affiliate denies an application based in whole or in part on any information contained in a consumer report, the Affiliate may combine both the required ECOA disclosures and the FCRA disclosures in a single notice often referred to as an “Adverse Action Notice.” A template Adverse Action Notice can be found at http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process.

If an application is denied because of information the Affiliate receives from a source other than a consumer credit reporting agency and this information bears on the consumer’s creditworthiness, credit standing, credit capacity, general reputation, personal characteristics or mode of living, then Affiliate must notify the consumer that he/she has sixty (60) days to make a written request for the reasons behind the action and the nature of the information that was used. If requested, the Affiliate must then provide the requested information within a reasonable amount of time. The Adverse Action Notice template referenced above contains sample language for this circumstance.

In addition, although HFHI does not recommend that Affiliates use credit scores to determine applicants’ creditworthiness, FCRA sets forth certain requirements if an Affiliate does use a credit score. First, Affiliates must disclose additional information on adverse action notices if a credit score was used in taking adverse action (i.e., credit score used, the date and agency from which it was obtained, and up to four key factors that adversely affected the applicant’s credit score). The Adverse Action Notice template...
referred above contains sample language for this circumstance. Second, if an Affiliate does use a credit score in connection with evaluating creditworthiness, then the Affiliate must provide the applicant with a copy of the credit score and accompanying information, as well as a notice providing information related to each consumer reporting agency that provided a credit score that was used.

Lastly, FCRA provides that a consumer report (i.e., credit report or criminal background check) may be obtained only under certain circumstances which are referred to as “permissible purposes” which include, but are not limited to, (1) a credit transaction involving the extension of credit to, or review or collection of an account of the consumer; and (2) an employment decision if written permission has been given by the employee or applicant. Thus, obtaining a consumer report as part of a borrower’s application falls under “permissible purposes” even if the applicant has not granted the Affiliate express permission.

Affiliates should be aware that FCRA also imposes obligations on Affiliates who use consumer reports and receive a “notice of address discrepancy” from a consumer reporting agency, which notifies the Affiliate that a substantial difference exists between the address for the consumer that the Affiliate provided and the address(es) in the agency’s file for the consumer. 12 C.F.R. § 1022.82. Specifically, Affiliates must develop and implement reasonable policies and procedures to allow the Affiliate to form a “reasonable belief” that a consumer report relates to the consumer about whom it has requested the report when the Affiliate receives a notice of address discrepancy.

Affiliates can comply with the above-referenced portion of the FCRA by complying with the RED FLAGS IDENTITY THEFT RULE, issued and enforced by the Federal Trade Commission (“FTC”), which generally applies to users of consumer reports (for provisions regarding address discrepancies) and creditors (for provisions regarding the detection, prevention, and mitigation of identity theft). 16 C.F.R. §§ 681.1(a), 681.2(a). Under the Red Flags Identity Theft Rule, Affiliates must develop a written Identity Theft Program, managed by the Board of Directors or senior employees, that identifies and detects the relevant warning signs (or “red flags”) of identity theft and describes appropriate responses that would prevent and mitigate the crime.3 For more information on the Red Flags Identity Theft Rule, including a sample policy, see the Legal Advisory: Identity Theft Red Flag and Example Policy re: Identity Theft Red Flag located at http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process.

Affiliates must adopt a written
Identity Theft
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and the Red
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For more information on the FCRA, see (1) the American Bankers Association training on the FCRA and (2) the Legal Advisory on Denial Requirements under the Fair Credit Reporting Act, located on My.Habitat at http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process.

3 The Red Flags Identity Theft Rule is issued and currently enforced by the FTC. The FTC generally does not have jurisdiction over non-profits. 15 U.S.C. §§ 41 et seq. However, Affiliates should comply with the Red Flags Identity Theft Rule as a best business practice. Further, to date it remains unclear whether CFPB has concurrent jurisdiction over the Red Flags Identity Theft Rule, which would require Affiliates to comply with the rule.
TRUTH IN LENDING ACT ("TILA") – REGULATION Z

The purpose of TILA (and Regulation Z) is to protect consumers in the mortgage loan process and facilitate responsible lending. The rules require timely disclosures of costs and terms and also prohibit unfair, abusive or deceptive home mortgage lending practices. TILA, implemented through Regulation Z, applies to consumer credit transactions, whether or not secured by real property, that are payable by written agreement in more than four (4) installments or are subject to a finance charge. Therefore, all Affiliates must comply with Regulation Z (unless a specific exemption applies). The CFPB amended Regulation Z to further protect consumers in the origination and servicing process as noted below.

