

# Legal Issues in the Homeowner Selection Process

Habitat for Humanity Illinois State Conference

November 8, 2019





# Today's objective: *Provide an overview of laws affecting Homeowner Selection / Mortgage Origination*

- Habitat for Humanity Application
- Fair Housing / Fair Lending Laws
- Other Federal Laws
- Qualified Loan Originator Requirements
- Outreach and Marketing
- Application Intake
- ECOA Phase
- Deselection
- RESPA Phase
- Disclosures



# Habitat Application

Habitat Application – **ONE** application with 2 phases

## \*ECOA (phase 1)

- Outreach & Marketing
- Program qualifications
- Define completed application
- Home visit
- Initial underwriting
  - Income verification
  - Credit review
  - Financial readiness
- Board concurrence
- Partnership Agreement

***\*Lender permitted to define a completed ECOA application***

## \*\*RESPA (phase 2)

1. Homebuyers Name
  2. Homebuyers SSN
  3. Homebuyers income
  4. Property address
  5. Appraisal
  6. Loan amount
- RESPA application
- Final underwriting
    - Re-verify income
    - Re-verify debts
    - Ability to Repay - DTI

***\*\*The law defines a completed RESPA application***

# Selection = Origination = Regulations

Mortgage Lending Laws			
Advertising	Application	Closing	Servicing
Outreach - Flyers, Website, Posters, Radio, TV etc. – Fair Housing Act – ECOA – ADA – TILA – UDAAP – State and Local laws	Pre-Qualification/Family Selection/Underwriting/ – SAFE Act – ECOA – FCRA – TILA – RESPA – AML/BSA – GLBA – UDAAP – *E-Sign – *FDPA – State and Local laws	Final Underwriting/ House Pricing/ Disclosures – SAFE Act – TILA – RESPA – ECOA – FCRA – GLBA – UDAAP – *FDPA – *E-Sign – State and Local laws	Payments/Escrow/ Loss Mitigation/ Foreclosure – RESPA – TILA – ECOA – FCRA – UDAAP – BSA/AML – GLBA – SCRA – SAFE Act – *E-Sign – *FDPA – State and Local laws
Board Approved Policy and Procedures			
Annual Business Plan			

# Anti-Discrimination Laws - Federal

- **Fair Housing Act (FH Act)** – prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and handicap (disability). Consider gender identity, HIV/AIDS & criminal history. *ABA course*
- **Equal Credit Opportunity Act (ECOA)** – makes it unlawful for any creditor to discriminate in any credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, source of income, or exercise of rights under Consumer Credit Protection Act. *ABA course*
  - ☐ Notify applicants of their right to receive a copy of appraisals and provide appraisal promptly upon completion
  - ☐ **Habitat Homeownership Program = Special Purpose Credit Program**

# Additional Anti-Discrimination Laws

- **State Laws and Local ordinances** – may prohibit discrimination in housing and residential lending practices on additional bases (e.g., ancestry, creed, genetic characteristics, sexual orientation, mental disability, etc.).
- **HUD Regulations** (e.g., Feb. 2012 Final Rule: Equal Access to Housing) – prohibits housing discrimination under HUD based on sexual orientation or gender identity.
- **Executive Orders** - also prohibit discrimination on a number of bases when federal funds are involved. Limited English Proficiency (LEP)

# Anti-Discrimination Laws cont'd

FH Act and ECOA cover all aspects of housing and credit decisions, including:

- Marketing efforts to potential Habitat home buyers
  - Steering or Red Lining
- Informational Meetings / Orientations
- Evaluation and approval of applicants (incl. exceptions, “cure” opportunities)
- Design of Habitat homes
- Notices for declined applications
- Document retention
- Servicing mortgages, including the payment collection process and loan modifications



# Other Applicable Federal Laws

**Unfair, Deceptive, or Abusive Acts or Practices (UDAAP):** Practices and behaviors from outreach & advertising thru origination and servicing should not be perceived as unfair, or deceptive, or abusive. [ABA course](#)

