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Chapter 4

Federal Lending Legislation

In This Chapter

The federal government and all state governments have enacted numerous laws that affect various aspects of the real estate industry. As a mortgage professional, not only are you obligated to know and understand the law, you have a duty to stay current with changes to the law. In this chapter, we'll examine the following federal laws, grouped into three broad categories:

- Laws requiring financial disclosures in real estate transactions: Truth in Lending Act and the Mortgage Disclosure Improvement Act, Real Estate Settlement Procedures Act, Homeowner's Protection Act, Equal Credit Opportunity Act
- Laws protecting privacy and consumer identification: Fair Credit Reporting Act, Fair and Accurate Credit Transactions Act Red Flag Rules, Gramm-Leach-Bliley Act, U.S. Patriot Act, National Do Not Call Registry
- Laws prohibiting predatory lending: Home Ownership Equity Protection Act, Federal Reserve Mortgage Loan Originator Compensation Rule

We will also review provisions of Title V of the Housing and Economic Recovery Act of 2008 (Pub.L. 110-289), which is designated the Secure and Fair Enforcement Mortgage Licensing Act, more commonly known as the SAFE Act.

In Chapter 13 Ethics, you will have the opportunity to learn about federal laws **prohibiting illegal discrimination**: Civil Rights Act, Fair Housing Act, Equal Credit Opportunity Act, Community Reinvestment Act, and the Home Mortgage Disclosure Act.

At the end of this chapter, you will be able to:

- Discuss disclosure provisions of federal laws related to mortgage lending.
- Identify procedures to protect the privacy of consumers.
- Describe regulations put in place to address predatory lending.
- Define education requirements for mortgage loan originators.

Key Terms

3/7/3 Rule
Affiliated Business Arrangement (AfBA)
Annual Percentage Rate (APR)
Equal Credit Opportunity Act (ECOA) / Regulation B
Fair and Accurate Credit Transactions Act (FACT Act)
Fair Credit Reporting Act (FCRA) / Regulation V
Good Faith Estimate (GFE)
Gramm-Leach-Bliley Act
Home Ownership and Equity Protection Act (HOEPA)
Homeowners Protection Act (HPA)
Housing and Economic Recovery Act of 2008 (HERA)
HUD Uniform Settlement Statement (HUD-1)
Mortgage Disclosure Improvement Act (MDIA)
Real Estate Settlement Procedures Act (RESPA) / Regulation X
Red Flag Rules
Rescind
Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)
Truth in Lending Act (TILA) / Regulation Z
Truth in Lending Statement (TIL)
U.S. Patriot Act

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

In July, 2010, the United States Congress passed the **Dodd-Frank Wall Street Reform and Consumer Protection Act** (Pub.L. 111-203, H.R. 4173). The stated purpose of this far-reaching financial legislation is "to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."

The two titles of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 with the greatest impact on the mortgage industry are Title X, designated as the **Consumer Financial Protection Act**, and Title XIV, designated as the **Mortgage Reform and Anti-Predatory Lending Act**. Title X creates the **Consumer Financial Protection Bureau** as an independent entity within the Federal Reserve and transfers to it the rulemaking and enforcement authority over many consumer financial laws, including:

- Truth in Lending Act (TILA)
- Real Estate Settlement Procedures Act (RESPA)
- Homeowners Protection Act (HPA)
- Fair Credit Reporting Act (FCRA)
- Fair and Accurate Credit Transactions Act (FACTA)
- Portions of the Gramm-Leach Bliley Act related to information privacy
- Equal Credit Opportunity Act (ECOA)
- Home Mortgage Disclosure Act (HMDA)
- Home Ownership and Equity Protection Act (HOEPA)
- Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act)

While Dodd-Frank indicates that final regulations for most of the mortgage provisions are required within 18 months of its enactment, actual implementation of all of its provisions depends on the Consumer Financial Protection Bureau issuing of final rules and regulations. The expected timeline for complete implementation of Dodd-Frank may be as much as three and half years from the passage of the Act. Even so, it is possible that some provisions may never be implemented exactly as proposed in the Act. Every mortgage loan originator is responsible for staying current with the regulations as they are implemented.

Laws Requiring Financial Disclosures

A mortgage loan originator, mortgage broker, mortgage banker, or any other agent of the lender should be aware of the various disclosure requirements when making real estate loans. Some of the disclosures that must be made by the lender include the total costs involved in the transaction. The lender or lender's agent must also disclose whether there is any relationship with service companies that the lender, lender's agent, or mortgage loan originator suggests that a buyer or seller use when the mortgage is for a purchase, and if any compensation is being paid (but not necessarily the amount). Of course, there are many disclosure duties real estate agents, lenders, and even sellers have. The source of the duty to disclose varies according to which disclosures are involved.

Some disclosures are imposed by federal (or state) law, and others are imposed by one's responsibilities to an employer or lender. Here, we'll focus on federal disclosure requirements relating to real estate finance and mortgage loans:

- Truth in Lending Act (TILA)
- Mortgage Disclosure Improvement Act (MDIA) amending TILA
- Real Estate Settlement Procedures Act (RESPA)
- Homeowners Protection Act (HPA)
- Equal Credit Opportunity Act (ECOA)

Truth in Lending Act (TILA)

Prior to the 1968 passage of the **Truth in Lending Act**, or TILA, there were no federal laws requiring the disclosure of consumer credit costs. The findings and declaration of purpose for the passage of TILA (15 U.S.C. 1601 § 102 (a)) follows:

> *The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.*

The Truth in Lending Act is administered by the **Consumer Financial Protection Bureau (CFPB)**. The specific provisions of the Act, which is contained in Title I of the Consumer Credit Protection Act as amended (15 U.S.C. 1601 et seq.) are implemented by Regulation Z (12 C.F.R. 1026). TILA has been amended numerous times, most recently with the Housing and Economic Recovery Act of 2008, the Mortgage Disclosure Improvement Act (MDIA), which went into effect in 2009, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

While Regulation Z does not set limits on interest rates or other finance charges imposed by lenders, it does regulate the disclosure of these items. Specifically, the Act requires all creditors who deal with consumers to make certain disclosures concerning all finance charges and related aspects of credit transactions (including disclosing finance charges expressed as an annual percentage rate). The Act also establishes a three-business day right of rescission in certain transactions.

These provisions apply to each creditor who offers or extends credit to consumers (people, not companies) in the ordinary course of business, primarily for personal, family, or household purposes. The credit offered must be subject to a finance charge or payable by written agreement in **more than four installments**. Under the Act, the definition of **credit** includes all real estate loans made to consumers—no matter what the amount—if the loan is for *other than business or commercial purposes*. (One exemption from coverage is credit of more than $25,000 that is not secured by real property.)

Disclosures

Disclosures are required in two general areas:

- **When creditors offer credit but before the transaction is consummated.** Regulation Z requires disclosures be made clearly, conspicuously, in writing, and in a form the consumer may keep and read prior to the loan closing. If the disclosures are incorporated into the loan agreement, they must be separated from all other loan details; for example, they may be placed in a boxed section on the form or be separated by bold print dividing lines.
- **When credit terms are advertised to potential customers.** Advertisers of consumer credit must clearly and conspicuously provide certain information if they use specific triggering terms in their credit ads. The credit terms advertised must actually be available.

The following are the specific disclosures required by Regulation Z:

- Truth in Lending Statement (TIL) and a guide on how to read the TIL
- Consumer Handbook on Adjustable Rate Mortgages (CHARM booklet) and adjustable rate mortgage (ARM) loan program details *(only for all ARM loans)*
- When Your Home is on the Line Disclosure *(only for home equity installment loans and home equity lines of credit)*

A creditor must retain evidence of compliance with these disclosure requirements for at least **two years** after the disclosures were required to be made.

Annual Percentage Rate (APR)

For residential mortgages, disclosure of the **annual percentage rate** (APR) is very important. The APR tells a borrower *the total cost of financing a loan in percentage terms, as a relationship of the total finance charges to the total amount financed*. The APR is *not* simply the interest rate that appears in the promissory note, known as the **note rate**. Rather, it reflects certain **finance charges** associated with the loan, spread out over the life of the loan. Therefore, the APR is generally higher than the note rate.

It can be a challenge to explain closing costs and fees to consumers, especially to define those fees that are considered finance charges for the purpose of calculating the APR. Regulation Z defines the **finance charge** (12 C.F.R. § 1026.4) as the *cost of consumer credit as a dollar amount.* It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

The finance charge includes fees and amounts charged by someone other than the creditor, (unless otherwise excluded) if the creditor:

- Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or
- Retains a portion of the third-party charge, to the extent of the portion retained.

Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

- Requires the particular services for which the consumer is charged;
- Requires the imposition of the charge; or
- Retains a portion of the third-party charge, to the extent of the portion retained.

Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

Charges Included in the Finance Charge

According to Regulation Z § 1026.4 (b), the following are examples of finance charges:

- Interest, time price differential, and any amount payable under an add-on or discount system of additional charges
- Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account to the extent that the charge exceeds the charge for a similar account without a credit feature
- Points, loan fees, assumption fees, finder's fees, and similar charges
- Premiums or other charges for:
  - Any guarantee or insurance protecting the creditor against the consumer's default or other credit loss
  - Credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction
  - Insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction
- Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation
- Discounts for the purpose of inducing payment by a means other than the use of credit
- Debt cancellation fee, including charges or premiums paid for debt cancellation coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law

Additional considerations related to what is included as finance charges for the purpose of determining APR are discussed later in this chapter in connection with high cost and higher-priced loans.

Charges Excluded from the Finance Charge

According to Regulation Z § 1026.4 (c)(d)(e), the following are excluded from the finance charge:

- Application fees charged to all applicants for credit, whether or not credit is actually extended
- Charges for actual unanticipated late payment, for exceeding a credit limit or for delinquency, default, or a similar occurrence
- Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing
- Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis
- Seller's points
- Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit
- These fees in a transaction secured by real property or in a residential mortgage transaction, if bona fide and a reasonable amount:
  - Fees for title examination, abstract of title, title insurance, property survey, and similar purposes
  - Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents
  - Notary and credit report fees
  - Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations
  - Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge
- Discounts offered to induce payment for a purchase by cash, check, or other means
- Premiums for voluntary credit life, accident, health, loss-of-income insurance, or debt cancellation coverage if the following conditions are met:
  - The insurance coverage or debt cancellation agreement or coverage is not required by the creditor, and this fact is disclosed in writing
  - The fee or premium for the initial term of insurance coverage or debt cancellation coverage is disclosed, as well as the term of insurance or coverage when less than the term of the transaction
  - Any consumer in the transaction signs or initials an affirmative written request for the insurance or debt cancellation coverage after receiving the specified disclosures
- Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property when the following conditions are met:
  - The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed
  - When the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage is disclosed, as well as the term of the insurance if less than the term of the transaction
- If itemized and disclosed, the following security interest charges may be excluded:
  - Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest
  - The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed fees described above that otherwise would be payable

- Taxes on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument

√ **Note:** These prohibited offsets—interest, dividends, or other income received or to be received by the consumer on deposits or investments—shall not be deducted in computing the finance charge.

Real Success

Whenever you quote an interest rate to a consumer—including advertisements, websites, etc.—the APR must also be disclosed. When a potential borrower inquires about the cost of credit orally, only the annual percentage rate is required to be stated. If you cannot determine the APR in advance, other cost information for the consumer's specific transaction may be given, as well as:

- For open-end credit, the corresponding annual percentage rate must be stated.
- For closed-end credit, the APR for a sample transaction must be stated.

As a general rule to assist you with determining what closing costs are included in the APR, consider this: If a borrower was purchasing a home for cash, there would be certain closing costs that he would ***not*** incur, such as an application fee, credit report fee, underwriting fee, mortgage insurance, and interest. These are generally the same costs that ***are*** included in the APR calculation.

Truth in Lending Statement (TIL)

According to Regulation Z (12 C.F.R. § 1026.19), in a mortgage transaction subject to the Real Estate Settlement Procedures Act that is secured by the consumer's dwelling, other than a home equity line of credit, creditors must provide the Truth in Lending Statement (TIL)—along with other required disclosures—at application or placed in the mail **no later than the third business day after the creditor receives the consumer's written application or no later than the seventh business day before consummation of the transaction.** This means that in order to comply with the Mortgage Disclosure Improvement Act, the earliest a loan may close is the **seventh business day** after the initial disclosures are delivered or placed in the mail (12 C.F.R. § 1026.19 (a)(2)(i)).

The only fee that may be collected prior to these mandated disclosures is a fee for a **credit report**, assuming the fee is bona fide and reasonable in amount. Other loan origination fees may be collected after these disclosures are hand-delivered to the borrower or three (3) business days after they are mailed (12 C.F.R. § 1026.19 (a)(1)(ii)(iii)).

Note that mortgage loan originators and servicers are prohibited from charging a fee for the preparation of the Truth in Lending Statement (TIL) or other disclosures required by the Truth in Lending Act or the Real Estate Settlement Procedures Act (12 C.F.R. § 1024.12).

As with other disclosures required by the Truth in Lending Act, the TIL may be made available in a language other than English at the consumer's request.

Data in the "Federal Box"

- Finance charge expressed as an **annual percentage rate** (the APR is labeled with a phrase such as "The cost of your credit as a yearly rate"); not the note rate
- Total **finance charges**—the amount of money paid toward interest over the life of the loan, plus the upfront fees (e.g., origination fee, loan fee, commitment fee, assumption fee, prepaid interest, prepaid PMI, prepaid credit life insurane

- **Amount financed**—the total amount of credit the lender extends to the borrower, reflecting the subtraction of any prepaid finance charges the borrower paid and the addition of other amounts financed
- **Total of payments** paid at the end of the loan term

Both the initial and final Truth in Lending Statements must also include the following language:

> *You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.*

Other Data Included for Closed-End Transactions

- Name of the lender/creditor
- Notice of a right to receive an itemization of the amount financed, including the principal amount, all finance charges detailed, and any discounts, points, fees, mortgage insurance premiums, etc., that are financed (this can be satisfied by a Good Faith Estimate)
- Number, amount, and timing of payments scheduled to repay the obligation
- New payment, late payment, and prepayment provisions
- Description and identification of the security (there will be a phrase such as "There is a security interest in the property purchased")
- Whether the loan may be assumed by a subsequent buyer
- Notice that consumers may not be able to refinance to a lower rate in the future (previously required only for adjustable rate loans)
- Payment summary table indicating initial interest rate and corresponding monthly payment

In addition, for adjustable or step-rate mortgages, the payment summary table must include the maximum interest rate and payment that can occur during the first five years and a "worst case" example showing the maximum rate and payment possible over the life of the loan, for example:

	Introductory Rate and Monthly Payment (first period)	Maximum During First Five Years (date)	Maximum Ever as early as (date)
Interest Rate	_____ %	_____ %	_____ %
Principal + Interest Payment	$ _____	$ _____	$ _____
Est. Taxes + Insurance (Escrow) [Includes Private Mortgage Insurance]	$ _____	$ _____	$ _____
Total Est. Monthly Payment	$ _____	$ _____	$ _____

New Disclosure Form on the Horizon

In response to provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, H.R. 4173), the Consumer Financial Protection Bureau has tested multiple iterations of a proposed single integrated disclosure that combines the disclosure requirements in the Truth in Lending Act (currently provided for by the Truth in Lending Statement) and the Real Estate Settlement Procedures Act (currently provided for by the Good Faith Estimate), revising its samples in response to comments from consumers and mortgage professionals. A final round of testing was expected to be conducted in February 2012, after which the accompanying federal rules related to the new disclosures are expected to be explained. The actual date for final implementation of any revised form and accompanying rules was unknown at the time of this printing, although the Dodd-Frank Act requires the CFPB to issue the combined model disclosures and implementing rules by July 21, 2012. Every MLO has an obligation to stay current with provisions of the Dodd-Frank Act as they are implemented via rules and regulations. For the most current information, see the mortgages section on the Consumer Financial Protection Bureau website: http://www.consumerfinance.gov/knowbeforeyouowe/

FEDERAL TRUTH IN LENDING STATEMENT

(This is neither a contract nor a commitment to loan)

Applicant(s): JOE BUYER
Applicant Address: 123 Market Ave, Anytown US 10001
Property Address: 9876 Oak St, Anytown US 10001
Application Number: 123456789

Prepared By: FIRST BANK
111 1st St, Anytown US 10001
Date Prepared: 4/17/11
Loan Type: Conventional Fixed

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
5.325	**$244,714.53**	**$242,865.02**	**$487,579.55**

INTEREST AND PAYMENT SUMMARY

	Rate and Monthly Payment
Interest Rate	**5.2500%**
Principal + Interest Payment	**$1,354.38**
Est. Taxes + Insurance (Escrow) *Includes Private Mortgage Insurance*	**$ 255.00**
Total Est. Monthly Payment	**$1,609.38**

THERE IS NO GUARANTEE THAT YOU WILL BE ABLE TO REFINANCE TO LOWER YOUR RATE AND PAYMENTS.