a. Qualified Mortgage/Ability-to-Repay Rule and Habitat’s Exemption

The CFPB amended Regulation Z to include an ability-to-repay ("ATR") rule, which sets a “ground floor” for what constitutes a reliable mortgage and provides minimum requirements for mortgage originators to consider during the underwriting process. Under the ATR rule, a lender must consider (1) current or reasonably expected income or assets; (2) current employment status; (3) the monthly payment on the covered transaction; (4) the monthly payment on any simultaneous loan; (5) the monthly payment for mortgage-related obligations; (6) current debt obligations, alimony, and child support; (7) the monthly debt-to-income ratio or residual income; and (8) credit history. The CFPB also provided for a Qualified Mortgage ("QM") designation, which if met, conclusively presumes that the lender made a good faith and reasonable ATR determination and will have a “safe harbor” from litigation challenging the ATR determination. Under the rule, mortgages with negative amortization schedules, interest-only payments, balloon payments, no documentation, or terms exceeding 30 years cannot be QM loans. Nor can loans where the points and fees paid by a consumer exceed 3% of the total loan amount. A QM loan must also have monthly payments calculated based on the highest payment that will apply in the first five years of the loan, and the consumer must have a total debt-to-income ratio that is less than or equal to 43%.

Affiliates are exempt from the ATR rule so long as they extend credit no more than 200 times annually (including any subordinate mortgages and any repair loan products secured by real property). The 200 loan exemption is based on the loans that were made by the Affiliate in the previous calendar year. For example, assume an Affiliate extends 100 loans in calendar year 2014. Based on its loan performance from 2014, the Affiliate will be exempt from the ability-to-repay requirements in 2015, even if in calendar year 2015 the Affiliate exceeds the 200 loan limit and extends 201 loans. However, in calendar year 2016, the Affiliate would not be covered by the exemption and, therefore, subject to ability to repay requirements in order to obtain QM designation because it extended more than 200 loans in 2015. Even though most Affiliates will be exempt from the

Affiliates are exempt from considering the 8 Ability-to-repay underwriting standards if they extend credit less than 200 times annually. However, Affiliates are strongly encouraged to comply as a best business practice.
ATR rule, the ATR requirements should be considered a best business practice, and Affiliates are strongly encouraged to follow the ATR standards in their underwriting process. Not meeting industry standards may negatively impact an Affiliate’s ability to leverage loans with industry and government partners. Additionally, for Affiliates making more than 200 extensions of credit annually, to meet industry standards for a QM loan designation, the loans must not negatively amortize, must not carry balloon payments, and must not have loan terms longer than 30 years.

b. **Truth in Lending Disclosure Statement (TIL Disclosure)**

The CFPB rules (through Regulation Z) require that Affiliates provide a TIL Disclosure to the borrower for each mortgage within 3 business days of receiving a “loan application,” and at least 7 days prior to closing. For purposes of TILA and RESPA, loan application is defined differently than an “application” under ECOA. Under TILA and RESPA, a loan application is considered complete when the Affiliate has the following information: (1) borrower’s name; (2) borrower’s monthly income; (3) borrower’s SSN; (4) property address; (5) estimate of value of property; and (6) loan amount. The TIL Disclosure must contain:

- **Annual Percentage Rate (APR):** the cost of credit expressed as a yearly rate.
- **Finance Charge:** the cost of consumer credit as a dollar amount, including “any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition to the extension of credit (i.e., private mortgage insurance, origination fees).
- **Amount Financed:** the loan amount plus any other amounts financed by the borrower.
- **Total of Payments:** the amount financed plus any finance charges; that is, the amount the consumer will have paid after s/he has made all scheduled payments.

A fillable TIL disclosure statement can be found at [http://my.habitat.org/kc/download-detail/g331ca/Truth-In-Lending-Disclosure-Statement](http://my.habitat.org/kc/download-detail/g331ca/Truth-In-Lending-Disclosure-Statement). A TIL disclosure is required for every loan, including promissory notes secured by subordinate mortgages and repair pricing loans.