**Bank Secrecy Act / Anti-Money Laundering (BSA/AML):** Mandatory compliance with AML Program, and Suspicious Activity Reporting (SAR), both in the origination and servicing processes. [ABA course](#) [AML Collection](#)

**Gramm-Leach-Bliley Act (GLBA) Privacy:** Mandatory compliance with safeguarding consumers info that is collected; initial and annual privacy disclosures tell consumers policy and info sharing practices. [ABA course](#) [Guidance Memorandum GLBA](#)

**Electronic Signatures In Global National Commerce (E-SIGN) Act:** Applicant must be provided with a disclosure and they must affirmatively consent before Affiliate can communicate electronically. [ABA module in the Privacy course](#) [E-Sign Disclosure Template](#)

# Other Applicable Federal Laws (cont'd)

## **Fair Credit Reporting Act (FCRA):**

Permission must be obtained to pull consumer report. Mandatory disclosure of adverse action if decision was based on a factor from a consumer report – employment or credit granting. **FACT Act** – protection for medical information; Identity Theft protections; and allows consumers 1 free credit report annually. [ABA course](#)

## **Flood Disaster Protection Act (FDPA):**

Only a covered lender if using or insured by government funds. If required, flood determination must be pulled and if the property is in a special flood hazard area, the lender sends a Notice of Special Flood Hazards and the Special Flood Hazard Determination Form to the borrower advising the borrower of the requirement to obtain flood insurance – must be in place by closing. [ABA course](#)

# Other Applicable Federal Laws (cont'd)

## **Real Estate Settlement Procedures Act (RESPA):**

Mandatory compliance for all affiliates. The Act covers timely disclosure of fees in origination, servicing processes (e.g., escrow account administration), and prohibits kickbacks and other abusive practices. [ABA course](#)

## **Truth In Lending Act (TILA):**

Mandatory compliance for all affiliates. Mortgage advertising must be accurate, and clear. Requires disclosure showing the cost of a loan, prohibits steering to loans less favorable to consumers, and certain aspects of servicing. Also requires a Right of Rescission notice for repair loan transactions secured by the residence. [3 ABA courses](#)

- **TILA/RESPA Integrated Disclosures (TRID):** [ABA course](#)

Mandatory compliance with initial and closing disclosures. If Affiliate in the previous or currently calendar year originated more than 5 mortgages or more than 25 secured or unsecured loans.

- **Loan Originator (LO) Qualifications:**

LO qualifications fall either under state SAFE Act or federal TILA.

# Qualified Loan Originator (QLO)

**Federal Legislation - Truth In Lending Act (TILA)/Regulation Z** requires individuals performing loan origination activities to meet certain standard requirements

- **State SAFE Act**
- **TILA's standards**

## **Illinois – Bona fide nonprofit organization exemption**

[Illinois Department of Financial & professional Regulation](#)

[IL Comp. Stat. § 635/1-4 \(d\) \(2.1\) – Illinois statute defining Bona fide non-profit exemption](#)

# Does my affiliate qualify for a Bona Fide non-profit exemption under the IL State SAFE Act?

**Bona Fide Non-profit requirements** [IL Comp. Stat. § 635/1-4 \(d\) \(2.2\)\(aaa\)](#):

- Must be a 501(C) (3) organization
- Federal income tax exemption under Section 501(a) of the IRS code
- Promotes affordable housing or provides home ownership education or similar services
- Conducts its activities in a manner that serves public or charitable purposes
- Receives funding and revenue and charges fees in a manner that does not create an incentive for itself or its employees to act other than in the best interest of its clients
- Provides to, or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to residential mortgage loans and housing assistance provided under government housing assistance programs

**Employees of Bona Fide nonprofit organizations are exempt when acting on behalf of the non-profit organization** [IL Comp. Stat. § 635/1-4 \(d\) \(2.2\)](#)