☐ **This loan has a Variable Rate Feature. Variable Rate Disclosures have been provided to you earlier.**
☐ **This loan has a Demand Feature.**
☐ **Filing/Recording Fee: $ 0**

Late Charge: If your payment is delinquent for **15** days or more, you will pay a late charge of **5** % of the payment in accordance with the terms of your note.

Prepayment: If you pay off your loan early: **You will not have to pay a penalty.**

Assumption: Someone buying your home **will not** be allowed to assume the remainder of the mortgage on its original terms.

See your Note and Mortgage for any additional information about nonpayment, default, and required repayment in full before the scheduled date, prepayment penalties, and assumption of the obligation.

Insurance: You may obtain hazard and flood insurance from any company you choose that is acceptable to the lender.

YOU ARE NOT REQUIRED TO COMPLETE THIS AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR SIGNED A LOAN APPLICATION.

I/We hereby acknowledge receipt of copies of this Truth in Lending Statement:

_____ _____
Applicant ***Date*** ***Applicant*** ***Date***

APR Accuracy and Rediscloseure

According to Regulation Z **(§ 1026.22),** the annual percentage rate is generally considered accurate if it does not vary above or below the APR initially disclosed by more than:

- 1/8% (.125) for a regular transaction.
- 1/4% (.25) for an irregular transaction.

An "irregular" transaction is defined as one that includes one or more of the following features:

- Multiple advances
- Irregular payment periods
- Irregular payment amounts (other than an irregular first period or irregular first and final payment)

If a change renders the APR inaccurate prior to loan consummation, the Mortgage Disclosure Improvement Act requires that the borrower be given corrected disclosure of all terms. The consumer must receive the corrected disclosures no later **three (3) business days** prior to loan consummation. If the corrected disclosures are mailed or delivered by some method other than in person, the consumer is considered to have received them three (3) business days after they were mailed (12 C.F.R. § 1026.19 (a)(2)(ii)).

The loan generally cannot be consummated until both waiting periods have expired. However, a borrower *may* be able to **waive** the waiting periods and expedite the closing if there's a **bona fide personal financial emergency**, such as to avoid foreclosure. This requires a dated written statement from the borrower with the details of the emergency (12 C.F.R. § 1026.19 (a)(3)).

Also, remember that consumers are NOT required to continue with the loan during these waiting periods simply because the creditor provided these disclosures.

3/7/3 Rule

You can remember these disclosure requirements as the 3/7/3 Rule:

- Initial disclosure must be given (or placed in the mail) within **three** (**3) business days** of receipt of a completed application.
- The earliest a loan may be consummated is on the **seventh (7th) business day** after disclosures are delivered/mailed.
- Any corrected disclosures must be received by the consumer at least **three (3) business days** before the loan is consummated.

When considering these waiting periods, Regulation Z defines a **business day** to be all calendar days **except** Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day (12 C.F.R. § 1026.2 (a)(6)). Note the difference between how these waiting periods are defined:

Example 1: The creditor takes an application for a fixed rate loan on Tuesday, May 1, and mails the initial TIL the next day, Wednesday, May 2. The earliest the loan can close—assuming the APR on the final TIL is within the tolerance—is the following Thursday, May 10, the seventh business day after mailing the initial disclosure (assuming no legal federal holidays occur during the waiting period).

Example 2: Same situation as above, but on Friday, May 4, the interest rate goes up, causing the APR to increase by more than .125 percent. The creditor mails a revised TIL on Saturday, May 5. The consumer is assumed to have received it three business days later (Wednesday, May 9). The three business-day waiting period then begins Thursday. Since the next day after the three business-day waiting period is a Sunday, the earliest this loan will close is Monday, May 14 (assuming no legal federal holidays occur during the waiting period).

Right of Rescission

Under Regulation Z (§§ 1026.15 and 1026.23), consumers have the right to rescind certain credit transactions. **Rescind** means to *take back or withdraw an offer or contract.* The right of rescission as discussed in these sections of Regulation Z applies to any credit transaction involving the establishment of a security interest (for example, a mortgage or deed of trust) in their **principal residence**, such as:

- Home equity loans
- Home improvement loans
- Refinances
- Home equity lines of credit

There are additional rescission rights associated with high cost and higher-priced loans, which are discussed later in this chapter.

This right of rescission does **not** apply to the following:

- Purchase loans (which protects sellers who may have entered into another contract or purchased a home contingent on the buyers purchasing their present home)
- Construction loans (which protects builders who may have performed services based on the buyer's commitment)
- Commercial loans
- Loans on vacation or second homes
- A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling unless the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation
- A transaction in which a state agency is a creditor

Some points to remember:

- When more than one consumer has the right to rescind, the **exercise of the right by one consumer is effective for all consumers**.
- If a consumer does choose to exercise the right to rescind, the mortgage is void and the creditor must return any money it collected related to the loan **within 20 calendar days**. The consumer has no liability for the loan, including finance charges.
- Consumers may exercise the right to rescind the credit transaction until midnight of the **third business day** following loan consummation, delivery of the required rescission notice, or delivery of all material disclosures, **whichever occurs last**.

Note that for the purposes of rescission, the term **consumer** is expanded to include any "natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest" (12 C.F.R. § 1026.2 (a)(11)).

Case in Point

Loan papers for a refinance are signed on Wednesday. The consumer can consider and think about the mortgage closing on Thursday (Day 1), Friday (Day 2) and Saturday (Day 3). Under Regulation Z's provisions for rescission, Saturdays are included in the rescission period, but Sundays and federal holidays are not included in the three business-day calculation. The mortgage can be recorded and money disbursed the next business day, Monday (assuming Monday is not a legal federal holiday).

Wednesday	Thursday	Friday	Saturday	Sunday	Monday
Loan Consummation	Day 1	Day 2	Day 3	--	$$ Disbursed

Notice of Right to Rescind

Creditors must inform consumers of their right to rescind by providing **two copies** of a **Notice of Right to Rescind** document to *each consumer entitled to rescind.* The notice of the right to rescind must be in a separate document from the sale or credit document, and must identify the transaction or occurrence and conspicuously disclose the following:

- The retention or acquisition of a security interest in the consumer's principal dwelling
- The consumer's right to rescind
- How to exercise the right of rescission, with a form to use that designates the address of the creditor's place of business
- The effects of rescission
- The date on which the rescission period ends

Extended Right of Rescission

Consumers may have the right to an extended rescission period of up to **three years** under these circumstances:

- The creditor fails to properly notify consumers of the right to rescind.
- The creditor does not provide the consumer with the required material disclosures (or the required corrected redisclosures). "Material" refers to annual percentage rate, finance charge, amount financed, total payments, or payment schedule within the acceptable tolerances.

For the purposes of extended rescission, the acceptable **tolerances** for accuracy include:

1/2 of 1 percent tolerance. The finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate if the disclosed finance charge is:

- Understated by no more than **0.5%** of the face amount of the note or **$100**, whichever is greater, or
- Greater than the amount required to be disclosed.

1 percent tolerance. In a refinancing of a residential mortgage transaction with a new creditor if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) is considered accurate if the disclosed finance charge is:

- Understated by no more than **1%** of the face amount of the note or **$100**, whichever is greater, or
- Greater than the amount required to be disclosed.

The extended right to rescind expires **three years** after the occurrence giving rise to the right of rescission, upon transfer of all of the consumer's interest in the property, or upon sale of the property, whichever occurs first.

Additional Rescission Considerations for Foreclosures

After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

- A mortgage broker fee that should have been included in the finance charge was not included.
- The creditor did not provide the properly completed Notice of Rescission.

Tolerance for disclosures. After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate if the disclosed finance charge is:

- Understated by no more than $35; or
- Greater than the amount required to be disclosed.

Advertising Disclosures

Prior to the passage of the Truth in Lending Act, an advertiser might have disclosed only the most attractive credit terms, distorting the true cost of financing. For example, the ad could have included the low monthly payments (e.g., $275 a month) without indicating the large down payment necessary to qualify for that payment level. Advertisers did not have to disclose the APR or whether the transaction was a credit sale or lease. The Act requires the advertiser to tell the whole story, and tell it **clearly** and **conspicuously**. Here's a critical example: If discussing an adjustable rate mortgage that has a fixed term, the word "**fixed**" must be accompanied by an equally prominent and closely proximate statement of the fixed time period and the fact that the rate may vary or the payment may increase after that period.

Anyone who places advertising that references consumer credit is required to follow the advertising provisions of the Truth in Lending Act. Also, if specific loan terms are shown in an ad, those terms must be **actually available**.

Triggering Terms Requiring Disclosure

If an advertisement is for credit secured by a dwelling, the advertisement may not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement contains any one of the triggering terms about the loan as specified in the Truth in Lending Act, that advertisement must also include the required disclosures. Examples of triggering terms in advertisements include:

- The amount of the down payment (e.g., "20% down")
- The amount of any payment (e.g., "Pay only $700 per month")
- The number of payments (e.g., "Only 360 monthly payments")
- The period of repayment (e.g., "30-year financing available")
- The amount of any finance charge (e.g., "1% finance charge")

Required Advertising Disclosures

If any triggering terms are used in an ad, *all* of these disclosures must be made:

- Amount or percentage of down payment
- Terms of repayment, e.g., payment schedule, including any balloon payments
- Annual percentage rate, using that term spelled out in full or APR; if the rate may increase (e.g., for ARMs), that fact must also be disclosed

If an ad discloses only the APR, the additional disclosures are *not* required.

Terms That Do NOT Trigger Disclosure

Examples of terms that do *not* trigger required disclosures include:

- "5% Annual Percentage Rate loan available here."
- "Easy monthly payments."
- "FHA financing available." or "100% VA financing available."
- "Terms to fit your budget."

Advertising Closed-End Credit

A **closed-end** credit transaction is one in which the balance is expected to be repaid—along with any interest and finance changes—by a specified future date. Most real estate loans are closed-end. Additional advertising provisions in Regulation Z (§ 1026.24) related to these loans include:

Rate. If an advertisement states a simple annual rate of interest and more than one rate applies over the term of the loan, the advertisement must also disclose—with equal prominence and in close proximity to the advertised rate—this information:

- Each simple annual rate of interest that will apply; if a variable-rate, a reasonably current index and margin must be used

- The period of time during which each simple annual rate of interest applies
- The APR for the loan

Payment Amount. If the advertisement states the amount of any payment, it must also disclose—with equal prominence and in close proximity to the payment—this information:

- The amount of each payment that applies over the term of the loan, including any balloon payment; if a variable-rate, a reasonably current index and margin must be used
- The period of time during which each payment applies

√ ***Note:*** When the ad for a first lien mortgage loan states the amount of any payment, it must also state prominently (but not with equal prominence) and in close proximity to the advertised payment that the payments do ***not*** include amounts for taxes and insurance, if applicable, and that the actual payment amount will be higher.

Payment and Rate Comparisons. Advertisements may not compare actual or hypothetical payments or rates and a "teaser" payment or simple annual rate available for the advertised product unless the ad includes a clear and conspicuous comparison to the terms required to be disclosed (APR, term, payments, etc.). If it's a variable rate transaction where the advertised payment or simple annual rate is based on the index and margin used to make subsequent rate or payment adjustments, the advertisement must include an equally prominent statement in close proximity that the payment or rate is subject to adjustment as well as the time period when the first adjustment will occur.

Use of the Term "Fixed." If an advertisement references **both variable and non-variable rate** loans, the terms "adjustable rate mortgage," "variable rate mortgage," or "ARM" must appear with equal prominence as any use of the term "fixed" or "fixed rate mortgage." Also, the term "fixed" must clearly refer *only* to the transactions with fixed rates. If referring to a payment or to a variable rate, it must also include the time period for which the rate or payment is fixed and a statement that the rate can vary and the payment can increase after that.

If an advertisement references a **variable rate** loan, the phrase "adjustable rate mortgage," "variable rate mortgage," or "ARM" must appear before the first use of the term "fixed" and must be at least as conspicuous as the word "fixed." In addition, the ad must clearly indicate the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

If the ad references a **non-variable rate** loan where the payment amount increases, the use of the word "fixed" must state the fact that the rate may vary or the payment may increase after that period.

Catalogs, Multiple-Page Ads, Electronic Ads. If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet web site) gives information in a table or schedule in sufficient detail that includes triggering terms requiring additional disclosure, it would be considered a single advertisement under the following circumstances:

- The table or schedule is clearly and conspicuously set forth; and
- Any statement of the triggering credit terms appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

The table or schedule of terms must include all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Advertising Open-End Credit

Regulation Z was amended to comply with the Mortgage Disclosure Improvement Act of 2009 (12 C.F.R. § 1026.16) to address the unique challenges in advertising open-end credit plans secured by the borrower's dwelling. Remember, **open-end** credit refers to loan where credit is extended to the borrower during the term and the creditor may impose a finance charge on the outstanding unpaid balance, such as a home equity line of credit (HELOC). It's critical that ads for these loans not use misleading terms, such as "free money." These loans are also subject to the disclosure provisions previously discussed as well these additional provisions:

Additional Disclosures. If any of the triggering terms are used or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement, the ad must also clearly and conspicuously state the following:

- Any **loan fee** that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan expressed as a single dollar amount or a reasonable range
- Any **periodic rate** used to compute the finance charge expressed as an annual percentage rate
- The **maximum annual percentage rate** that may be imposed in a variable-rate plan

Further, if an advertisement states an initial annual percentage rate that is *not* based on the index and margin used to make later rate adjustments in a variable-rate plan, the ad must also clearly indicate the period of time such initial rate is in effect and a reasonably current APR that would have been in effect using the index and margin.