If the terms of the TIL Disclosure change beyond certain “tolerance” limits, then the Affiliate must provide a revised TIL no later than 3 business days before closing. If a revised TIL Disclosure is provided, then the Affiliate must wait 7 days from mailing to close the loan. For more information on the TIL disclosure statement, see the American Bankers Association training titled “Regulation Z Overview” located in the following sub-collection on My.Habitat [http://my.habitat.org/kc/collection-detail/g357f1/RESPA-and-TILA-Resources](http://my.habitat.org/kc/collection-detail/g357f1/RESPA-and-TILA-Resources).
c. **Right of Rescission (For Repair Product Loans Secured by Principal Dwelling)**

Regulations Z gives borrowers the right to cancel the credit transaction within three business days of signing the loan documents and qualify to receive a full refund of any monies paid. This “cooling off period” only applies to loans on a consumer’s principal dwelling other than a transaction to purchase the dwelling. Therefore, most Habitat mortgages would not be subject to the right of rescission since the loans are made to purchase the dwelling. Repair product loans, however, would be subject to this right of rescission if the Affiliate is taking a security interest in the borrower’s dwelling. The right of rescission is also not available for refinances with the same lender when no new money is advanced. For more information on the Regulation Z Right of Rescission, see the American Bankers Association training on Right of Rescission located in the following sub-collection on My.Habitat http://my.habitat.org/kc/collection-detail/g357f1/RESPA-and-TILA-Resources.

**Regulation Z final disclosures:** (1) Final TIL (if terms change beyond tolerance limits); (2) right of rescission (repair product loans when a lien is placed on the principal dwelling).

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**d. Valuation Independence and Appraiser Compensation**

The new CFPB rules amended Regulation Z to prohibit conflicts of interest in property valuation. Affiliates cannot attempt, directly or indirectly, to cause the valuation of a property to be based on anything other than the independent judgment of the person preparing the valuation. Affiliates must ensure that no person performing a valuation service on behalf of the Affiliate has a direct or indirect interest, financial or otherwise, in the property. Consequently, an Affiliate board or staff member who is an appraiser should not prepare the valuation or perform valuation management functions for a transaction that the Affiliate is involved in except in the case of very limited safe harbor conditions. Additionally, the CFPB amended Regulation Z to require appraisers to be paid a customary and reasonable fee. The CFPB has provided verbal authorization to HFHI that Affiliates may continue to utilize donated or discounted appraisal services from independent appraisers.

For more information on TILA and Regulation Z, see the American Bankers Association training titled “Regulation Z Mortgages (Closed End Credit)” located in the following sub-collection on My.Habitat http://my.habitat.org/kc/collection-detail/g357f1/RESPA-and-TILA-Resources.
REAL ESTATE SETTLEMENT PROCEDURES ACT (“RESPA”) – REGULATION X

The RESPA regulations apply to any Affiliate that originates more than $1,000,000 per year in mortgages, including the face amount of “soft second” or other subordinate mortgages held by the Affiliate. Affiliates, however, are strongly encouraged to comply with RESPA-related regulations (both servicing and origination) regardless of amount originated as a best business practice and to ensure compliance with mortgage industry servicing standards and to qualify for state and federal subsidy programs, and other leveraging and discounting programs.

a. Disclosures

Affiliates must provide certain initial disclosures to the borrower within 3 business days of receiving a “loan application,” and at least 7 days prior to closing. As stated above for purposes of TILA and RESPA, loan application is defined differently than an “application” under ECOA. Under TILA and RESPA, a loan application is considered complete when the Affiliate has the following information: (1) borrower’s name; (2) borrower’s monthly income; (3) borrower’s SSN; (4) property address; (5) estimate of value of property; and (6) loan amount.

- The Good Faith Estimate (GFE) of Settlement Costs lists the charges that the borrower is expected to pay at closing. The amounts listed on the GFE must be available for at least 10 business days. Once the borrower has accepted the terms stated in the GFE, then the Affiliate can only make changes beyond the acceptable “tolerances” if there is a “changed circumstance.” Changed circumstances include (1) acts of God, war, disaster or other emergency, (2) information particular to the borrower or transaction that was relied on in providing the GFE changes or is found to be inaccurate (including credit quality of borrower or estimated value of property), and (3) new information or circumstantial changes particular to the borrower or transaction (i.e., boundary dispute, environmental problem). A revised GFE must be issued if changed circumstances occur. For a (1) fillable GFE, (2) an example GFE, (3) a checklist for filling out the GFE, and (4) a GFE cover letter see the RESPA/TILA resources collection located at http://my.habitat.org/kc/collection-detail/g357f1/RESPA-and-TILA-Resources.