# Who is a QLO?

**Loan Originator = Individuals who are compensated to perform activities such as:**

- Taking an application for purchase money mortgage or repair loan secured by real property
- Arranging a credit transaction
- Assisting a consumer in applying for credit
- Offering or negotiating credit terms
- Making an extension of credit
- Referring a consumer to a loan originator or creditor
- Advertising or communicating to the public that you can or will perform any loan origination services
- **Habitat Policy = “key volunteers” too!**

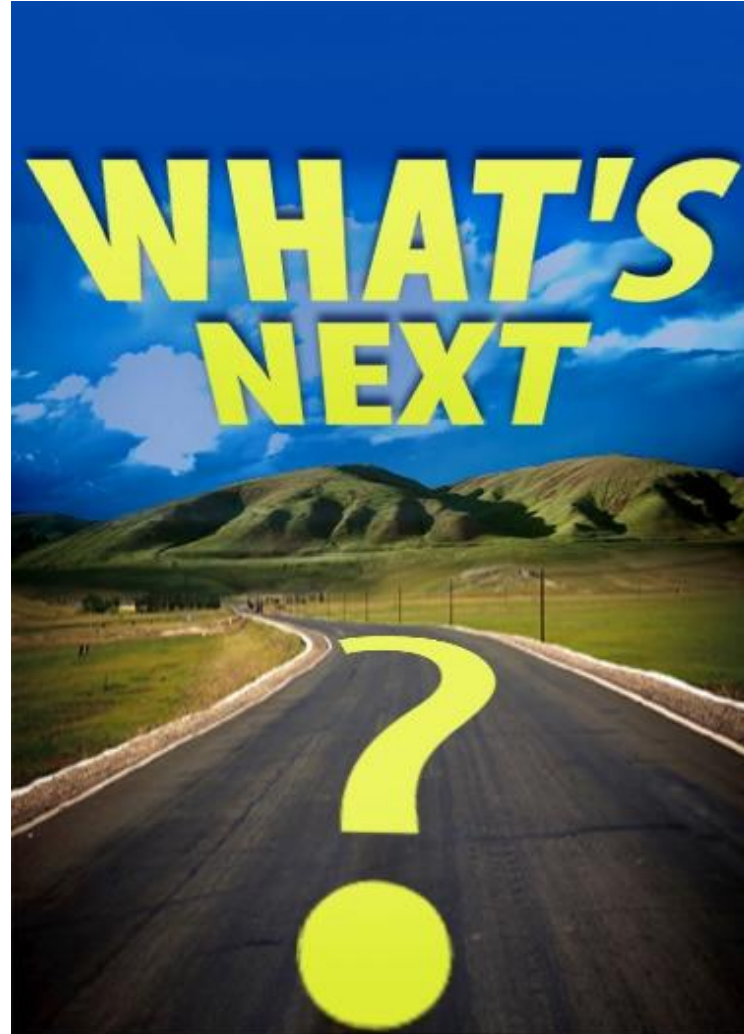
**Who is not a Loan Originator?**

- Only receives, collects, and distributes information common for the processing or underwriting of a loan
- Only communicates with a consumer to obtain information necessary for the processing or underwriting of a residential loan. The **communication must not include offering, negotiating or counseling consumers** about residential mortgage loan rates or terms.
- Solely underwrites loan (number crunching)

**Affiliates that use a 3<sup>rd</sup> party originator, still perform LO activities when selecting applicants, therefore need a QLO.**

## QLO cont'd

My affiliate is  
exempt  
from Illinois  
SAFE Act



Federal law –  
TILA QLO  
requirements

# QLO cont'd

## Affiliate Leader responsibilities

- Set policy; obtain authorization to pull consumer reports – **remember FCRA**
- Review reports to ensure that prohibitions in the law are not present
- Ensure that training that meets the requirements of state and federal laws applicable to the LO's role is available
  - Provide time and funds to cover training
- Oversee QLO(s); submit information to HFHI

## Individual QLO responsibilities

- Provide authorization to have screening performed and information relative to military service, and current or previous licensed activities as applicable
- Complete annual training on state and federal laws
- Follow affiliate policies – recommend changes if practices are not compliant