Balloon Payments. In an ad that states a minimum payment, if it's possible that a balloon payment would result if only that minimum periodic payment is made, that fact must be stated with equal prominence and close proximity.

Promotional Rates and Payment. If a HELOC advertisement states a promotional rate and/or a promotional payment, the ad must disclose—in a clear and conspicuous manner and with equal prominence and in close proximity to each listing of the promotional rate or payment—each of these facts:

- The period of time during which the promotional rate or payment applies
- If a promotional rate, any APR that applies (if a variable rate, the APR must be disclosed within established accuracy standards)
- If a promotional payment, the amounts and time periods of any payments that will apply under the plan (if the payment is based on the application of a variable index and margin, it must be disclosed based on a reasonable current index and margin)

If an ad stating a promotional rate is broadcast on radio or television, in lieu of stating these disclosures, a toll-free telephone number (or one that allows consumers to reverse charges) from which to get additional cost information must be indicated.

√ ***Note:*** These provisions do ***not*** apply to an envelope in which an application or solicitation is mailed, nor to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

Other General Provisions

Tax Implications. Care must be taken to ensure that an advertisement that states any tax implications—such as whether or not interest is tax-deductible—is not misleading. There are additional requirements imposed on ads distributed in paper form or through the Internet rather than broadcast on radio or television. If the ad states the advertised extension of credit may exceed the fair market value of the dwelling, is must also clearly and conspicuously state that the interest on that portion of the loan is not tax deductible for Federal income tax purposes. Furthermore, the consumer must be advised to consult a tax adviser about the deductibility of interest and charges.

Misrepresentations. Regulation Z prohibits misrepresentations about a loan product being government endorsed, as well as any misleading use of the current lender's name in the advertisement or claims of debt elimination. It also prohibits using the term "counselor" in any advertisement to refer to a for-profit mortgage broker or lender. In a foreign language advertisement, providing information about some trigger terms or required disclosures in a foreign language, while providing information about other trigger terms or required disclosures only in English, is also prohibited.

Clear and Conspicuous Standard. When considering **oral advertisements** for credit secured by a dwelling, including alternative disclosures as provided for by § 1026.24(g), a clear and conspicuous disclosure, whether by radio, television, or other medium, means that the required disclosures are given at a speed and volume

sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

Other Prohibited Practices

Regulation Z was amended to comply with the Mortgage Disclosure Improvement Act of 2009 (12 C.F.R. § 1026.42) to specifically address perceived abuses in the mortgage industry. The following prohibitions apply to any **closed-end mortgage** loan that is subject to TILA and secured by the consumer's **principal dwelling**, regardless of pricing or loan purpose.

Appraisal

Creditors, mortgage brokers, and their affiliates are prohibited from coercing, influencing, or encouraging an appraiser to misstate the value of the dwelling. For example, the law specifically prohibits these practices:

- Implying to an appraiser that current or future retention of the appraiser depends on the amount at which the appraiser values a consumer's principal dwelling
- Excluding an appraiser from consideration for future engagement because the appraiser reports a value of a consumer's principal dwelling that does not meet or exceed a minimum threshold
- Telling an appraiser a minimum reported value of a consumer's principal dwelling that is needed to approve the loan
- Failing to compensate an appraiser because the appraiser does not value a consumer's principal dwelling at or above a certain amount
- Conditioning an appraiser's compensation on loan consummation

In addition, a creditor cannot extend credit if the creditor knows, at or before closing, that improper coercion has occurred by anyone unless the creditor can document that it has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the dwelling's value. It is not a violation to ask an appraiser to consider additional information about the dwelling or comparable properties or to ask an appraiser to correct factual errors. In addition, the following practices are *not* prohibited:

- Obtaining multiple appraisals of a consumer's principal dwelling, so long as the creditor adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value
- Withholding compensation from an appraiser for breach of contract or substandard performance of services as provided by contract

Servicing

Servicing may be defined as receiving any scheduled periodic payments from a borrower according to the terms of any mortgage loan—including amounts for escrow accounts—and making the payments to the owner of the loan or other third parties of principal and interest and such other payments. The following servicing practices would be a violation of Regulation Z:

- Failing to credit a payment as of the date of receipt (unless the delay results in no adverse consequences to the borrower) when the payment complies with the terms of the legal contract between the lender and the borrower. However, if a servicer accepts a payment that does not conform to the written requirements, the servicer shall credit the payment no later than five days after receipt.
- Imposing any late fee or delinquency charge in connection with a payment, when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period. This prohibited practice may be referred to as "pyramiding" late fees.
- Failing to provide, within a reasonable period of time, statements showing the payoff amounts as of a specified date in time.

Real Estate Settlement Procedures Act (RESPA)

The **Real Estate Settlement Procedures Act of 1974** (RESPA) became effective on June 20, 1975. The U. S. Department of Housing and Urban Development (HUD) promulgated **Regulation X**, which is now implemented by the Consumer Financial Protection Bureau. . The purposes of RESPA are to help consumers become better shoppers for settlement services and to eliminate unnecessary increases in the costs of certain settlement services due to kickbacks and referral fees.

Settlement Services

Regulation X (12 C.F.R. § 1024.2) defines settlement services as any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

- Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans)
- Services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender)
- Any services related to the origination, processing, or funding of a federally related mortgage loan
- Title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies
- Services by an attorney
- Preparation of documents, including notarization, delivery, and recordation
- Rendering of credit reports and appraisals
- Inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title
- Conducting of settlement by a settlement agent and any related services
- Services involving mortgage insurance
- Services involving hazard, flood, or other casualty insurance or homeowner's warranties
- Services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan
- Services involving real property taxes or any other assessments or charges on the real property
- Services by a real estate agent or real estate broker
- Any other services for which a settlement service provider requires a borrower or seller to pay

Covered Transactions

Regulation X (12 C.F.R. § 1024.05) covers loans secured with a mortgage placed on **residential properties** designed for occupancy of from **one to four families**—most conventional loans and government agency loans such as FHA, VA, and USDA—including most purchase loans, assumptions, refinances, property improvement loans, home equity lines of credit, and some construction loans.

The following types of transactions are *not* covered:

- An all-cash sale
- A sale where the individual home seller takes back the mortgage
- A rental property transaction
- Temporary construction loans
- Other business purpose transaction
- Property of 25 acres or more
- Vacant or unimproved property unless a dwelling will be constructed or moved onto the property within two years

RESPA Provisions

The Real Estate Settlement and Procedures Act is a consumer protection law that includes provisions to mandate specific disclosures and prohibit certain practices.

Kickbacks, Fee-Splitting and Unearned Fees

Section 8 of the Real Estate Settlement and Procedures Act (12 U.S.C. 2607):

- Prohibits giving or accepting a fee, kickback, or anything of value in exchange for referrals of settlement service business involving a federally related mortgage loan (allows a thing **of minimal value** used for promotional purposes, such as pens, mementos, coffee cups, hats, etc.)
- Defines prohibited **thing of value** to include, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation
- Prohibits fee-splitting and receiving unearned fees or a percentage of any charge made or received for services not actually performed
- Prohibits a "required use" of specific settlement service providers, except in cases where a lender refers a borrower to an attorney, credit reporting agency, or real estate appraiser to represent the lender's interest in the transaction
- Does **not** prohibit the payment of fees to attorneys, title companies, or agents for service actually performed, the payment of a bona fide salary or compensation to a person for goods or products actually furnished or services actually performed in the making of a loan, and payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers
- Allows legitimate discounts on services to consumers if a combination of settlement services is offered at a total price lower than the sum of the individual settlement services, as long as:
  - The use of any such combination is optional to the purchaser, and
  - The lower price for the combination is not made up by higher costs elsewhere in the settlement process.
- Subjects violators to criminal and civil penalties, including:
  - Fines up to $10,000
  - Imprisonment up to one year
  - Liability up to three times the amount of the charge paid for the service (civil lawsuit)

Affiliated Business Arrangements (AfBAs)

While kickbacks from referrals are prohibited, Regulation X does recognize the legitimacy of affiliated business arrangements involving real estate settlement services for federally related mortgage loans (12 C.F.R. § 1024.15). An affiliated business arrangement is a situation where a person in a position to refer settlement services—or an associate of that person—has either an affiliate relationship with or a direct or beneficial ownership interest of more than **1%** in a provider of settlement services and who then refers business to that provider or in some way influences the selection of that provider. Within the scope of this definition, a "person" could be an individual or a corporation, association, partnership, or trust. The term "associate" refers to someone who has one or more of the following relationships with a person in a position to refer settlement business:

- A spouse, parent, or child of that person
- A corporation or business entity that controls, is controlled by, or is under common control with such person

- An employer, officer, director, partner, franchisor, or franchisee of that person
- Anyone who has an agreement, arrangement, or understanding with that person when the purpose or substantial effect of which is to enable that person to benefit financially from the referrals

How someone with ownership interest receives compensation for settlement services is important under RESPA. Legitimate fees or wages for **services actually rendered** or hours worked are permissible. Additionally it is permissible to accept **bona fide compensation** from the ownership interest or franchise relationship between entities in an affiliate relationship, as long as it is for ordinary business purposes and is not a fee for the referral of settlement service business or an unearned fee. That compensation could include dividends, capital or equity distributions, business loans, advances, and capital or equity contributions.

Seller Required Title Insurance

Section 9 of RESPA (12 U.S.C. 2608) prohibits a seller from requiring the home buyer to use a particular title insurance company, either directly or indirectly, as a condition of sale. Buyers may sue a seller who violates this provision for an amount equal to **three times** all charges made for the title insurance.

Limits on Escrow Accounts

Section 10 of RESPA (12 U.S.C. 2609) sets limits on the amounts a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance, and other charges related to the property. RESPA does *not* require lenders to impose an escrow account on borrowers; however, certain government loan programs or lenders may require escrow accounts as a condition of the loan, for example, a mortgage loan that includes mortgage insurance MUST have an escrow account. In addition, a loan that meets the TILA definition of a "higher-priced" loan is required to have a lender-imposed escrow account for at least 12 months.

During the course of the loan, RESPA prohibits a lender from charging excessive amounts for the escrow account. Each month, the lender may require a borrower to pay into the escrow account no more than **1/12 of the total of all disbursements payable during the year** (one month), plus an amount necessary to pay for any shortage in the account. In addition, the lender may require a cushion, not to exceed an amount equal to **1/6 of the total disbursements for the year** (two months).

The lender must perform an escrow account analysis once during the year and notify borrowers of any shortage. Any **excess of $50 or more** in the escrow account must be returned to the borrower, assuming that the borrower is not delinquent with payments. In that case, the lender is not required to return any excess escrow.

Prohibition on Certain Fees

Federal law requires that consumers of credit be given specific disclosures. The Real Estate Settlement Procedures Act prohibits lenders and servicers from charging a fee for the preparation of the Truth in Lending Statement (TIL) or other disclosures required by the Truth in Lending Act, or the disclosures and statements required by RESPA, such as the Good Faith Estimate, HUD-1 Settlement Statement, or annual escrow account statements.

Required Disclosures

RESPA requires that borrowers receive disclosures at various times throughout the loan process. Some disclosures spell out the costs associated with the settlement/closing, outline lender servicing and escrow account practices, and describe business relationships between settlement service providers. RESPA mandates different disclosures when the loan application is made, prior to settlement, at settlement, and after settlement.

Disclosures Within 3 Business Days of Completed Application

Application is defined by Regulation X (12 C.F.R. § 1024.2) as the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan which includes:

- Borrower's name
- Borrower's monthly income
- Borrower's Social Security number to obtain a credit report
- Property address
- Estimate of value of the property
- Loan amount
- Any other information deemed necessary by the mortgage loan originator

When consumers complete an application—or provide the information sufficient to complete an application—mortgage loan originators must give them certain disclosures. If a borrower does not get these disclosures at the time of application, the MLO must provide them **within three (3) business days** of receiving the completed application.

If the applicant withdraws the application or the lender turns down the loan before the end of the three business-day period, RESPA does **not** require the mortgage loan originator to provide these documents.

HUD's Settlement Costs Booklet. Contains clear and concise consumer information regarding various real estate settlement services including:

- Description and explanation of the nature and purpose of each cost
- Description and explanation of the nature and purpose of escrow accounts
- Explanation of consumer's options to select settlement service providers
- Explanation of unfair practices and unreasonable or unnecessary chargers the borrower should avoid

The Dodd-Frank Act gives the Director of the Consumer Financial Protection Bureau the authority to prepare and revise this booklet every five years (§ 1450). Although required for **purchase transactions only** under RESPA as originally enacted, the scope of this requirement may become broader to include refinances, reverse mortgages, and other loans as provisions of the Act are implemented via regulations.

Good Faith Estimate (GFE) of Settlement Costs. Provides a summary of the borrower's settlement charges. Some of the charges are fixed, and some could change at settlement. While a Good Faith Estimate is not a loan commitment, the charges listed on the GFE must be good for at least 10 business days.

Recall that prior to delivery of the mandated disclosures, the only fee that may be charged to a borrower is the credit report fee. Once the borrower receives the GFE and other mandated disclosures and the borrower indicates an intention to proceed, the mortgage loan originator may collect other loan origination fees.

After the TIL and GFE are…	And borrower has indicated the intent to proceed, other fees may be collected …
Hand-delivered to the borrower	That day
Emailed to the borrower with the borrower's permission	The next day after a send receipt is returned as evidence that the email was received
Faxed to the borrower	The next day after a signed TIL and GFE are faxed back
Mailed to the borrower	Three (3) business days after the TIL and GFE are mailed

Mortgage Servicing Disclosure Statement. Discloses to the borrower whether the lender intends to service the loan or transfer servicing to another lender. It also provides information about complaint resolution, for example, if the borrower wishes to challenge any late charges or penalties.

Mortgage Servicing Disclosure Statement

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED. FEDERAL LAW GIVES YOU CERTAIN RELATED RIGHTS. IF YOUR LOAN IS MADE, SAVE THIS STATEMENT WITH YOUR LOAN DOCUMENTS, SIGN THE ACKNOWLEDGMENT AT THE END OF THIS STATEMENT ONLY IF YOU UNDERSTAND ITS CONTENTS.

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Check the appropriate box under "Servicing Transfer Information."

Servicing Transfer Information

☐ We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.

or

☐ We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.

or

☐ The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.

Acknowledgment of Mortgage Loan Applicant

I/we have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below. I/we understand that this acknowledgment is a required part of the mortgage loan application.

_____ _____

Applicant's Signature / Date Co-Applicant's Signature / Date

Mortgage Servicing Disclosure Statement

Disclosures Before Settlement Occurs

RESPA mandates additional disclosures before settlement—or closing—occurs:

Affiliated Business Arrangement (AfBA or ABA) Disclosure. Required whenever a settlement service provider involved in a RESPA covered transaction refers the consumer to a provider with whom the referring party has an ownership or other beneficial interest. The referring party must give the AfBA disclosure to the consumer at or prior to the time of referral. The disclosure must describe the business arrangement that exists between the two providers and give the borrower an estimate of the second provider's charges. Except in cases where a lender refers a borrower to an attorney, credit reporting agency, or real estate appraiser to represent the lender's interest in the transaction, the referring party may not require the consumer to use the particular provider being referred.