- The Special Information Book contains consumer information regarding various real estate settlement services. It is also known as the Settlement Cost Booklet and a copy can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/settlement-cost-booklet03252010.

- The Servicing Disclosure Statement discloses to a borrower whether the lender intends to service the loan or transfer it to a third-party servicer. An example Servicing Disclosure Statement may be found at http://my.habitat.org/kc/download-detail/g331c9/Mortgage-Servicing-Disclosure-Form. When an actual transfer of servicing...
occurs, then the Affiliate is required to notify the borrower at least 15 days before the loan is transferred. This notice is commonly referred to as a “Hello/Goodbye Letter.”

- The Affiliated Business Arrangement Disclosure is required whenever the consumer is referred for a settlement service to a provider with whom the Affiliate has an ownership, relationship, or beneficial interest. For example, this disclosure is needed if the Affiliate refers a borrower to a board member who provides legal work related to loan origination. The Affiliated Business Arrangement Disclosure must be given to the borrower at or prior to the time of referral. An example Affiliated Business Arrangement Disclosure may be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/ramh/res/resappd.

In addition to the initial disclosures, Affiliates must also provide certain RESPA disclosures at loan closing.

- The HUD-1 Statement itemizes the settlement services provided by the Affiliate and the fees associated with these services. It also shows all charges imposed on the Affiliate and borrower in connection with the closing. The HUD-1 Statement must be provided to borrowers at least one day prior to closing. A sample HUD-1 and HUD-1 instructions can be found in the following sub-collection on My.Habitat http://my.habitat.org/kc/collection-detail/3f2e8/Closing~Documentation~Disclosures.

- Affiliates must also provide an initial escrow statement, which itemizes the estimated taxes, insurance premiums and other charges anticipated to be paid from the escrow account during the first 12 months of the loan. Although the statement is usually given at closing, Affiliates have 45 days from establishing the escrow account to deliver the initial escrow statement. A sample initial escrow statement can be found at http://my.habitat.org/kc/download-detail/3ebb5/Example-Escrow-Analysis-Statement.

b. Escrow Management

RESPA does not require lenders to maintain an escrow account, but HFHI strongly recommends Affiliates establish escrow accounts to ensure manageable payment of taxes, insurance, and other charges related to the property. Escrow accounts must be separate from all other accounts that are fully insured by the FDIC and escrowed funds cannot be commingled with operating funds.

If an escrow account is established, RESPA limits the amount of money that an Affiliate may require a homeowner to deposit. For example, an Affiliate cannot require a homeowner to pay into the escrow account monthly more than 1/12 of the total of all disbursements that must be paid during the year, plus an amount necessary to pay for any shortage in the account. While an Affiliate can collect a reserve, it cannot be greater than 1/6 (2 months) of the estimated annual payments. Affiliates must also conduct an escrow analysis and deliver the statement to the homeowner at closing or within 45 calendar days of closing. In addition, Affiliates must also conduct an annual escrow analysis and send annual
escrow account statements within 30 calendar days of the end of the “computation” year that address surplus, shortage, and deficiency amounts. For more information on escrow management, calculations, and statements, see the resources contained in the Escrow Management Sub-Collection located at http://my.habitat.org/kc/collection-detail/3f2ea/Escrow-Management.

c. **Force-Placed Insurance**

Under the CFPB amendments to Regulation X, Affiliates are required to put force-placed insurance in place only if the cost of the force-placed insurance to the consumer is equal to or less than the cost of hazard insurance to the homeowner. Under the final CFPB, if Affiliates cannot find force-placed insurance meeting this standard, then they are not required to have it. However, if the Affiliate does choose to require force-placed insurance, then the CFPB amendments prohibit a servicer from charging a borrower for force-placed insurance unless it has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided the required notices. The initial notice must be sent to the borrower at least 45 days before charging the borrower for forced-place insurance coverage. The second notice must be sent no earlier than 30 days after the first notice and at least 15 days before charging the borrower for the insurance. And, after the force-placed insurance is in place, servicers must send an annual notice to borrowers 45 days before charging for, renewing, or replacing such insurance. Lastly, if the borrower provides proof of hazard insurance coverage, then servicer must within 15 days cancel the force-placed insurance coverage and refund any premiums paid for periods in which the borrower’s coverage was in place.