# Marketing and Outreach

- **Fair Housing Act (FH Act)**– must have Equal Housing logo/statement; no images, symbols, words or actions that would imply a preference (advertise in all faith-based organizations, not just churches)
- **Truth in Lending Act (TILA)** – clear and conspicuous; restricts terms advertised without adding further disclosures (triggering terms)
- **Equal Credit Opportunity Act (ECOA)** – prohibits discouraging applicants and obtaining an application cannot be restricted (if applications are being accepted)
- **Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)** – ads can not be misleading, no act or practice should be perceived as unfair or deceptive

# Application Intake



- **FH Act** – Post “Equal Housing Lender” sign wherever you meet with applicants
- **ECOA** – the Right to Receive Copy of Appraisal Disclosure Notice must be provided within 3 days of an application being submitted (HFHI 2017 app includes disclosure)
- **ECOA** – 30 c-days to provide a notice of action taken
- **GLBA (Privacy)** – Notice may need to be included in the application package if affiliate shares information with third parties (e.g. USDA, state housing agencies, etc.)
- **GLBA** – safeguard information collected from applicants
- **TILA** – Qualified loan originator

# Inquiry vs. Application

## Application can be oral or written

**Inquiry vs. Application:** avoid turning inquiries into applications, invoking notice requirements for credit decisions

- ❑ Affiliate personnel **should not** give opinion about likelihood of acceptance
- ❑ A good phrase if asked direct questions: “There are many factors that contribute to being approved or denied. We invite you to submit an application.”
  - Develop a script for personnel to use
  - Keep the conversation to the program specifics, not the potential applicant’s specifics

# ECOA Phase – Selection Criteria

Habitat Homeownership program is a **ECOA Special Purpose Loan Program: credit program for economically disadvantaged persons - permits lender to set qualification criteria**

- ☐ **Need – Financial & Physical**
- ☐ **Ability to Pay**
- ☐ **Willingness to Partner**

Permits the collection of alimony, child support, and maintenance payments for household income to determine program qualifications (need)

- Avoid any appearance of impropriety
- Affiliates must have policies and procedures and apply them consistently
- Each program criteria must have objective criteria to determine eligibility

# ECOA phase - Ability to Pay

**TILA's** Ability to Repay Rule – exemption, but requires policy and procedures for determining, in good faith, applicant's ability to repay the mortgage loan.

Qualifying income must be stable and likely to continue out at least 3 years

Info should be documented and verified by third party source (and re-verified in the final underwriting prior to closing).

## Policy 23:

Housing debt ratio (monthly mortgage payment compared to income) = no more than 30% of income.

Overall debt to income ratio (total monthly debt compared to total monthly income) = no more than 43%

Must review credit history - must comply with denial notice requirements - FCRA

# ECOA Phase - Third-party Financing Options

1. **Adopt a policy**: clear criteria for eligibility for the different loan products; may include an explanation as to why different products will be offered to different applicants. Follow affiliate policy consistently.
  - For example, the additional product(s) may help affiliates access more capital to serve more households.
2. All outreach and **marketing materials** must be **accurate** and communicate to applicants the basic eligibility requirements and loan terms for the different products.
  - For example, if offering USDA or ZEMs, affiliates cannot advertise only “0% loans” because this would be inaccurate in the USDA setting.
3. **Do not promise** any particular loan product to the applicant.
4. Loan originator employee must not receive **“increased compensation”** for offering any certain loan product (steering) .
5. Ensure borrower cannot claim that the loan product is not in the **“consumer’s interest”**.