HUD-1 Settlement Statement. A standard form that clearly shows all charges imposed on borrowers and sellers in connection with the settlement. RESPA allows the borrower to request to see the HUD-1 Settlement Statement **one (1) business day before the actual settlement.** The settlement agent must then provide the borrowers with a completed HUD-1 Settlement Statement based on information known to the agent at that time.

Disclosures At Settlement

HUD-1 Settlement Statement. Shows the actual settlement costs of the loan transaction. Separate forms may be prepared for the borrower and the seller. Where it is not the practice that the borrower and the seller both attend the settlement, the HUD-1 should be mailed or delivered as soon as practicable after settlement.

Initial Escrow Statement. 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. It lists the escrow payment amount and any required cushion. Although the statement is usually given at settlement, the lender has 45 days from settlement to deliver it.

Disclosures After Settlement

RESPA requirements continue even after the loan closes:

Annual Escrow Statement. Must be delivered to borrowers by loan servicers once a year. This statement summarizes all escrow account deposits and payments during the servicer's 12-month computation year. It also notifies the borrower of any shortages or surpluses in the account and advises the borrower about the course of action being taken.

Servicing Transfer Statement. Required if the loan servicer sells or assigns the **servicing rights** to a borrower's loan to another loan servicer. Generally, the loan servicer must notify the borrower **15 days** before the effective date of a servicing transfer. As long the borrower makes a timely payment to the old servicer within 60 days of the servicing transfer, the borrower cannot be penalized. The notice must include the name and address of the new servicer, toll-free telephone numbers, and the date the new servicer will begin accepting payments.

Note that a bona fide transfer of ownership of a loan into the secondary market without a corresponding transfer of servicing rights is **not** covered under this provision of RESPA and, therefore, does not require a servicing transfer statement to the borrower.

Good Faith Estimate (GFE)

RESPA requires mortgage loan originators to provide the borrower, without charge, a Good Faith Estimate (GFE) of the dollar amount of settlement charges no later than three (3) business days of the receipt of a completed application. It can be provided by a lender or a mortgage broker, although RESPA indicates that the lender is ultimately responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE. RESPA requires the use of HUD's three-page, standardized Good Faith Estimate, until such time as the Consumer Financial Protection Bureau replaces it with an integrated form that combines the disclosure requirements on the Truth in Lending Statement with those on the GFE.

Affiliated Business Arrangement Disclosure Statement Format

Notice

To: _____ **Property:** _____

From: _____ **Date:** _____

(Entity Making Statement)

This is to give you notice that [referring party] has a business relationship with [settlement services provider(s)]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [referring party] a financial or other benefit.

[A.]Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[provider and settlement service]	**[charge or range of charges]**

[B.]Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[provider and settlement service]	**[charge or range of charges]**

ACKNOWLEDGEMENT

I/we have read this disclosure form, and understand that [referring party] is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

_____ **Signature**

Affiliated Business Disclosusre

OMB Approval No. 2502-0265

Good Faith Estimate (GFE)

Name of Originator	Borrower
Originator Address	Property Address
Originator Phone Number	
Originator Email	Date of GFE

Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures,* and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

Important dates

1. The interest rate for this GFE is available through _____. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through _____.
3. After you lock your interest rate, you must go to settlement within ___ days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least ___ days before settlement.

Summary of your loan

Your initial loan amount is	$	
Your loan term is	years	
Your initial interest rate is	%	
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	$ per month	
Can your interest rate rise?	☐ No	☐ Yes, it can rise to a maximum of %. The first change will be in .
Even if you make payments on time, can your loan balance rise?	☐ No	☐ Yes, it can rise to a maximum of $
Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise?	☐ No	☐ Yes, the first increase can be in and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No	☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No	☐ Yes, you have a balloon payment of $ due in years.

Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ _____.

Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☐ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

Summary of your settlement charges

A	Your Adjusted Origination Charges *(See page 2.)*	$
B	Your Charges for All Other Settlement Services *(See page 2.)*	$
A + B	Total Estimated Settlement Charges	$

2010 GFE Sample

Understanding your estimated settlement charges

Your Adjusted Origination Charges

1. **Our origination charge** This charge is for getting this loan for you.	
2. **Your credit or charge (points) for the specific interest rate chosen** ☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.) ☐ You receive a credit of $ [ ] for this interest rate of [ ] %. This credit **reduces** your settlement charges. ☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges. The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan.	
A Your Adjusted Origination Charges	$

Your Charges for All Other Settlement Services

Some of these charges can change at settlement. See the top of page 3 for more information.

3. **Required services that we select** These charges are for services we require to complete your settlement. We will choose the providers of these services. *Service* / *Charge*	
4. **Title services and lender's title insurance** This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required.	
5. **Owner's title insurance** You may purchase an owner's title insurance policy to protect your interest in the property.	
6. **Required services that you can shop for** These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below. *Service* / *Charge*	
7. **Government recording charges** These charges are for state and local fees to record your loan and title documents.	
8. **Transfer taxes** These charges are for state and local fees on mortgages and home sales.	
9. **Initial deposit for your escrow account** This charge is held in an escrow account to pay future recurring charges on your property and includes ☐ all property taxes, ☐ all insurance, and ☐ other [ ].	
10. **Daily interest charges** This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $[ ] per day for [ ] days (if your settlement is [ ]).	
11. **Homeowner's insurance** This charge is for the insurance you must buy for the property to protect from a loss, such as fire. *Policy* / *Charge*	
B Your Charges for All Other Settlement Services	$
A + B Total Estimated Settlement Charges	$

Good Faith Estimate (HUD-GFE) 2

2010 GFE Sample

Instructions

Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

These charges **cannot increase** at settlement:	The total of these charges **can increase up to 10%** at settlement:	These charges **can change** at settlement:
▪ Our origination charge ▪ Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)* ▪ Your adjusted origination charges *(after you lock in your interest rate)* ▪ Transfer taxes	▪ Required services that we select ▪ Title services and lender's title insurance *(if we select them or you use companies we identify)* ▪ Owner's title insurance *(if you use companies we identify)* ▪ Required services that you can shop for *(if you use companies we identify)* ▪ Government recording charges	▪ Required services that you can shop for *(if you do not use companies we identify)* ▪ Title services and lender's title insurance *(if you do not use companies we identify)* ▪ Owner's title insurance *(if you do not use companies we identify)* ▪ Initial deposit for your escrow account ▪ Daily interest charges ▪ Homeowner's insurance

Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges,** then you will have a **higher interest rate.**
- If you want to choose this same loan with a **lower interest rate,** then you will have **higher settlement charges.**

If you would like to choose an available option, you must ask us for a new GFE.

Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.

	The loan in this GFE	The same loan with lower settlement charges	The same loan with a lower interest rate
Your initial loan amount	$	$	$
Your initial interest rate[1]	%	%	%
Your initial monthly amount owed	$	$	$
Change in the monthly amount owed from this GFE	No change	You will pay $ **more** every month	You will pay $ **less** every month
Change in the amount you will pay at settlement with this interest rate	No change	Your settlement charges will be **reduced** by $	Your settlement charges will **increase** by $
How much your total estimated settlement charges will be	$	$	$

[1] *For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.*

Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

	This loan	Loan 2	Loan 3	Loan 4
Loan originator name				
Initial loan amount				
Loan term				
Initial interest rate				
Initial monthly amount owed				
Rate lock period				
Can interest rate rise?				
Can loan balance rise?				
Can monthly amount owed rise?				
Prepayment penalty?				
Balloon payment?				
Total Estimated Settlement Charges				

If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

2010 GFE Sample

GFE Page 1

Page 1 of the GFE explains the purpose of the disclosure and summarizes the critical data a borrower needs in order to "shop" for settlement services and determine the best loan. The name of the borrower and of the mortgage loan originator's entity must go in the top of page 1, and the name of the individual MLO may also be added. The remaining data is organized into sections:

Important Dates

This indicates the date through which the specific interest rate for the loan is and informs the borrower that changes in the rate can result in changes to origination charges and the indicated monthly payment. While there are no restrictions on the amount of time an interest rate must remain available, the estimate for all other settlement charges—as shown in Line 2 of this section—must be available for **at least ten (10) business days**. Since rates can change daily, by locking the rate a certain number of days prior to settlement, the mortgage loan originator can lessen the possibility of having to redisclose. The Regulation X definition of a "business day" includes "any day on which the business entity is open to the public for carrying on substantially all of the entity's business functions" (§ 1024.2 (b)).

Loan Summary

This gives a concise summary of terms of the loan, including the amount, term, initial interest rate, initial monthly payment of principal and interest (as well as any mortgage insurance), whether the rate can rise under certain circumstances, and if the loan has a prepayment penalty or requires a balloon payment. Note that "initial" loan amount refers to the amount of the principal loan balance on the date of closing. "Initial" interest rate is the rate applicable on the date of closing.

Escrow Account Information

This indicates whether the lender requires an escrow account for taxes or other charges such as hazard insurance.

Summary of Settlement Charges

This shows the bottom line that most consumers are interested in—the total estimated settlement charges. For a borrower, this number is generally the amount of money he needs to bring to settlement in addition to funds for the down payment.

GFE Page 2

The settlement charges for the loan are documented on page 2. The amounts shown in Blocks 1, 2, and 8 cannot increase at settlement. There is a 10% tolerance applied to the sum of the prices of each service listed in Blocks 3, 4, 5, 6, and 7, where the mortgage loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the mortgage loan originator. Any services in Blocks 4, 5, or 6 for which the borrower selects a provider other than one identified by the mortgage loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10% tolerance is based. Where a mortgage loan originator permits a borrower to shop for third party settlement services, the mortgage loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 1 Origination Charges

Here the mortgage loan originator must specify a lump-sum origination charge. It must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the mortgage loan originator. No fees may be itemized separately. If there is a lender and a mortgage broker in the same transaction, the total charges for both must be contained in Block 1. This does not include any charge for the specific interest rate chosen (points). This fee cannot change unless there is a changed circumstance.

Block 2 Your Credit or Charge (Points) for the Specific Interest Rate Chosen

This block states the charge (points) or credit adjustment as applied for the specific interest rate chosen, if applicable. For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is an additional charge (points) to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of that charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender. This is the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender. When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE. If there is no net payment (i.e., the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert "0" in Block 2 and may check either the box indicating there is a credit of "0" or the box indicating there is a charge of "0."

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box, insert the interest rate, and must also insert "0" in Block 2.

The amount stated in Block 2 is subject to **zero tolerance** while the interest rate is locked, i.e., any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase.

√ **Note:** An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.

Line A Your Adjusted Origination Charges

The mortgage loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A is a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked. In the case of "no cost" loans, where "no cost" refers only to the mortgage loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the mortgage loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the mortgage loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A results in a negative number to cover the third party fees.

Block 3 Required Services that We Select

The mortgage loan originator must identify each third party settlement service required and selected by the mortgage loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The mortgage loan originator must identify the specific required services and provide an estimate of the price of each service. Mortgage loan originators are also required to add the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall **10% tolerance**.

Block 4 Title Services and Lender's Title Insurance

The mortgage loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or

mortgage loan originator. The MLO must also include any lender's title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or MLO. All fees for title searches, examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall **10% tolerance**.

Block 5 Owner's Title Insurance

For all purchase transactions the mortgage loan originator must provide an estimate of the charge for the owner's title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or mortgage loan originator. For non-purchase transactions, the MLO may enter "NA" or "Not Applicable" in this Block. The charge shown in this block is subject to an overall **10% tolerance**.

Block 6 Required Services that You Can Shop For

The mortgage loan originator must identify each third party settlement service required by the mortgage loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The MLO must identify the specific required services (e.g., survey, pest inspection) and provide an estimate of the charge of each service. The MLO must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall **10% tolerance**.

Block 7 Government Recording Charges

The mortgage loan originator must estimate the state and local government fees for recording the loan and title documents that can be expected to be charged at settlement. Since the charge shown in this block is subject to an overall **10% tolerance**, it's important to have a good idea of how many pages the mortgage will be as that affects the recording charges. Remember that an ARM or a condominium loan, for example, usually has extra pages.

Block 8 Transfer Taxes

The mortgage loan originator must estimate the sum of all state and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A **zero tolerance** applies to the sum of these estimated fees.

Block 9 Initial Deposit for Your Escrow Account

The mortgage loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner's and other similar insurance, mortgage insurance, and other periodic charges. The mortgage loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the mortgage loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the mortgage loan originator should check "other" and then list the items included.

Block 10 Daily Interest Charges

The mortgage loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The mortgage loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11 Homeowner's Insurance

The mortgage loan originator must estimate the total amount of the premiums for any hazard insurance policy and other similar insurance, such as fire or flood insurance that must be purchased at or before settlement to meet the mortgage loan originator's requirements. The mortgage loan originator must also

separately indicate the nature of each type of insurance required along with the charges. To the extent a mortgage loan originator requires that such insurance be part of an escrow account, the amount of the initial escrow deposit must be included in Block 9.

Line B Your Charges for All Other Settlement Services

The mortgage loan originator must add the numbers in Blocks 3 through 11 and enter this subtotal in the column at highlighted Line B.

Line A+B Total Estimated Settlement Charges

The mortgage loan originator must add the subtotals in the right-hand column at highlighted Lines A and B and enter this total in the column at highlighted Line A+B.

"Average Charges" Permitted

A settlement service provider that obtains a service from a third party on behalf of a borrower or seller is allowed to disclose an "average charge" on the Good Faith Estimate. Typically, these permitted third party services include, but are not limited to, appraisals, credit reports, flood certificates, tax services, and recording documents. Settlement service providers determine classifications of transactions to determine the average cost, based on the period of time (between 30 days and six months), the type of loan, and the geographic area. Average charge calculations are not permitted for services where the cost is based on the price of the loan or property value, for example, transfer taxes, interest charges, escrow reserves, and insurances.

The total amount charged to a specific borrower cannot exceed the charges for a specific class of transaction, and the same average charge must be used for all loans within that classification. A provider must retain all documentation used to calculate the average charge for three years after a settlement for which the average charge was used.

When the use of average charges is prohibited by state law, HUD's RESPA rule would not preempt it.

GFE Page 3

The last page of the GFE summarizes the categories of charges, grouping them according to whether or not they can increase at settlement and, if so, to what degree. This also introduces the borrower to the HUD-1 Settlement Statement and makes the connection between that and the amounts that appear on the GFE. Page 3 also provides consumer tools for comparison, as well as a notice to the borrower that any fees related to selling the loan will not affect the loan or charges at settlement.

Tradeoff Table

The tradeoff table allows borrowers to see the relationship between their total estimated settlement charges and the interest rate and resulting monthly payment (which includes the payment of principal and interest as well as escrows for property taxes and insurance, mortgage insurance and any other items that may be included). The mortgage loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. Then, the MLO may choose to provide the borrower with the same information for two available alternative loans for which the borrower would be eligible, one with a higher interest rate and one with a lower interest rate. The alternative loans must use the same loan amount and be otherwise identical to the loan in the GFE, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon paymentIf the MLO fills in the tradeoff table, he or she must show the borrower the loan amount, alternative

interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, which the MLO must provide.

Shopping Cart

This chart is a shopping tool to be provided by the mortgage loan originator for the **borrower** to complete, in order to compare GFEs.