For more information on RESPA rules and regulations see the presentations and legal advisories located at http://my.habitat.org/kc/collection-detail/g357f1/RESPA-and-TILA-Resources.

**SMALL SERVICER SERVICING REQUIREMENTS (REGULATIONS X AND Z)**

The servicing amendments of Regulations X and Z are especially onerous. Fortunately, the CFPB rules include some exemptions for “small servicers,” which exemption encompasses many Affiliates. Small servicers are defined as servicers who service 5,000 or fewer loans and service only mortgage loans that they own. However, despite the small servicer exemption, Affiliates (as small servicers) still need to comply with the servicing regulations listed below.

- **Prompt Crediting of Payments:** Affiliates must credit mortgage payments on the same day they were received. If payment is less than the full amount due, servicers are permitted to hold partial payments in a suspense account. Once the amount in the suspense account equals one full

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“Small Servicers” are exempt from many Reg X and Z amendments. However, they still must comply with certain requirements, such as

1. prompt crediting of payments and response to request for payoff,
2. error resolution & information request, and
3. loss mitigation & delinquency.
monthly payment (principal and escrow), the servicer has to apply the amount to the earliest delinquent payment.

- **Prompt Response to Request for Payoff**: Affiliates must provide an accurate mortgage payoff balance to a consumer no later than 7 business days after a borrower requests such information.

- **No “Pyramid” of Late Fees**: Affiliates cannot “pyramid” late fees, which means they cannot assess a late fee when a timely and complete payment has been made and the only outstanding balance is a previously unpaid late fee or delinquency charge.

- **Error Resolution & Information Request**: Affiliates must respond to information requests or error complaints from borrowers within 5 days of receipt either with an acknowledgment of the request or by correcting the error. After an acknowledgment is sent to the borrower, the Affiliate has 7 days to correct a payoff error, or 30 days to correct other errors (that can be extended for up to 15 days for errors other than payoffs and foreclosure procedures).

- **Loss Mitigation and Delinquency**: Despite exemption from many servicing requirements, small servicer Affiliates must adopt delinquency policies and procedures that meet the following requirements:
  - Affiliates must establish or make good faith efforts to establish live contact with delinquent borrowers by the 36th day of their delinquency.
  - Before the 45th day of delinquency, Affiliates must include in a demand letter a notice to the homeowner of the availability of homeownership counseling offered by HUD and the Affiliate (if applicable). Specifically, the default letter should say: “You may contact the Department of Housing and Urban Development at 1-800-569-4287 to obtain a list of HUD-approved nonprofit homeownership counseling organizations. [In addition, we have available for you (insert description of any homeownership counseling offered by the Affiliate, if any).]”
  - Affiliates cannot “initiate” foreclosure proceedings (1) until a borrower is more than 120 days delinquent; and (2) if a homeowner is performing pursuant to the terms of a loss mitigation agreement, which prohibited practice is commonly known as “dual tracking”.

For a sample delinquency policy and procedure that: (i) meets the Regulation X Amendments; (ii) instructs on how to calculate the first day of “deficiency;” and (iii) includes template default letters, see [http://my.habitat.org/kc/download-detail/3f414/Sample-Delinquency-and-Foreclosure-Policy-and-Procedure](http://my.habitat.org/kc/download-detail/3f414/Sample-Delinquency-and-Foreclosure-Policy-and-Procedure).
Periodic Billing Statements (exempted as small servicers, but recommended as best practice): Small servicers are exempt from the periodic billing statement requirements of Regulation Z. However, Affiliates are encouraged to comply with these regulations as a best business practice. Subject to the small servicer exemption, Regulation Z requires that lenders provide periodic billing statements to borrowers by hand-delivery or mail within a reasonable time after the payment due date. The periodic statements must include (1) amount of the principal obligation, (2) current interest rate, (3) information on prepayment penalties and late fees, (4) contact information for the servicer and home counseling information, (5) upcoming payment information, (6) past payments, and (7) a list of recent transaction activity.