# ECOA phase – Notice of Action Taken

1. Within 30 c-days after **(SUBMISSION)** receipt of first piece of information to evaluate (orally or written) send one of these:

Type of Notice	Details
<b>Notice of Incompleteness (NOI)</b>	<ul style="list-style-type: none"><li>• Include: (1) info needed; (2) reasonable time for applicant to provide info; and (3) notice that failure to provide info in time constitutes denial without further action.</li></ul>
<b>Adverse Action Notice</b>	<p><a href="#">Template Adverse Action Notice</a> on My.Habitat.</p> <ul style="list-style-type: none"><li>• Template compliant with ECOA and FCRA. FCRA is triggered if denial is based in whole or in part on information contained in a consumer report including a credit score or criminal background check.</li></ul>
<b>Informational NOI</b>	<ul style="list-style-type: none"><li>• Send NOI when the application is incomplete due to required affiliate action (e.g., home visit or board approval)</li></ul>
<b>Notice of Acceptance (unlikely at this point)</b>	<ul style="list-style-type: none"><li>• States that partner family has been accepted into the Habitat Program and pre-approved for the loan up to a certain amount, subject to changed circumstances and conditions.</li></ul>

# ECOA phase – Notice of Action Taken cont'd

2. Within 30 c-days of “completed” ECOA application (**COMPLETION**) ([HomeownerSelectionAOM.pdf pg 5](#)) (if first Notice of Action was a Notice of Incompleteness), send either:

Type of Notice	Details
Adverse Action Notice	<ul style="list-style-type: none"><li>• <a href="#">Template Adverse Action Notice</a> on MyHabitat; compliant with ECOA and FCRA.</li><li>• FCRA is triggered if denial is based in whole or in part on information contained in a consumer report including a credit score or criminal background check.</li></ul>
Notice of Acceptance	<ul style="list-style-type: none"><li>• Pre-approval notice to homebuyer of acceptance with conditions to close (loan amount range, sweat equity hours, etc.)</li></ul>

3. Within 30 days of making a decision to deny credit (**DENIAL**), at any point in application or partnership process, send:

Type of Notice	Details
Adverse Action Notice	<a href="#">Template Adverse Action Notice</a> on MyHabitat. Template compliant with ECOA and FCRA. FCRA is triggered if denial is based in whole or in part on information contained in a consumer report including a credit score or criminal background check.

**Withdrawal:** If applicant withdraws, affiliate should request writing confirmation of withdrawal; place copy in folder. Notify all parties within the affiliate.



# Required FCRA Notice

## Fair Credit Reporting Act

### Accuracy and Privacy of Reported Info

Use “Consumer Reports” only for permissible purposes, e.g., decision to extend credit

Consumer report – includes credit report and background check (release required)

If denial based on information from consumer report, additional information must be included in the Adverse Action Notice

- Within 30 days of denial of application
- May be triggered before “application” is complete
- Same notice can satisfy ECOA and FCRA requirements

FACT Act – provides protections for consumer’s medical information, Identity Theft protections, and allows 1 free credit report annually for a consumer

### [Legal Advisory - Identity Theft Red Flag](#)

# ECOA Phase Acceptance of Applicants

## Credit Pre-approval

- ❑ Documents the requirements of the partnership between applicant and affiliate.
- ❑ Needs to include process basics and conditions to close, for example:
  - Down Payment, if applicable
  - Sweat Equity (non-reimbursable)
  - Applicant Workshops (Financial Literacy, Home Maintenance)
  - Grounds for de-selection
  - Other essential terms of the partnership
  - Not a sales contract – but a legal agreement

# Willingness to Partner

- ☐ Reasonable accommodations should be made for prospective homeowners with disability limitations (ADA)
- ☐ Policy must have **objective criteria** that measure willingness to partner
- ☐ Must be documented in the Partnership Agreement (PA)

## During ECOA Application

- Complete and return application in established timeframe
- Attend meetings and classes on time
- Returning messages in timely manner
- Home visit

## After PA is Signed

- Being on time to work site
- Attend required homebuyer workshop
- Saving required down payment as specified
- Comply with conditions of partnership agreement

# Deselection

## What is deselection?

Deselection is the termination of the partnership with a prospective homeowner, after pre-approval but before closing on the house. It is a denial for credit and requires an adverse action notice.