Provisions Related to the GFE

Section 1024.7 of Regulation X identifies specific provisions related to the terms expressed in a Good Faith Estimate.

Availability of Terms

The estimate of the charges and terms for all settlement services must be available for at least **10 business days** (recall that the Regulation X definition of a "business day" includes "any day on which the business entity is open to the public for carrying on substantially all of the entity's business functions" (§ 1024.2 (b)) from when the GFE is provided, but it may remain available longer, if the mortgage loan originator extends the period of availability. This 10-business day provision, however, does **not** apply to the interest rate, charges and terms dependent upon the interest rate—which includes the charge or credit for the interest rate chosen—the adjusted origination charges, and per diem interest. Because of this, borrowers and lenders frequently agree to a **rate lock** for a pre-determined period of time.

Tolerances of Amounts in the GFE

The actual charges at settlement **may not exceed** the amounts included on the GFE for these charges:

- The origination charge, which may be for any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, and the underwriting and funding of loan, and the processing and administrative services required to perform these functions
- The credit or charge for the interest rate chosen or the adjusted origination charge while the borrower's interest rate is locked
- Transfer taxes

Additionally, the sum of these charges at settlement for the following services **may not be greater than 10% above** the sum of the amounts included on the GFE:

- Lender-required settlement services, where the lender selects the third party settlement service provider
- Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the mortgage loan originator
- Government recording charges

The amounts charged for all other settlement services included on the GFE may change at settlement.

Curing Tolerance Violations

If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the only way the mortgage loan originator can cure the tolerance violation is by reimbursing the borrower the amount by which the tolerance was exceeded, **at settlement or within thirty (30) calendar days** after settlement.

Binding GFE

The mortgage loan originator is bound, within the tolerances indicated above, to the settlement charges and terms listed on the GFE provided to the borrower, unless a new GFE is provided prior to settlement. When it is necessary to provide a revised GFE, MLOs must do so within **three (3) business days** of receiving

information sufficient to establish changed circumstances. Also, mortgage loan originators must document the reason for the revised GFE and then retain that documentation for no less than **three (3) years** after settlement.

Reasons for providing a revised a GFE to a borrower include:

- Changed circumstances that **increase settlement costs** to the point of exceeding the tolerances
- Changed circumstances affecting the borrower's **eligibility for the specific loan terms** identified in the GFE
- **Borrower-requested changes** to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan
- Changes to the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate if the interest rate has **not been locked** by the borrower or if a locked interest rate has **expired**

Note that for **new home purchases** where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the mortgage loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the MLO may issue a revised GFE. If no such separate disclosure is provided, the MLO cannot issue a revised GFE unless under the circumstances indicated above.

Changed Circumstances

Regulation X (12 C.F.R. § 1024.7 (f)(i)) defines "changed circumstances" as:

- Acts of God, war, disaster, or other emergency.
- Information particular to the borrower or transaction that was relied on in providing the GFE—such as credit quality of the borrower, the amount of the loan, value of the property, etc.—that changes or is found to be inaccurate after the GFE has been provided.
- New information particular to the borrower or transaction that was not relied on in providing the GFE.
- Other circumstances that are particular to the borrower or transaction—such as boundary disputes, the need for flood insurance, or environmental problems.

The mortgage loan originator is presumed to have relied on the borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the mortgage loan originator before providing the GFE. None of this information collected by the MLO prior to issuing the GFE may later become the basis for a changed circumstance requiring a revised GFE, unless the MLO can demonstrate that:

- There was a change in the particular information or that it was inaccurate.
- The mortgage loan originator did not rely on that particular information in issuing the GFE.

Also, market fluctuations by themselves are *not* considered to be changed circumstances.

Expiration of the Original GFE

If a borrower does not express an intent to continue with an application **within ten (10) business days** after the Good Faith Estimate is provided, or such longer time specified by the mortgage loan originator, the MLO is no longer bound by the GFE.

HUD-1 Settlement Statement

The **HUD-1 Settlement Statement** used for RESPA compliance under Regulation X (12 C.F.R. § 1024.8) must be completed by the person conducting the closing (settlement agent) and must clearly itemize all charges imposed upon the borrower and the seller by the mortgage loan originator, all sales commissions—whether to be paid at settlement or outside of settlement—and any other charges which either the borrower or the seller will pay at settlement. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person.

The HUD-1 is used for transactions with a borrower and seller. A HUD-1 must be prepared for both the borrower and for the seller, although it is permissible for the borrower's HUD-1 to show only his information and the seller's to show only his. For transactions with a borrower and *no seller*—for example, refinancing and subordinate lien loans—the HUD-1 may be completed by using only the borrower's side of the settlement statement, or the **HUD-1A** may be used.

The HUD-1 Settlement Statement is **not** required for open-end home equity loans subject to the Truth in Lending Act and Regulation Z. However, the HUD-1 form may be used for loans not subject to RESPA without subjecting the transaction to the provisions of RESPA.

The lender must retain each completed HUD-1 or HUD-1A and related documents for **five years** after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD-1 or HUD-1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD-1 or HUD-1A for the remainder of the five-year period.

Compatibility with the GFE

In order to promote comparability between the charges on the Good Faith Estimate and the charges on the HUD-1, if a seller pays for a charge that was included on the GFE, the charge should be:

- Listed in the borrower's column on page 2 of the HUD-1.
- Offset by listing a credit in that amount to the borrower on lines 204-209 on page 1 of the HUD-1, and by a charge to the seller in lines 506-509 on page 1 of the HUD-1.

If a mortgage loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD-1, with an offsetting credit reported on page 1 of the HUD-1, identifying the party paying the charge.

Charges Paid Outside of Closing (P.O.C.)

Charges paid outside of settlement by the borrower, seller, mortgage loan originator, real estate agent, or any other person, must be included on the HUD-1 but marked "P.O.C." for "Paid Outside of Closing" (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may **not** be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid by the borrower, seller, or some other party by marking the items paid by whoever made the payment as "P.O.C." with the party making the payment identified in parentheses, such as "P.O.C. (borrower)" or "P.O.C. (seller)".

In the case of "no cost" loans where "no cost" encompasses third party fees as well as the upfront payment to the mortgage loan originator, the third party services covered by the "no cost" provisions must be itemized and listed in the borrower's column on the HUD-1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

HUD-1 Page 1

Page 1 contains identification such as the borrower's name and address, the address or other location information on the property, the lender's identifying loan number, the settlement date, the name and address of the lender. This page also provides a notice related to charges paid outside of closing (P.O.C.).

Section J Summary of Borrower's Transaction. Indicates the details of the borrower's transaction, including the gross amount due from the borrower, adjustments for items paid by the seller in advance, amounts paid by or on behalf of the borrower, adjustments for items unpaid by the seller, and the cash at settlement paid by—or in some cases, to—the borrower.

- Lines 101 and 102—Contract sales price of the property being sold and the sale price of any items of tangible personal property.

OMB Approval No. 2502-0265

A. Settlement Statement (HUD-1)

B. Type of Loan

1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name & Address of Borrower:	E. Name & Address of Seller:	F. Name & Address of Lender:
G. Property Location:	H. Settlement Agent:	I. Settlement Date:
	Place of Settlement:	

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due from Borrower		**400. Gross Amount Due to Seller**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustment for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower		**420. Gross Amount Due to Seller**	
200. Amounts Paid by or in Behalf of Borrower		**500. Reductions In Amount Due to Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid by/for Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash at Settlement from/to Borrower		**600. Cash at Settlement to/from Seller**	
301. Gross amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amount due seller (line 520)	( )
303. Cash ☐ **From** ☐ **To Borrower**		**603. Cash** ☐ **To** ☐ **From Seller**	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

2010 HUD1 Sample

L. Settlement Charges		
700. Total Real Estate Broker Fees	Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows:		
701. $ to		
702. $ to		
703. Commission paid at settlement		
704.		
800. Items Payable in Connection with Loan		
801. Our origination charge $ (from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen $ (from GFE #2)		
803. Your adjusted origination charges (from GFE A)		
804. Appraisal fee to (from GFE #3)		
805. Credit report to (from GFE #3)		
806. Tax service to (from GFE #3)		
807. Flood certification (from GFE #3)		
808.		
900. Items Required by Lender to Be Paid in Advance		
901. Daily interest charges from to @ $ /day (from GFE #10)		
902. Mortgage insurance premium for months to (from GFE #3)		
903. Homeowner's insurance for years to (from GFE #11)		
904.		
1000. Reserves Deposited with Lender		
1001. Initial deposit for your escrow account (from GFE #9)		
1002. Homeowner's insurance months @ $ per month $		
1003. Mortgage insurance months @ $ per month $		
1004. Property taxes months @ $ per month $		
1005. months @ $ per month $		
1006. months @ $ per month $		
1007. Aggregate Adjustment –$		
1100. Title Charges		
1101. Title services and lender's title insurance (from GFE #4)		
1102. Settlement or closing fee $		
1103. Owner's title insurance (from GFE #5)		
1104. Lender's title insurance $		
1105. Lender's title policy limit $		
1106. Owner's title policy limit $		
1107. Agent's portion of the total title insurance premium $		
1108. Underwriter's portion of the total title insurance premium $		
1200. Government Recording and Transfer Charges		
1201. Government recording charges (from GFE #7)		
1202. Deed $ Mortgage $ Releases $		
1203. Transfer taxes (from GFE #8)		
1204. City/County tax/stamps Deed $ Mortgage $		
1205. State tax/stamps Deed $ Mortgage $		
1206.		
1300. Additional Settlement Charges		
1301. Required services that you can shop for (from GFE #6)		
1302. $		
1303. $		
1304.		
1305.		
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		

2010 HUD1 Sample

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase	**HUD-1 Line Number**		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		

Charges That in Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
Total			
Increase between GFE and HUD-1 Charges		$ or %	

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 $ /day		
Homeowner's insurance	# 903		
	#		
	#		
	#		

Loan Terms

Your initial loan amount is	$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and and any mortgage insurance is	$ includes ☐ Principal ☐ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be **lower** than % or **higher** than %.
Even if you make payments on time, can your loan balance rise?	☐ No. ☐ Yes, it can rise to a maximum of $.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $. The maximum it can ever rise to is $.
Does your loan have a prepayment penalty?	☐ No. ☐ Yes, your maximum prepayment penalty is $.
Does your loan have a balloon payment?	☐ No. ☐ Yes, you have a balloon payment of $ due in years on .
Total monthly amount owed including escrow account payments	☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Homeowner's insurance ☐ Flood insurance ☐ ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

2010 HUD1 Sample

- Line 103—Total charges to borrower detailed in Section L and totaled on Line 1400 (page 2).
- Lines 104 and 105—Additional amounts owed by the borrower, such as charges that were not listed on the GFE or items paid by the seller prior to settlement but reimbursed by the borrower at settlement.
- Lines 106 through 112—Items which the seller had paid in advance, and for which the borrower must therefore reimburse the seller, for example, taxes and assessments paid in advance, flood and hazard insurance premiums if the borrower is being substituted as an insured under the same policy, planned unit development or condominium association assessments paid in advance.
- Line 120—Total of Lines 101 through 112.
- Line 201—Any amount paid against the sales price prior to settlement.
- Line 202—Amount of the new loan made by lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase; also used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 24 C.F.R. part 3500 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.
- Line 203—Used when borrower is assuming or taking title subject to an existing loan or lien on the property.
- Lines 204-209—Used for other items paid by or on behalf of the borrower to indicate any financing arrangements or other new loan not listed in Line 202, for example, if the borrower is using a second mortgage or note to finance part of the purchase price, the borrower receives a credit from the seller for closing costs, or a seller (typically a builder) makes an "allowance" to the borrower for items that the borrower is to purchase separately.
- Lines 210 through 219—Items not yet paid that the borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement, for example, taxes paid in arrears, utilities used but not yet paid by seller.
- Line 220—Total of Lines 201 through 219.
- Lines 301 and 302—Summary lines for the borrower.
- Line 303—Indicates either the cash required from the borrower at settlement or cash payable to the borrower at settlement with the appropriate box checked (if the borrower's earnest money is applied toward the charge for a settlement service, the amount applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked "P.O.C. (Borrower)", and must not be included in computing totals).

Section K, Summary of Seller's Transaction. Indicates the details of the seller's transaction, including the gross amount due to the seller, adjustments for items paid by the seller in advance, reductions in amount due to the seller, adjustments for items unpaid by the seller, and the cash at settlement paid to—or in some cases, by—the seller. Instructions for the use of Lines 101 and 102 and 104-112 and Lines 210-219 in Section J apply also to Lines 401-412 and 510-519 in Section K.

- Line 501—Used if the seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party; if that party will render the excess deposit directly to the seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.
- Line 502—Used to record the total charges to the seller detailed in section L, and totaled on Line 1400 (page 2).
- Line 503—Used if the borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.
- Lines 504 and 505—Used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

- Line 506—Used for deposits paid by the borrower to the seller or other party who is not the settlement agent; amount of the deposit in Line 201 is entered on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services; if the settlement agent holds the deposit, a note should be inserted in Line 507 indicating that the deposit is being disbursed as proceeds.
- Lines 506-509—May be used to list additional liens/seller obligations which must be paid off through the settlement to clear title to the property, including charges that were disclosed on the GFE but that are actually being paid for by the seller; may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the seller prior to settlement are not yet known (subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional); any amounts entered on Line 204--209 including seller financing arrangements should also be entered on Lines 506-509.
- Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.
- Line 520—Total of Lines 501 through 519.
- Lines 601 and 602—Summary lines for the seller.
- Line 603—Indicates either the cash required to be paid to the seller at settlement or the cash payable by the seller at settlement, with the appropriate box checked.

HUD-1 Page 2

Page 2 itemizes the settlement charges paid by both the borrower and the seller, including items paid in connection with the loan, items required by the lender to be paid in advance, reserves deposited with the lender, title charges, government recording and transfer charges, and any additional settlement charges.

- Lines 700-704—Indicates any real estate broker commissions—including any commission splits where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers—disbursed at settlement. If the sales agent or real estate broker retains part of the deposit against the sales price (earnest money) to apply towards commission, only that part of the commission being disbursed at settlement should be shown on Line 703 with a note on Line 704 indicating the amount to be retained as a "P.O.C." item. Line 704 may also be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the borrower, which will be disbursed by the settlement agent.
- Line 801—Records "Our origination charge," which includes all charges received by the mortgage loan originator—except any charge for the specific interest rate chosen (points)—including administrative and processing services, performed by or on behalf of the mortgage loan originator. This number must not be listed in either the buyer's or seller's column.
- Line 802—Records "Your credit or charge (points) for the specific interest rate chosen," which states the charge or credit adjustment as applied to "Our origination charge," if applicable. This number must not be listed in either column or shown on page one of the HUD-1. For a mortgage broker originating a loan in its own name, the amount shown on Line 802 is the difference between the initial loan amount and the total payment to the mortgage broker from the lender (the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments). For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 is the sum of all payments to this mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the borrower.
- Line 803—Records "Your adjusted origination charges," which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount is listed as either

a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801). In the case of "no cost" loans, where "no cost" refers only to the mortgage loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where "no cost" includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the mortgage loan originator.