GRAMM-LEACH-BLILEY ACT (“GBLA”)

The GLBA, which is implemented by Regulation P, broadly applies to all “financial institutions.” 12 U.S.C. § 1843(k), and protects “nonpublic personal information” that financial institutions collect from individuals. Affiliates are considered “financial institutions” because they engage in lending activities (whether origination, servicing, or both) and, thus, must comply with GLBA requirements. An Affiliate’s duties under GLBA generally include, but are not limited to, providing initial and annual disclosures of the Affiliate’s privacy policy and adhering to limitations on how the Affiliate may use or disseminate a consumer’s or customer’s nonpublic personal information to third parties. See 15 U.S.C. §§ 6801-6809. For purposes of GLBA, there is an important distinction between a “consumer” and a “customer.” A “consumer” is anybody who applies for a loan, whether or not the individual actually obtains the loan. A “customer” is a consumer who has a continuing relationship with the Affiliate. The customer relationship begins when the loan is originated and terminates if the Affiliate sells the mortgage (even if it retains recourse) or transfers servicing rights.

Under GLBA, Affiliates must provide their consumers (i.e., applicants), and customers (i.e., homeowners) with a clear and conspicuous privacy notice (“Privacy Notice”) that accurately reflects its privacy policies and practices. The Privacy Notice should include the following information: (1)

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4 Non-public personal information covered by GLBA includes information (1) an applicant provides during the application process, (2) resulting from any transaction between Affiliate and consumer related to the loan or financial service, or (3) obtained about a consumer in connection with providing the financial service. 15 U.S.C. § 6809(4). Thus, most information obtained by an affiliate during the loan application process will fall under this description. However, publicly listed telephone numbers or other publicly available information would not fall under GBLA.

5 The customer relationship, however, remains with the Affiliate if the Affiliate sells the loan but retains servicing rights.

6 To the extent that Affiliates operate in states that have codified their own privacy statutes, Affiliates must provide privacy disclosures as required by those state laws.
This information is current as of the date of the advisory. This advisory does not constitute legal advice. Please note that laws vary from state to state. It is important to check with your local attorney regarding state law and to obtain legal advice regarding your specific affiliate.
RECAP: MORTGAGE DISCLOSURES

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FLOOD DISASTER PROTECTION ACT (“FDPA”)

The FDPA applies generally to entities subject to federal lending regulations, which includes Affiliates. The specific applicability of the FDPA, however, depends in large part on the location of the property for which the Affiliate is providing financing. If the property falls in a “special flood hazard area” (as defined below), then before the Affiliate can extend, modify, or renew credit secured by real property (other than raw land) the Affiliate must comply with the FDPA requirements. See 42 U.S.C. § 4001 et seq.

The FDPA requires Affiliates to first determine whether the property securing the loan is in a special flood hazard area (“SFHA”). In order to meet this requirement, Affiliates must provide a property description to a certified vendor that has the current flood map published by the National Flood Insurance Program (“NFIP”). The FDPA is related to the NFIP, which makes flood insurance available to certain flood prone areas at a reasonable cost through a joint program involving the federal government and the private insurance industry.

If a property is in a SFHA that is participating in NFIP insurance, then the Affiliate must notify the homeowner of the NFIP available insurance and require that the homeowner purchase the flood insurance from NFIP prior to closing the loan.
The NFIP has conducted an extensive flood hazard and identification mapping project. For a list of vendors who provide NFIP services, see http://www.fema.gov/national-flood-insurance-program/flood-zone-determination-companies#note. The NFIP certified vendor will inform the Affiliate (1) whether the property falls within a SFHA and (2) whether that particular community is participating in NFIP. If the property is in a SFHA that is participating in NFIP insurance then the Affiliate must notify the homeowner of the NFIP available insurance and require that the homeowner purchase the flood insurance from NFIP. Affiliates must notify the homeowner in sufficient time to allow the homeowner to obtain NFIP flood insurance prior to closing the loan.

For properties in SFHA participating in NFIP insurance, Affiliates must obtain proof of insurance prior to loan closing and ensure that the insurance remains in force for the life of the loan. It is highly recommended that Affiliates require escrow of flood insurance premiums and fees. Throughout the term of the loan, the FDPA mandates that if the flood insurance lapses for more than 45 days, then Affiliates must force-place a policy (i.e., purchase the flood insurance and pass fees on to the borrower).