### ❑ Grounds for De-Selection (Exclusive):

- Fraud or material misrepresentation on the application
- Negative change in financial circumstances (which affects the ability to pay)
- Appearance on the Sex Offender Registry (Affiliate policy)
- Lack of willingness to partner – not meeting conditions in the PA, or specifics in affiliate's policy

Conditions to close must be communicated to applicant(s) and included in letter of acceptance/partnership agreement

# RESPA Phase

Appraisal Ordered - signals that RESPA phase is approaching

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

Initial disclosures  
are triggered when  
all 6 or 7 (as  
applicable) items  
are present

**If affiliate is not subject to TRID, add:**

7. Any other information deemed necessary by the loan originator

Unlike ECOA, a RESPA application is defined by law

Appraisal must be delivered to buyer promptly after completion

Disclosure are triggered even if final underwriting is not completed

# RESPA Phase – Application Triggered

- Once all 6 (TRID) and 7 (non-TRID) items are present, initial disclosures are triggered
- Lenders are prohibited from requiring verification documents such as a verification of employment prior to issuing a Loan Estimate
- Final underwriting is completed after or simultaneously, but initial disclosures cannot be held until underwriting is completed
- Business day (b-day) for LE is determined by a day the creditor's office is open to the public for substantially all business functions
- B-day for CD is all calendar days except Sunday and legal public holidays.

# First Lien Mortgage Disclosures – non TRID

Requirements	Disclosure
<b>RESPA - Initial disclosures</b> To be delivered to applicants <b>within 3 b-days</b> of receiving : (1) borrower's name; (2) borrower's monthly income; (3) borrower's social security number; (4) property address; (5) estimated value of property; (6) mortgage loan amount sought; and <b>(7) other info needed by lender to make a decision.</b>	<ul style="list-style-type: none"> <li>• Good Faith Estimate (GFE)</li> <li>• <a href="#">CFPB Settlement Cost Booklet</a> [formerly HUD Special Information Booklet]</li> <li>• Mortgage Servicing Disclosure Statement</li> <li>• Affiliated Business Arrangement Disclosure</li> <li>• <a href="#">List of Homeownership Counseling Organizations</a></li> </ul>
<b>TILA</b>	<ul style="list-style-type: none"> <li>• Initial TIL Statement</li> <li>• Written List of Providers (if applicants can shop for services)</li> </ul>
<b>GLBA</b>	<ul style="list-style-type: none"> <li>• Initial Privacy Notice*</li> </ul>
<b>Closing disclosures</b> Best practice to provide HUD-1 24 hrs. before closing	<ul style="list-style-type: none"> <li>• HUD 1 (Settlement Statement)</li> <li>• Final TIL Statement</li> <li>• Initial Escrow Statement</li> </ul>
Ongoing	<ul style="list-style-type: none"> <li>• Annual Escrow Analysis</li> <li>• Notice of Transfer (servicing)</li> <li>• Annual Privacy Notice</li> </ul>