- Lines 804-808—Records each of the "Required services that we select" identifying each settlement service provider by name and the amount paid recorded either inside the columns or as paid to the provider outside closing ("P.O.C.").
- Lines 804-807—Records specific fees as indicated.
- Lines 808 (and additional sequentially numbered lines, as needed)—Records other third party services required by the mortgage loan originator or other required disclosures from the mortgage loan originator (which must be listed outside the columns).
- Lines 901-903—Records specific items the lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (e.g., FHA mortgage insurance premium), other than reserves collected by the lender and recorded in the 1000-series.
- Lines 904 (and additional sequentially numbered lines)—Used to list additional items required by the lender (except for reserves collected by the lender and recorded in the 1000-series), including premiums for flood or other insurance; also used to list amounts paid at settlement for insurance not required by the lender.
- Lines 1000-1007—Used for amounts collected by the lender from the borrower and held in an account for the future payment of the obligations listed as they fall due; include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an "escrow," "impound," or "trust" account. In addition to the property taxes and insurance listed, some lenders may require reserves for flood insurance, condominium owners' association assessments, etc. The amount in line 1001 is listed in the columns, and the itemizations in lines 1002 through 1007 are listed outside the columns. After itemizing individual deposits in the 1000 series, the servicer makes an adjustment based on aggregate accounting.
- Lines 1100-1108—Covers title charges and charges by attorneys and closing or settlement agents as specified. The title charges include a variety of services performed by title companies or others and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns. Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.
- Lines 1200-1205—Covers specific government-recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.
- Line 1206 (and additional sequentially numbered lines)—Used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

- Line 1301 (and additional sequentially numbered lines)—Used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.
- Line 1400—States the total settlement charges as calculated by adding the amounts within each column.

HUD-1 Page 3

The last page of the HUD-1 offers a comparison of the exact amounts from the Good Faith Estimate (GFE) and the actual settlement charges indicated on the HUD–1 or HUD-1A Settlement Statement.

Charges That Cannot Increase. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE are entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803, and 1203 of the HUD-1/1A are entered in the corresponding line in that column, which must include any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD-1/1A, the credit is entered as a negative number.

Charges That Cannot Increase More Than 10%. A description of each charge included in Blocks 3 and 7 on the borrower's GFE is entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5, and 6 on the borrower's GFE for which the mortgage loan originator selected the provider or for which the borrower selected a provider identified by the mortgage loan originator, a description is entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The mortgage loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the mortgage loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD-1/1A for each line is entered in the HUD-1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD-1/1A line number. The HUD-1/1A column includes any amounts shown on page 2 of the HUD-1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. The amounts shown in the Good Faith Estimate and HUD-1/1A columns for this section are separately totaled and entered in the designated line. If the total for the HUD-1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

Charges That Can Change. The amounts shown in Blocks 9, 10, and 11 on the borrower's GFE are entered in the appropriate line in the Good Faith Estimate column. Any third party settlement services for which the borrower selected a provider other than one identified by the mortgage loan originator is also included in this section. The amounts shown on the HUD-1/1A for each charge in this section are entered in the corresponding line in the HUD-1/1A column, along with the appropriate HUD-1/1A line number. The HUD-1/1A column includes any amounts shown on page 2 of the HUD-1 in the column as paid for the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

Loan Terms. This section is completed in accordance with the information and instructions provided by the lender in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

Homeowners Protection Act (HPA)

The federal **Homeowners Protection Act** of 1998, or HPA, (Pub. L. No. 105-216, 112 Stat. 897) requires lenders or servicers to provide certain disclosures and notifications concerning **private mortgage insurance** (PMI) on residential mortgage transactions. Most provisions of the Act do *not* apply to home loans made before July 29, 1999. This Act covers lenders that grant **residential mortgages**, defined as a *mortgage, loan,*

or other evidence of a security interest created with respect to a single-family dwelling that is the primary residence of the borrower. A **single-family dwelling** is defined as a *residence consisting of one family dwelling unit.* The Homeowners Protection Act also requires lenders that refinance or service home mortgages to comply with its terms.

Exclusions

The HPA does *not* cover loans that do not have private mortgage insurance or loans secured by second or multi-family homes. Nor does it apply to:

- Veterans Affairs (VA) or Federal Housing Administration (FHA) loans.
- Loans with lender-paid PMI, although these loans do require an upfront disclosure to the borrower.

Disclosure Provisions of the HPA

The HPA requires that lenders provide an **initial written disclosure** regarding PMI cancellation—and **annual reminders** of this right—to residential mortgage borrowers. The written notice must include these disclosures:

- **Borrower Cancellation.** The borrower's right to request cancellation of PMI when a mortgage has been paid down to **80%** of its original appraised value or purchase price, whichever is less. Additionally, a borrower requesting PMI cancellation must have:
  - A good history of payment,
  - Not taken out any other loans on the property, and
  - Not experienced a decline in the value of the home.
- **Automatic Termination.** The automatic cancellation of PMI by the lender when a mortgage has been paid down to **78%** of the property's original value, assuming the borrower is current with payments.
- **Prepayment.** The borrower's right to accelerate the cancellation date by making additional payments that bring the loan-to-value ratio to 80%.

The Act requires written disclosure for both adjustable rate and fixed rate home mortgages on primary residences. Disclosure requirements, however, vary depending on how the mortgage accrues interest:

- **Fixed Rate Mortgages.** At the loan closing for a fixed rate mortgage, lenders must provide an initial amortization schedule with a written notice stating both the cancellation date that the borrower may seek to cancel PMI based on the amortization schedule and the automatic termination date.
- **Adjustable Rate Mortgages (ARMs).** For ARMs, an amortization schedule would not be provided at closing, but the lender must inform the borrower when the LTV reaches 80%.

A **final disclosure** must be sent to the borrower after the PMI coverage has been terminated or cancelled to notify the borrower that the borrower is no longer covered by PMI and that the borrower is not required to pay PMI premiums any longer. Additional disclosures are required for so-called high-risk loans.

High-Risk Loans

The borrower-requested cancellation of PMI at 80% LTV and the automatic termination at 78% LTV requirements do not apply to high-risk loans. However, high-risk loans are subject to final termination and are divided into two categories: Conforming and nonconforming:

- **Conforming.** Conforming loans are loans that have an original principal balance not exceeding Fannie Mae and Freddie Mac's limit for conforming loans. PMI on a conforming high-risk loan must be terminated by the first day of the month following the date that is **the midpoint of the loan's initial amortization schedule** (in the case of a fixed rate loan) or amortization schedules (in the case of an adjustable rate loan) if, on that date, the borrower is current on the loan. If the borrower is not current on that date, PMI must be terminated when the borrower becomes current.
- **Nonconforming.** Nonconforming loans are residential mortgage transactions that have an original principal balance exceeding Freddie Mac's and Fannie Mae's conforming loan limit. If a residential mortgage transaction is a lender-defined high-risk loan, PMI must be terminated on the date on which

the principal balance of the mortgage—based solely on the initial amortization schedule (in the case of a fixed rate loan) or the amortization schedules (in the case of an adjustable rate loan) for that mortgage—is **first scheduled to reach 77% of the original value of the property securing the loan**, regardless of the outstanding balance for that mortgage on that date.

Disclosure

When PMI is required for high-risk residential mortgage transactions, the lender must provide to the borrower a written notice stating that PMI will not be required beyond the date that is the midpoint of the loan's amortization schedule if, on that date, the borrower is current on the payments as required by the terms of the loan. The lender must provide this notice at consummation.

The lender need not provide disclosure of the termination at 77% LTV for lender-defined high-risk mortgages.

Real Success

Property values can change over time for a variety of reasons—for example, an overall increase in a neighborhood's property values or significant home improvements. Borrowers whose PMI payments are included in their mortgage may assume that the equity in their homes should trigger the automatic cancellation of PMI. Although the Homeowners Protection Act does not require a mortgage servicer to consider the current property value, borrowers may contact the lender or servicer to determine if they have internal policies and procedures for the early cancellation of PMI because of increased values. For example, a servicer might consider:

- A minimum amount of time (years) before a borrower can request cancellation.
- A good payment history for at least a minimum amount of years.
- Documentation of home improvements to demonstrate the higher property value, which could include a new appraisal.

Equal Credit Opportunity Act

The **Equal Credit Opportunity Act** (15 U.S.C. § 1691) is a federal law that *ensures that all consumers are given an equal chance to obtain credit.* The illegal discrimination provisions of ECOA are covered in Chapter 13 Ethics. The law, implemented by **Regulation B**, also contains disclosure provisions, the primary one being the creditor's lending decision. Generally, creditors must notify applicants of their **lending decision**—whether credit was extended or rejected—**within 30 days** of the filing of a complete application.

- If the application is approved, the creditor may provide a **Commitment Letter** to the borrower.
- If an incomplete application is submitted, creditors must send the applicant a **Notice of Incomplete Application.**
- When **adverse action** is taken—an application has been denied, the applicant was offered less favorable terms than those applied for, or there was a change in terms of an existing credit agreement—the creditor must either provide notice of the *specific reasons* for the decision or inform the applicant of his right to request specific reasons for the decision within 60 days. This notice, called a **Statement of Adverse Action**, must be in writing.

Creditors must also disclose to consumers what their rights are under ECOA, including a notice to the applicant of their right to receive a copy of any **appraisal report** on the property (one- to four-family dwelling) that was used in the decision-making process if they make a request **within ninety (90) days** of a credit decision.

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which is designated the Mortgage Reform and Anti-Predatory Lending Act, amends the Equal Credit Opportunity Act (§ 1474) to require a creditor to furnish a copy of any and all written appraisals developed in connection with an

application for a first lien loan on a dwelling promptly upon completion, but in no case later than three business days prior to the closing of the loan, whether the creditor grants or denies the applicant's request for credit or the application is incomplete or withdrawn.

Record Retention

After a creditor notifies an applicant of an action taken, the creditor is required to maintain the following for **25 months** (12 months for business credit):

- Any application that it receives
- Any information required to be obtained concerning characteristics of the applicant to monitor compliance
- Any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request
- The notification of action taken and the statement of specific reasons for adverse action
- Any written statement submitted by the applicant alleging a violation of ECOA

NOTICE TO APPLICANT OF RIGHT TO RECEIVE COPY OF APPRAISAL REPORT

APPLICATION NO:

PROPERTY ADDRESS:

You have the right to receive a copy of the appraisal report to be obtained in connection with the loan for which you are applying, provided that you have paid for the appraisal. We must receive your written request no later than 90 days after we notify you about the action taken on your application or you withdraw your application. If you would like a copy of the appraisal report, contact :

(Applicant) (Date)

(Applicant) (Date)

(Applicant) (Date)

(Applicant) (Date)

Calyx Form rra.frm 12/96

Sample Notice of Applicant Right to Receive Copy of Appraisal Report

Laws Related To Privacy and Consumer Identification

To keep from destroying the integrity of a relationship with a customer, financial information gathered as part of the loan process must be kept confidential. It should never be revealed to unauthorized people nor taken advantage of for personal benefit. Various laws have passed that address the disclosure and protection of private information. This section discusses the following federal laws:

- Fair Credit Reporting Act (FCRA)
- Fair and Accurate Credit Transactions Act (FACT Act)
- Gramm-Leach-Bliley Act
- U.S. Patriot Act
- National Do Not Call Registry

Fair Credit Reporting Act (FCRA)

Regulation V (12 C.F.R. 1022) implements the **Fair Credit Reporting Act** (15 U.S.C. § 1681), a *federal law dealing with the granting of credit, access to credit information, the rights of debtors, and the responsibilities of creditors.* In brief, FCRA gives consumers access to the same information about themselves that lenders use when making credit decisions. The Consumer Financial Protection Bureau publishes guides for consumers that explain all of their rights under FCRA, including the ability to seek damages for violations of their rights. Identity theft victims and active duty military personnel have additional rights.

Consumer Rights

The Fair Credit Reporting Act provides consumers with the following rights:

Adverse Action

Anyone who uses a credit report or another type of consumer report to deny an application for credit, insurance, or employment—or to take another adverse action—must provide the consumer with the name, address, and phone number of the agency that provided the information. The requirements under FCRA differ somewhat from those under the Equal Credit Opportunity Act, although both laws can be satisfied with a single adverse action notice.

Copy of Consumer Credit File

Consumers are entitled to a free copy of their credit file from a consumer credit reporting agency under these circumstances:

- Information in a credit report resulted in adverse action.
- The consumer was a victim of identify theft and a fraud alert was inserted in credit file.
- The credit file contains inaccurate information as a result of fraud.
- The consumer is on public assistance or is unemployed.

Additionally, all consumers are entitled to one free disclosure every 12 months upon request from each of the three nationwide credit bureaus.

Request a Credit Score

Although it is not free, consumers have the right to ask for a credit score from any consumer reporting agencies that create or distribute scores used in residential real property loans.

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, § 1100F, amends the Fair Credit Reporting Act to require a creditor to provide a consumer with a written or electronic disclosure of the numeric credit score used in taking any adverse action, including a risk-based pricing notice.

Adverse Action Notice

Applicant(s): William A Sample
Loan Amount: $ 150,000
Interest Rate: 6.000 %
Term: 360 months

Date Denied: May 1, 2009
Noticed Mailed: May 5, 2009

In compliance with Regulation B (Equal Credit Opportunity Act), you are advised that your recent application for an extension of credit has been declined. The decision to deny your application was based on the following reason(s):

- Delinquent credit obligations
- Temporary employment
- Insufficient stability of income
- Stable monthly income insufficient to make monthly mortgage payments

Our decision was based in whole or in part on information that has been obtained from the consumer reporting agency checked below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is therefore unable to supply specific reasons for the credit decision.

☐ Agency #1: Experian, Toll Free: 888-397-3742, P.O. Box 2002, Allen, TX 75013
☐ Agency #2: Equifax, Toll Free: 800-685-1111, P.O. Box 740241, Atlanta, GA 30374
☒ Agency #3: TransUnion, Toll Free: 800-888-4213, P.O. Box 1000, Chester, PA 19022

You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. If you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

If you have any questions regarding this notice or if you have additional information that might assist us in further evaluating your loan application, please contact:

ABC SAVINGS AND LOAN
123 Main Street
Anytown, USA 00011
1-800-555-9999

NOTICE
The Federal Equal Credit Opportunity Act prohibits creditors from discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with this law concerning this creditor is the Office of Thrift Supervision.

Dispute Incomplete or Inaccurate Information

Consumers have the right to dispute any incomplete or inaccurate information they find in their credit report. The consumer reporting agency must correct or delete inaccurate, incomplete, or unverifiable information.

Limit Prescreened Offers

Consumers may choose to limit "prescreened" offers of credit and insurance based on information in their credit report. Unsolicited prescreened offers for credit and insurance must include a toll-free phone number to call to be removed from the lists on which these offers are based.

Consumer Reporting Agency Obligations

Under the Fair Credit Reporting Act, consumer reporting agencies:

- May **not report outdated negative** information. In most cases, a consumer reporting agency may not report negative credit information that is more than **seven years old** or bankruptcies that are more than ten years old. There is no time limit on the reporting of criminal convictions.
- Must **limit access** to a credit file. A consumer reporting agency may provide information to people with a legitimate business need—usually to consider an application with a creditor, insurer, employer, landlord, or other business. FCRA specifies those with a valid need for access.
- May not give out consumer credit information to an employer, or a potential employer, without written consent given to the employer by the consumer.