If the property is not in a SFHA, then the Affiliate has no further duties under the FDPA. If the property is in a SFHA but in a community that does not participate in NFIP insurance, then the Affiliate must notify the homeowner that the property is in a federally identified SFHA but NFIP insurance is not available. Although not required under FDPA through NFIP insurance, it is highly recommended that the Affiliate require the borrower to purchase private flood insurance to protect the asset as a best business practice.

For more information on the FDPA, see the American Bankers Association training titled “Flood Disaster Protection Act” located in the following sub-collection on My.Habitat http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process.

FEDERAL LAWS RELATING TO CRIMINAL FINANCIAL ACTIVITIES, INCLUDING ANTI-MONEY LAUNDERING (“AML”)

The U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) requires that, as of August 13, 2012, all Affiliates have a written anti-money laundering (“AML”) policy and program in place (including a designated AML compliance officer), report suspicious activities through a “Suspicious Activity Report,” and comply with certain recordkeeping requirements. See 31 C.F.R. Part 1029. For more information, see the Anti-Money Laundering Homepage, which provides

All Affiliates must have an AML policy and program in place or risk severe criminal and civil penalties. Visit the AML homepage for sample policies and templates. http://my.habitat.org/kc/home/aml.

7 HFHI does not approve or endorse any NFIP vendor on the list, but rather provides the list for informational purposes only.
policies, procedures, and templates that Affiliates must adopt or risk severe civil and criminal penalties, http://my.habitat.org/kc/home/aml.

In addition, the Office of Foreign Assets Control (“OFAC”), pursuant to Executive Order 13224, requires that all entities organized under the laws of the US, including Affiliates, are prohibited from engaging in any transaction or dealing in property or interest with any blocked country or any person or entity on the Specially Designated Nationals List (“SDN List”), which can be found at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. The US Patriot Act also requires that Affiliates search all applicants against the SDN List, for new and existing borrowers, initially and ongoing. It also requires Affiliates to report cash payments received over $10,000 on IRS Form 8300. 31 C.F.R. §§ 1029.330, 1010.330.

SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT (“SAFE ACT”)

The federal SAFE Act requires each state to set minimum standards for licensing mortgage loan originators working in their state. In 2011, HUD issued a ruling clarifying that “bona fide” nonprofits are outside the scope of the federal SAFE Act. Thus, Affiliates in most states are exempt from the federal Safe Act since they can demonstrate that they meet the “bona fide” nonprofit requirements and do not need to comply with the SAFE Act loan originator standards. For templates and instructions on how to obtain the bona fide nonprofit exemption from your state banking regulators, see the Safe Act Sub-collection located at http://my.habitat.org/kc/collection-detail/3f2e6/Pre-Application~Application-Process.

HFHI worked closely with the CFPB to ensure the new SAFE Act regulations, effective January 2014, will not impact the state and federal exemptions currently enjoyed by many Affiliates. The new SAFE Act regulations, Regulations G and H, expressly provide that they do not impact state determinations or the existing HUD bona-fide nonprofit exemption. However, the CFPB’s new regulations (through TILA/Regulation Z) do require that loan originator organizations, such as the Affiliates, must

(1) ensure that their loan originator employees meet character, fitness, and criminal background standards similar to existing SAFE Act licensing standards. This includes background and criminal checks on loan originator employees, and obtaining information related to any civil, criminal, or administrative determinations against them. The loan originator must not have been convicted of, or pled guilty or nolo contendere to, a felony during the preceding seven-year period, or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time; and

(2) provide training to their loan originator employees that is appropriate and consistent with those employees’ origination activities.

Additionally, Affiliates must still obtain exemption from their state banking regulators.
OTHER REGULATIONS THAT IMPACT AFFILIATES

- **Unfair, Deceptive, or Abusive Acts or Practices (“UDAAP”):** Affiliates (whether they are originators, servicers, or both) are subject to the CFPB’s enforcement and rulemaking under UDAAP. The CFPB has statutory authority to issue and enforce specific regulations to prevent Affiliates from “committing or engaging in an unfair, deceptive, or abusive act or practice under federal law in connection with any transaction with a consumer.” Pub. L. No. 111-203, 124 Stat. 1376 (2010). As of the date of this Advisory, the CFPB has not issued specific regulations to enforce UDAAP. Affiliates, however, should check My.Habitat for any updates on UDAAP regulations. Notably, Affiliates are not *per se* subject to the CFPB’s Mortgage Acts and Practices (MAPS Rule), which is implemented by Regulation N and related to UDAAP in that it prohibits certain deceptive practices when *engaging in advertising activities*. 12 C.F.R. § 1014.1. Affiliates, however, are encouraged to comply with the MAPS Rule as a good business practice if the Affiliates engage in advertising activities. Indeed, many of the MAPS Rule violations would also constitute a violation under UDAAP.