# First Lien Mortgage Disclosures –TRID

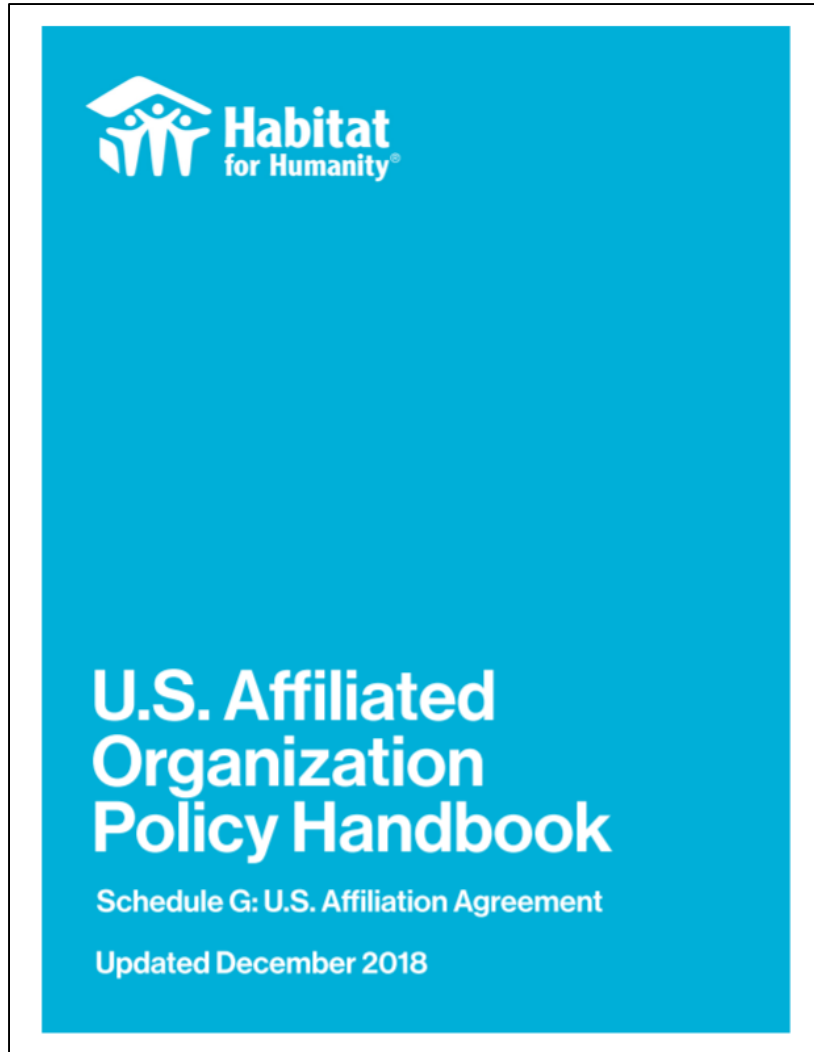
Requirements	Disclosure
<b>TRID &amp; RESPA – Initial disclosures</b> To be delivered to applicants <b>within 3 days</b> of receiving: (1) borrower's name; (2) borrower's monthly income; (3) borrower's social security number; (4) property address; (5) estimated value of property; and (6) mortgage loan amount sought.	<ul style="list-style-type: none"> <li>• Loan Estimate (LE)</li> <li>• <a href="#">Your Home Loan Toolkit</a></li> <li>• Affiliated Business Arrangement Disclosure</li> <li>• <a href="#">List of Homeownership Counseling Organizations</a></li> </ul>
<b>GLBA</b>	<ul style="list-style-type: none"> <li>• <b>Initial Privacy Notice*</b></li> </ul>
<b>TILA</b> Must be delivered at least 7 b-days prior to closing	<ul style="list-style-type: none"> <li>• Written List of Providers (if applicants can shop for services)</li> <li>• <b>Intent to Proceed</b></li> </ul>
<b>TRID &amp; RESPA - Closing disclosures</b> CD must be delivered 3 b-days prior to closing.	<ul style="list-style-type: none"> <li>• Closing Disclosure (CD)</li> <li>• Initial Escrow Statement</li> </ul>
<b>RESPA, GLBA - Ongoing</b>	<ul style="list-style-type: none"> <li>• Annual Escrow Analysis</li> <li>• Notice of Transfer – if servicing is transferred</li> <li>• Annual Privacy Notice</li> <li>• Escrow Closing Notice – if closing escrow account</li> </ul>



# State Laws

- SAFE Act – both Loan Originator and Servicing requirements
- Origination
  - Advertising
  - Disclosures
  - Language in note or mortgage
  - Real Estate sale contracts
  - Community property – property ownership; dower rights
  - Use of sex offender information
  - Late fees