Fair and Accurate Credit Transaction Act (FACT Act)

The **Fair and Accurate Credit Transaction Act** of 2003 (Pub.L. 108-159), sometimes referred to as either the FACT Act or simply FACTA, amended the federal Fair Credit Reporting Act and is intended primarily to *help consumers fight the growing crime of identity theft.* Accuracy, privacy, limits on information sharing, and new consumer rights to disclosure are included in the FACT Act.

Provisions of the FACT Act

The FACT Act actually contains seven major titles: Identity Theft Prevention and Credit History Restoration, Improvements in Use of and Consumer Access to Credit Information, Enhancing the Accuracy of Consumer Report Information, Limiting the Use and Sharing of Medical Information in the Financial System, Financial Literacy and Education Improvement, Protecting Employee Misconduct Investigations, and Relation to State Laws.

Access to Credit Reports

One of the major provisions of the FACT Act is to allow consumers easier **access to their credit reports** as a way to *spot possible identity theft* and to *allow dispute of inaccurate information.* The FACT Act requires that consumers applying for home loans receive the **Home Loan Applicant Credit Score Information Disclosure** notice, which explains their rights. Prior to the passage of the FACT Act, consumers had to pay to get a copy of their report from each of the three national credit bureaus: Equifax, Experian, and TransUnion. The FACT Act allows consumers to request and obtain a free copy of their credit report **once every 12 months** from each of these credit bureaus by contacting a centralized website, maintained in cooperation with the Federal Trade Commission—www.annualcreditreport.com—or by calling 877-322-8228.

To protect sensitive data, the FACT Act allows consumers who request a copy of their credit report to also request that the first five digits of their Social Security number (or similar identification number) not be *included* in the file.

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identify theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

  In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

Sample Fair Credit Reporting Act Summary

- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 202-452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation , Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 202-720-7051

Sample Fair Credit Reporting Act Summary

National Credit Score Disclosure

Applicant Loan #
Applicant
Address

In evaluating your application for a home mortgage loan, one factor your lender will consider is one or more of your credit scores because they assist the lender in evaluating your credit history in a faster, more objective manner. Your credit scores are found on your credit report, **a copy of which was provided to you with this disclosure.** The range of possible scores is from 300 to 850. Your lender may also obtain and consider other credit scores in making its decision on your application from the consumer reporting agencies listed below.

In addition to the credit scores, your credit report lists the key reasons why your scores were less than the maximum possible scores. Please keep in mind that these reasons are provided based on variables, where you received less than the maximum number of points possible. The listing of these reasons does not by itself indicate that you would not be approved for the loan you have requested. The lender considers many factors in addition to your credit score in making a decision on your application. If your application is not approved, you will receive a separate notice stating the specific reasons for that action which may or may not relate to your credit scores.

The originator or lender did not calculate your credit scores, nor did they develop the scoring models. If you have any questions about your credit scores or the information in the credit report from which the credit scores were computed, you can contact the consumer reporting agencies at the addresses listed below:

Equifax	**TransUnion**	**Experian**
PO Box 740258	PO Box 1000	PO Box 2104
Atlanta, GA 30374-0258	Chester, PA 19016-4000	Allen, TX 75013
Phone: 800) 685-1111	**Phone: 800) 888-4213**	**Phone: 888) 397-3742**
Website: www.equifax.com	www.transunion.com/direct	www.experian.com

Notice to Home Applicant

(Pursuant to the Fair Credit Report Act [15 U.S.C. 1681g Sec 609(g)(1)(D)] as amended 12/4/03)

In connection with your application for a home loan, the lender must disclose to you the score that a consumer reporting agency distributed to users and the lender used in connection with your home loan, and the key factors affecting your scores.

The credit score is a computer-generated summary calculated at the time of the request and based on the information a consumer reporting agency or lender has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important because they are used to assist the lender in determining whether you will obtain a loan. They may also be used to determine what interest rate you may be offered on the mortgage. Credit scores can change over time, depending on your conduct, how your credit history and payment patterns change, and how credit scoring technologies change.

Because the score is based on information in your credit history, it is very important that you review the credit-related information that is being furnished to make sure it is accurate. Credit records may vary from one company to another. If you have questions about your credit score or the credit information that is furnished to you, contact the consumer reporting agency at the address and telephone number provided with this notice, or contact the lender, if the lender developed or generated the credit score. The consumer reporting agency plays no part in the decision to take any action on the loan application and is unable to provide you with specific reasons for the decisions on a loan application. If you have any questions concerning the terms of the loan, contact the lender.

This acknowledges that this Disclosure, along with a copy of my/our credit report, has been provided to each applicant/client pursuant to 15 U.S.C. 1681g Sec 609(g)(1)(D) as amended 12/4/03 and effective 12/4/04.

_____ _____
Applicant Date Applicant Date

_____
Originator Date

Rev12/1/04

Sample National Credit Score Disclosure

Fraud Alerts and Freezes

If a consumer believes he or she has been a victim of identity theft, the FACT Act allows the consumer to contact the credit bureau and place a **fraud alert**. If you are running a credit report and you see a fraud alert, you must contact the person whose name is on the account at the number provided to the credit bureau or take other reasonable steps to ensure that the person applying for a mortgage loan is not really an identity thief. The FACT Act also allows consumers to place a **credit freeze** in order to prevent the information from showing on a credit report. The consumer may then "thaw" the credit report when they apply for a loan.

The Act also allows members of the military who are deploying overseas to place a credit freeze, thereby making fraudulent applications for credit more difficult.

Truncation of Credit and Debit Card Numbers

The FACT Act also prohibits businesses from printing more than five digits of any customer's credit/debit card number or expiration date on any receipt provided to the cardholder at the point of sale or transaction. The provision excludes handwritten or imprinted receipts if that is the only method of recording the card number.

Security and Disposal

To further protect the privacy of consumer financial information, the FACT Act requires businesses to take measures to responsibly **secure and dispose** of sensitive personal information found in a consumer's credit report. Reasonable methods for security and disposal include:

- Burning or shredding papers that contain consumer report information so that information cannot be reconstructed.
- Destroying or erasing electronic files or media so that information cannot be recovered or reconstructed.
- Placing all pending loan documents in locked desks, cabinets, or storage rooms at the end of the work day.

Red Flags Rules

Several widely reported surveys on the number of identity theft victims were released as Congress went into final hearings on FCRA amendments. One report released by the Federal Trade Commission in September 2003 estimated that approximately 10 million people were victims of identity theft in 2002 alone. This resulted in **Section 114** of the FACT Act, known as the **Red Flags Rules**, which requires:

- Financial institutions and creditors to implement a written identity theft prevention program.
- Card issuers to assess the validity of change of address requests.
- Users of consumer reports to reasonably verify the identity of the subject of a consumer report in the event of a notice of address discrepancy.

Section 114 applies to federal and state-chartered banks and credit unions, non-bank lenders, mortgage brokers, any person that regularly participates in a credit decision—including setting the terms of credit, and any person who requests a consumer report. Every organization has the flexibility to define a program that is appropriate to the size and operation of their particular business.

Red Flags

According to the FTC, red flags generally fall into these categories:

- Alerts, notifications, or warnings from a consumer reporting agency
- Suspicious documents
- Suspicious personally identifying information, such as a suspicious address
- Unusual use of—or suspicious activity relating to—a covered account
- Notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered accounts

Gramm-Leach-Bliley Act (GLB Act)

The **Financial Services Modernization Act of 1999**, also known as the **Gramm-Leach-Bliley Act** (Pub.L. 106-102), includes provisions in **Title V - Privacy** to *protect and regulate the disclosure of consumers' personal financial information.* There are three principal parts to the privacy requirements: The Financial Privacy Rule, Safeguards Rule, and Pretexting Provisions.

The GLB Act gives authority to eight federal agencies and the states to administer and enforce Title V - Privacy. These regulations apply to financial institutions, which include not only banks, securities firms, and insurance companies, but also companies providing many other types of financial products and services to consumers, such as:

- Lending, brokering, or servicing any type of consumer loan.
- Transferring or safeguarding money.
- Preparing individual tax returns.

- Providing financial advice or credit counseling.
- Providing residential real estate settlement services.
- Collecting consumer debts.

Regulation P (12 C.F.R. 1016) contains rules related to privacy of consumer financial information.

Financial Privacy Rule

Information that many would consider private—including bank balances and account numbers—is regularly bought and sold by banks, credit card companies, and other financial institutions. The **Privacy Rule** (15 U.S.C. §§ 6801–6809) governs the collection and disclosure of customers' personal financial information—known as **nonpublic personal information**—restricting when and under what circumstances such information may be disclosed to affiliates and to nonaffiliated third parties. Nonpublic personal information could include the following types of information:

- What a consumer or customer puts on an application
- Data about the individual from another source, such as a credit bureau
- Transactions between the individual and the company, such as an account balance, payment history, or credit/debit card purchase information
- Whether or not an individual is a consumer or customer of a particular financial institution

These restrictions are based on a required **Consumer Privacy Policy** notice provided to the consumer, explaining the lender's information collection and information sharing and transfer practices, and giving the consumer instructions on how to **opt out** of having this information shared. A financial institution must disclose its policy to consumers before they disclose personal information, as well as **annually** for customers during the financial relationship.

Even if a consumer does *not* opt-out, financial institutions are prohibited from disclosing—other than to a consumer reporting agency—access codes or account numbers to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail. Creditors are responsible for validating any other entity to which they transfer custody of a private consumer data.

Consumer or Customer?

A company's obligations under the GLB Act and Regulation P depend on whether the company has consumers or customers who obtain its services (12 C.F.R. § 1016.3):

- A **consumer** is *an individual who obtains or has obtained a financial product or service from a financial institution for personal, family or household reasons*.
- A **customer** is a *consumer with a continuing relationship with a financial institution*. Generally, if the relationship between the financial institution and the individual is significant and/or long-term, the individual is a customer of the institution.

For example, a person who gets a mortgage from a lender or hires a broker to get a personal loan is considered a customer of the lender or the broker, while a person who uses a check-cashing service is a consumer of that service.

Under the GLB Act, **customers** must receive a financial institution's privacy notice **every year** for as long as the customer relationship lasts. **Consumers**, on the other hand, are entitled to receive a privacy notice from a financial institution *only if the company shares the consumers' information with companies not affiliated with it*, with some exceptions.

Safeguards Rule

The **Safeguards Rule** (15 U.S.C. §§ 6801–6809) requires all financial institutions to design, implement, and maintain safeguards to protect customer information while it is in the custody and control of the institution and its agents. This rule applies not only to financial institutions that collect information from their own customers, but also to any institution—such as a credit reporting agency or even an educational institution—that receives customer information from other financial institutions. A written Safeguards Policy must include provisions that:

- Ensure the security and confidentiality of customer records.

- Protect against any anticipated threats or hazards to the security of such records.
- Protect against the unauthorized access or use of such records or information in ways that could result in substantial harm or inconvenience to customers.

Pretexting Provisions

This provision (15 U.S.C. §§ 6821–6827) protects consumers from individuals and companies that obtain their personal financial information under false, fictitious, or fraudulent pretenses.

U.S. Patriot Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Pub.L. 107-56), more commonly known as the Patriot Act, was signed in October 2001 in response to the September 11, 2001, terrorist attacks, The Act increases the ability of law enforcement agencies to search telephone, e-mail, medical, financial, and other records; eases restrictions on foreign intelligence gathering within the United States; expands the Secretary of the Treasury's authority to regulate financial transactions, particularly those involving foreign individuals and entities; and enhances the discretion of law enforcement and immigration authorities in detaining and deporting immigrants suspected of terrorism-related acts.

Title III of the Patriot Act, designated the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, requires lenders and banks to create and maintain **customer identification programs** (CIPs) to prevent financing of terrorist operations and money laundering (§ 326). CIPs require covered institutions to verify the identity for customers who are entering into a "formal relationship," such as taking out a loan or a credit account.

Minimum Data Required

A covered institution must obtain, at a minimum, the following information from all customers opening a new account:

- Name
- Date of birth
- Residential or work address for individuals, or physical location address for legal entities
- A tax identification number (TIN) for U.S. citizens or legal entities organized under state law
- For lawful permanent residents or non-immigrants, a TIN, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photo
- For non-U.S. legal entities with no TIN, a government-issued certificate of existence or good standing

If a lender is extending credit to the borrower using a mortgage broker as its agent, then it must ensure the broker is performing the bank's CIP.

The National Do Not Call Registry

A provision of the federal Telemarketing Sales Rule (16 C.F.R. Part 310), the Do Not Call (DNC) Registry is managed by the **Federal Trade Commission** (FTC), the nation's consumer protection agency and enforced by the FTC, the Federal Communications Commission (FCC), and state law enforcement officials.

The National Do Not Call Registry applies to any plan, program, or campaign to sell goods or services through interstate phone calls. This includes telemarketers who solicit consumers, often on behalf of third party sellers. It also includes sellers who provide, offer to provide, or arrange to provide goods or services to consumers in exchange for payment. The National Do Not Call Registry does *not* limit calls by political organizations, charities, or telephone surveyors. To keep from violating Do Not Call regulations, a company must maintain national and internal lists of customers and prospects and keep them updated regularly. The federal DNC list must be updated every three months, and the internal DNC list must be updated every 30 days.

A consumer who receives a telemarketing call despite being on the registry is able to file a complaint with the FTC. Violators could be fined up to **$16,000 per incident.**

PATRIOT ACT
INFORMATION DISCLOSURE

Applicant Name _____
Co-Applicant Name _____
Present Address _____
Mailing Address _____

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

I/we acknowledge that I/we received a copy of this disclosure.

Applicant _____ Date _____

Applicant _____ Date _____

Calyx Form patriotinfo.frm 04/04

Sample Patriot Act Information Disclosure

Established Business Relationship

A telemarketer or seller may call a consumer with whom it has an **established business relationship** (EBR) for up to **18 months** after the consumer's last purchase, delivery, or payment, even if the consumer's number is on the National Do Not Call Registry. In addition, a company may call a consumer for up to **three months** after the consumer makes an inquiry or submits an application to the company. Obtaining the name, phone number, and **signature** from a consumer provides written consent that does not expire until rescinded. One warning: If a consumer has asked to be put on the company's internal do not call list, the company may not call, even if there is an EBR. This prohibition is only against solicitation of new business. Calls may be made to consumers in reference to a current relationship, such as a creditor making a collection call.

Laws Against Predatory Lending

Predatory lending involves loans that *take advantage of ill-informed consumers through excessively high fees, misrepresented loan terms, frequent refinancing that does not benefit the borrower, and other prohibited acts.* Predatory lending targets borrowers with little knowledge of, or defense against, these practices. To combat predatory lending, federal and state regulations require that complete and clear disclosures be made to borrowers. This section focuses on the federal **Home Ownership and Equity Protection Act** of 1994 (HOEPA) and on **higher-priced loans** as defined by amendments to the Truth in Lending Act. It will also examine some provisions of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, designated as the Mortgage Reform and Anti-Predatory Lending Act.