- **Servicemembers Civil Relief Act (“SCRA”):** The SCRA protects persons called to active military service and their dependents from undue hardship resulting from their military service. Affiliates must comply with provisions of the SCRA when a borrower is a member of the Army, Navy, Marine Corps, Air Force, Coast Guard, National Guard, or a commissioned officer of the Public Health Service or National Oceanic and Atmospheric Administration. *See* 50 U.S.C. App. §§ 501 *et seq.* The protection period under SCRA commences when a borrower enters active duty and normally terminates when the servicemember is released from active service, and this protection period may continue for up to ninety (90) days after release. During the protection period, lenders cannot: (1) charge interest over 6%; (2) charge late fees; (3) initiate foreclosure proceedings; or (4) otherwise enforce a breach under the note or mortgage – without prior approval from a court of competent jurisdiction waiving the SCRA protection period. Principal payments, however, remain due and accruing during the protection period. This means that Affiliates can require that the servicemember continue to pay the principal monthly payments during active duty. However, if principal payments are missed during the protection period, Affiliates cannot charge late fees, send default notices, or initiate foreclosure proceedings. Instead, Affiliates can require that the total missed monthly principal payments be paid immediately after the protection period ends (i.e. 90 days after return from active duty). As a best business practice though, HFHI encourages Affiliates to work with the servicemember borrowers to set up a mutually acceptable payment plan for the monthly principal payments that may have accrued during the protection period.

- **Fair Debt Collection Practices Act (“FDCPA”):** The FDCPA applies generally to debt collectors and puts restrictions on collection efforts, such as (i) no calls to places of employment; (ii) no calls late at night or very early; and (iii) no threats to take actions not legally allowed. 15
U.S.C. § 1692 et seq. The FDCPA applies to a subset of Affiliates – ones that service mortgage loans for a third party that they did not originate (i.e., another Affiliate) and that were in default at the time the servicing Affiliate acquired it. If an Affiliate meets the criteria to fall under the FDCPA, then it should exercise extreme caution when engaging in collection efforts.

- **Homeowners Protection Act (“HPA”):** Affiliates must comply with HPA if they require a borrower to pay private mortgage insurance (“PMI”). The specific limitations, obligations, and disclosure requirements under HPA depend on whether the PMI is borrower-paid or lender-paid and whether the loan is considered “high risk.” See 12 U.S.C. §§ 4901 et seq.

- **Electronic Signatures in Global and National Commerce (“E-Sign Act”):** The E-Sign Act is a federal law enacted to facilitate and promote commerce and governmental transactions by validating and authorizing the use of electronic records and electronic signatures. It generally applies to lending transactions that have an interstate nexus. See 15 U.S.C. §§ 7001 et seq. If a lending transaction is limited to one state, then the applicable state law would apply. Most states (other than Illinois, New York, and Washington) have adopted the Uniform Electronic Transactions Act (“UETA”), which is similar to the federal E-Sign Act. UETA and the E-Sign Act provide that electronic records and signatures have the same legal effect as pen and paper records and signatures. That is, under UETA or E-Sign Act, a signature will not be denied enforceability simply because it is in electronic form. If a law requires a signature, an electronic record or electronic signature will generally satisfy the law. Due to the uncertainty surrounding the application of UETA and E-Sign Act to promissory notes and mortgages, however, Affiliates should require live signatures and hard copies of all promissory notes and deeds. Affiliates can, however, accept electronic signatures and records for other mortgage documents such as the appraisal, credit reports, and income/asset documentation.

UETA and the E-Sign Act also provide that the retention of records solely in an electronic format is generally sufficient to satisfy a record retention requirement imposed by the law. However, this does not apply to the original promissory note. **Affiliates must retain the original promissory note for all lending transactions.** Lastly, the UETA and E-Sign Act do not require parties to conduct business electronically. Rather, for these acts to apply, the parties must intend to conduct transactions electronically and in those instances the Acts set the ground rules for the e-commerce transactions.