# HFHI Policies



## Policies to focus on for Homeowner Selection

Policy 10 – Funding Sources

Policy 11 – Homeowner Partner Selection

Policy 19 – Sexual Offender Registration Check

Policy 22 – Sale of the Housing Unit

Policy 23 – Mortgage Origination

Policy 24 – Mortgage Servicing

Policy 25 – Family Support

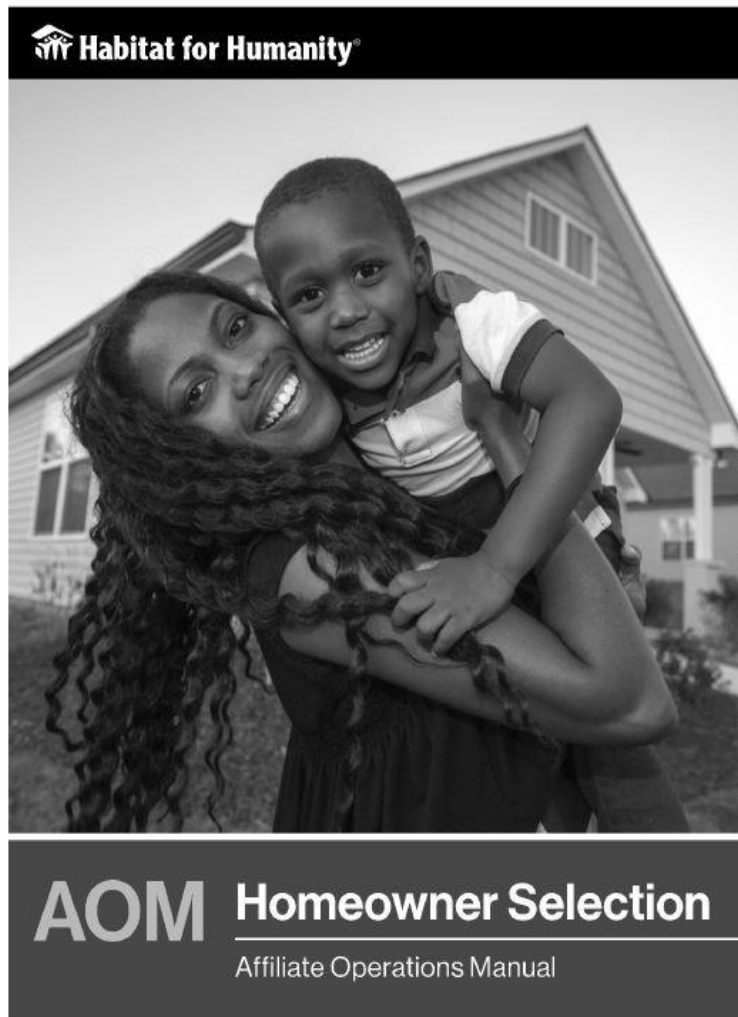
Policy 26 – Equal Treatment of Habitat

Homebuyers

Policy 29 – Authorized Financing Options

[USPolicyHandbook.pdf](#)

# Homeowner Selection AOM



## [Chapter 1 – Introduction](#)

About the Homeowner Selection AOM, Ministry & Mission, Overview of the selection process

## [Chapter 2 – Prepare for Homeowner Selection](#)

Getting Organized, Legal, Homeowner Selection Documents, Developing Homeowner Selection Criteria

## [Chapter 3 – Outreach to Prospective Homeowners](#)

Planning and implementing promotional efforts

## [Chapter 4 – Application Processing](#)

Loan Originator, Obtaining Completed Homeowner Applications, ECOA Requirements, Application Timeline, Qualification & Verification,

## [Chapter 5 – Selecting the Homebuyer](#)

Final review and recommendation , Report to Board, Board Action, Applicant Waiting List

## [Chapter 6 - Communicate the Decision](#)

Notification - Denial, Notification - Approval, Deselection

## [Chapter 7 – Pre-closing, Including Final Underwriting](#)

Final underwriting of prospective homeowner

## [Chapter 8 – Appendices](#)

Quick reference guide to the appendices referenced in this manual

## [Homeowner Selection Affiliate Operations Manual](#)

# Questions

*Thank You*

Affiliate Support Center

Monday to Friday 8:00am to 8:00pm

[ussupportcenter@habitat.org](mailto:ussupportcenter@habitat.org) or

1-877-434-4435

**Disclaimer: This material is for informational purposes only. I am not a lawyer, and this should not be considered legal advice. You should seek appropriate counsel to obtain advice for your own situation.**