Home Ownership and Equity Protection Act (HOEPA)

The **Home Ownership and Equity Protection Act** (HOEPA), a 1994 amendment to the Truth in Lending Act, *establishes disclosure requirements and prohibits deceptive and unfair practices in lending.* HOEPA also establishes requirements for certain loans with high interest rates and/or fees. The rules for these loans are contained in **Section 32 of Regulation Z**, which implements the Truth in Lending Act.

This Act is enforced by the Federal Trade Commission for non-depository lenders and by each state's attorney general. HOEPA also gives the Federal Reserve Board broad regulatory authority to prohibit additional practices it finds to be unfair or deceptive, not just for HOEPA loans but all consumer mortgage loans. A lender who violates HOEPA may be sued by the consumer, who may be able to recover statutory and actual damages, court costs, and attorney's fees. In addition, a violation of HOEPA may enable a consumer to rescind the loan for up to **three years**.

High Cost Loan Triggers

HOEPA provisions must be complied with once the triggers for a "high cost loan" have been met. A high cost loan, according to HOEPA, is closed-end loan secured by a borrower's principal residence. The rules primarily affect **refinancing** and **home equity installment loans** that also meet the definition of a high-rate or high-fee loan. The rules do *not* cover loans to buy a home (although purchase loans *are* included in the definition of "higher-priced" loans that are discussed later) or loans to build a home, reverse mortgages, or home equity lines of credit. A HOEPA loan is further defined by either the annual percentage rate (APR) or the total amount of finance charges.

Annual Percentage Rate Trigger

A loan with an APR that exceeds the limits indicated below would be considered a HOEPA loan:

- For a first mortgage, the APR exceeds by **more than eight percentage points** the yield on Treasury securities of comparable maturity.
- For a second mortgage, the APR exceeds by **more than ten percentage points** the yield on Treasury securities of comparable maturity.

Creditors should use the **15th of the month before the month** in which the application was received to identify the appropriate Treasury security yield. The selection of the Treasury index for purposes of calculating HOEPA loans is completely unrelated to the index selection and use for adjustable rate mortgages. Setting the rate for an ARM and determining HOEPA coverage are two separate and distinct exercises. This provides one more important reason to document when applications are received.

Total Finance Charge Trigger

The last HOEPA trigger is based on total finance charges and fees. A loan must comply with HOEPA requirements if the total points and fees paid by the consumer exceeds the larger of **eight percent of the loan amount** or a specific dollar amount that is adjusted annually by the Federal Reserve Board based on the Consumer Price Index. For example, the total dollar fee trigger for 2012 is $611.

The calculation of total finance charges for HOEPA is **not** the same as the standard Regulation Z calculation of finance charges. In addition to the fees and charges typically considered, some of the non-finance charges normally exempt by Regulation Z from the finance charge calculation—such as application fees paid by the borrower to the lender—must be considered for HOEPA. Another charge that *must be included* in the points/fee trigger is the amount of any optional credit, life, accident, or loss of income **insurance**, even if the cost of insurance may have been disclosed. Because voluntary credit insurance *is included* in the HOEPA calculation, a loan that did not meet the HOEPA triggers when considering APR for the Truth in Lending statement may become a HOEPA loan at closing when the borrower decides to make the purchase. If this happens, the lender must prepare HOEPA disclosures and delay the closing for the mandatory HOEPA **three business-day waiting period**.

Impact of the Dodd-Frank Act

Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, designated as the Mortgage Reform and Anti-Predatory Lending Act (§ 1431), amends the Truth in Lending Act so that, when implemented via regulation, the triggers that define a high cost loan are lowered to:

- Total points and fees exceeding **5%** on mortgage loan of at least $20,000 or 8% or a certain dollar amount on loans below $20,000
- APR exceeding average prime offer rate (APOR) by **6.5%** on first lien loans for $50,000 or more or 8.5% on smaller and second lien loans
- Prepayment penalty applicable for more than three years after closing or that exceed 2% of the prepayment

The Act also expands the definition of points and fee used for calculating the HOPEA loan trigger and requires the borrower to present certification from an approved loan counselor.

Note: The daily Treasury Yield rates can be accessed from the online **Resource Center of the U.S. Department of the Treasury**:

http://www.treasury.gov/resource-center/data-chart-center/Pages/index.aspx

Prohibited Loan Terms

A loan that is subject to the Home Ownership and Equity Protection Act may not include the following terms (12 C.F.R. § 1026.32(d)):

- A payment schedule that provides for regular periodic payments that do not fully amortize and result in a **balloon payment** on HOEPA loans having terms of **less than five years**, unless it is a bridge loan of less than one year used by consumers to buy or build a home.
- **Negative amortization**—monthly payments that do not fully pay the interest due on the loan and that cause an increase in the borrower's total principal debt are prohibited. Any interest rate changes and payment schedule caps must be coordinated to avoid this situation.
- A **repayment schedule** that consolidates more than two periodic payments that are to be paid in advance from the proceeds of the loan. The borrower should get the maximum use of the funds and have a legitimate opportunity to use the loan proceeds.
- **Default interest rates** higher than pre-default rates.
- **Rebates**—a refund calculated by a method less favorable than the actuarial method for rebates of interest arising from a loan acceleration due to default.
- **Prepayment penalties** are generally prohibited, although there are exceptions. Prepayment penalties are allowed if limited to the first two years of the loan or if the source of the prepayment funds is a refinancing by the lender or lender affiliate. They're also allowed if the amount of the periodic payment of principal, interest, or both will not change at any time during the first four years of the loan. Prepayment penalties may also be allowed in cases where the borrower's debt-to-income ratio does not exceed 50%.
- **Demand clauses**, including any provision that enables the creditor to call the loan before maturity, are strictly prohibited. Only certain behavior of the consumer would permit the lender to call the loan; for example, fraud, material misrepresentation, default, or damage to the security property.

Prohibited Acts and Practices

Additionally, according to Regulation Z (§ 1026.34), creditors granting loans meeting HOEPA criteria may **not**:

- Grant loans solely on the collateral value of the borrower's property without regard to the borrower's ability to repay the loan.
- Disburse proceeds from home improvement loans to anyone other than the borrower, jointly to the borrower and the home improvement contractor, or, in some instances, to a third-party escrow agent, as established by written agreement between the borrower, the creditor, and the contractor.
- Sell or otherwise assign the loan without furnishing the following statement to the purchaser or assignee: "Notice: This is a mortgage subject to special rules under the federal Truth in Lending Act. Purchasers or assignees of this mortgage could be liable for all claims and defenses with respect to the mortgage that the borrower could assert against the creditor."
- Refinance a HOEPA loan into another HOEPA loan within the first 12 months of origination, unless the new loan is in the borrower's best interest. The prohibition also applies to assignees holding or servicing the loan.

Verifying Repayment Ability

Creditors may not grant loans solely based on the collateral value of the borrower's property without regard to the borrower's ability to repay the loan, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and mortgage-related obligations, which include expected property taxes, premiums for mortgage-related insurance required by the creditor, and similar expenses. Income and assets can include:

- Expected income or assets,
- Tax returns and W-2s,
- Payroll receipts,
- Financial institution records, or
- Other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

The amounts the creditor uses to verify the repayment ability cannot be materially greater than the amounts the creditor could have verified when the loan was consummated.
Furthermore, the lender must determine the borrower's repayment ability using the largest payment of principal and interest scheduled in the first seven years following consummation. The creditor must also consider the current obligations and mortgage-related obligations and assess the borrower's repayment ability taking into account at least one of the following:

- The ratio of total debt obligations to income
- The income the consumer will have after paying debt obligations

A creditor is not presumed to be in compliance if the regular periodic payments for the first seven years of the transaction would cause the principal balance to increase or if the term of the loan is less than seven years and the regular periodic payments when aggregated do not fully amortize the outstanding principal balance.

The requirement to prove ability to repay does not apply to temporary or "bridge" loans with terms of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

Required Disclosures

Creditors granting loans meeting HOEPA criteria must disclose certain facts about the loan as part of the loan package at least **three business days** prior to consummation of a mortgage transaction.

This notice is intended to protect consumers from pressure tactics that imply the consumer is already locked into the agreement, or that canceling will be prohibitively complex or expensive.

In addition, the creditor must disclose:

- The annual percentage rate (APR).
- The regular payment amount (including any balloon payment where the law permits balloon payments).
- The loan amount; when the amount borrowed includes credit insurance premiums, that fact must be stated.
- For variable rate loans, the amount of the maximum monthly payment and the fact that the rate and monthly payment may increase.
- For a mortgage refinancing, the total amount borrowed, as reflected by the face amount of the note must be disclosed. Where the amount borrowed includes premiums or other charges for optional credit insurance or debt-cancellation coverage, that fact must also be stated. To be considered accurate, the amount disclosed cannot vary by more than $100 above or below the amount required to be disclosed.

These disclosures are in addition to the other required Truth in Lending disclosures. A sample of the required HOEPA disclosure language is shown (the disclosure statements in brackets are provided to the consumer only when applicable):

Disclosure Form

You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.

If you obtain this loan, the lender will have a mortgage on your home.

You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

You are borrowing $ _____ . [Optional credit insurance ☐ is ☐ is not included in this amount.]

The annual percentage rate on your loan will be

_____ %.

Your regular frequency payment will be $_____ .

[At the end of the loan, you will still owe us

$ balloon amount .]

[Your interest rate may rise. Increases in the interest rate could raise your payment. The highest amount your payment could increase is to $ _____ .]

Higher-Priced Mortgage Loans

With the passage of the Housing and Economic Recovery Act of 2008, amending Regulation Z and the Truth in Lending Act, a new category of loans was defined: **Higher-priced mortgage loans**. While the high cost loans defined and regulated by HOEPA are less common in today's credit market, the federal government recognized there was still a segment of the loan market between average rate, or prime, loans and loans that do not meet the fee or APR trigger requirements of HOEPA. In order to further protect consumers, Regulation Z (§ 1026.35) sets forth specific requirements for handling these higher-priced loans.

Defining Higher-Priced Loans

Higher-priced loans are closed-end mortgage loans secured by the borrower's principal dwelling where the APR **exceeds the applicable average prime offer rate** by at least:

- 1.5 percentage points for first lien loans, or
- 3.5 percentage points for junior lien loans.

This definition *does* include **home purchase** loans, but does *not* include loans to finance:

- The initial construction of a dwelling.
- A temporary or "bridge" loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the consumer plans to sell a current dwelling within 12 months.

- A reverse mortgage transaction.
- A home equity line of credit.

Unlike the HOEPA APR test, a higher-priced loan's APR is measured against the **applicable average prime offer rate**, which is an annual percentage rate derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of lenders for mortgage transactions that have low-risk pricing characteristics. The average prime offer rate for both fixed and adjustable rate loans is published in a table and updated at least weekly.

Restrictions

Regulation Z imposes the following restrictions on loans that meet the definition of a higher-priced mortgage loan:

- **Repayment Ability**. Creditors are obligated to verify the repayment ability of the borrower.
- **Prepayment Penalties**. These are generally prohibited unless it is limited to the first two years of the loan. A prepayment penalty is prohibited if the amount of the periodic payment of principal, interest, or both can change at any time during the first four years of the loan. It is also prohibited if the source of the prepayment funds is a refinance by the creditor or its affiliate.
- **Escrow Accounts**. An escrow account must be established for property taxes and premiums for mortgage-related insurance required by the creditor when the loan is a first lien that secures the borrower's principal dwelling. This is not required for loans on cooperatives or on condominium units where the condo association maintains a master policy to insure all units.

Escrow Requirements on Jumbo Loans

In response to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, H.R. 4173), a final rule was adopted related to escrow requirements on higher-priced first lien loans that exceed Freddie Mac's conforming loan limit (jumbo loans). The rule relates to a 2008 rule implementing the Home Ownership and Equity Protection Act (HOEPA) which prohibits a creditor from extending such a higher-priced mortgage loan unless an escrow account is established for payment of required property taxes and premiums for related insurance, including any required mortgage insurance premiums and homeowners hazard insurance. If property hazard insurance is paid through a homeowners association, as may be the case with a condominium, it would be excluded from the escrow requirement. Similarly, if the property taxes for a cooperative are paid by the corporation and collected through cooperative association fees, property taxes would be excluded from these escrow requirements.

This rule, which became effective April 1, 2011, revised § 1026.35(b)(3) of Regulation Z, as proposed, to provide a higher APR threshold for determining whether jumbo mortgage loans secured by a first lien on a consumer's principal dwelling are higher-priced mortgage loans for which an escrow account must be established.

As revised, the threshold for coverage of the escrow requirement for jumbo loans is 2.5 percentage points (rather than 1.5 percentage points) in excess of the average prime offer rate for a comparable transaction, as of the date the transaction's rate is set. Raising the APR threshold applicable to jumbo loans eliminates the mandatory escrow requirement for loans with an APR above the existing threshold but below the new threshold. Creditors may, at their option, elect to continue to use the 1.5 percentage point threshold for these loans.

Federal Reserve Mortgage Loan Originator Compensation Rule

One of the objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, H.R. 4173) was to address perceived unfair practices by mortgage loan originators related to **compensation** paid by consumers. The Federal Reserve Board, anticipating the Dodd-Frank amendments to the Truth in Lending Act, promulgated a final rule—which became effective April 2011—as an amendment to Regulation Z, found in Part 1026, Subpart E, Special Rules for Certain Home Mortgage Transactions,

that addresses compensation consistent with Dodd-Frank. According to the Compliance Guide prepared by the staff of the Board of Governors of the Federal Reserve System, this rule applies to transactions involving closed-end extensions of credit secured by a consumer's principal dwelling and must be followed by all persons who originate loans, including mortgage brokers and their employees, as well as mortgage loan officers employed by depository institutions and other lenders. For the purposes of this rule, **loan originator** is defined in Regulation Z § 1026.36 (a) as:

> *… a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person. The term "loan originator" includes an employee of the creditor if the employee meets this definition. The term "loan originator" includes the creditor only if the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including drawing on a bona fide warehouse line of credit, or out of deposits held by the creditor.*

The rule prohibits creditors from compensating MLOs based on the loan's interest rate or other terms or conditions—such as the APR, loan-to-value, loan program or provisions (such as a prepayment penalty) selected. This prohibition also applies to compensation from a mortgage broker to an employee who originates loans: A mortgage broker cannot pay an employee more for a transaction with a 6% interest rate than a 5% interest rate, for example. Compensation can be based on any of the following triggers:

- Flat fee fixed in advance
- Hourly rate for time worked
- Overall loan volume
- Long-term loan performance
- Existing/new customer
- "Pull-through" rate, i.e., quality of loan files

Creditors can also set a minimum and a maximum compensation—such as paying 1% for **all loans** the MLO originates, with a minimum of $1,000 and a maximum of $5,000—as long as the amount is the same for every transaction.

Note that "compensation" does not include any amounts a mortgage loan originator receives as payment for bona fide and reasonable non-affiliated third party charges, such as an appraisal fee, escrow fees, or insurance premiums. However, fees that are paid to affiliated third parties would be considered part of MLO compensation.

Dual Compensation

If a MLO receives compensation for a transaction directly from a consumer, no one else may compensate the MLO for that transaction, either directly or indirectly (§ 1026.36 (d)(2)). All compensation to a MLO must be either what is called **borrower paid origination** (BPO) or **lender paid origination** (LPO), such as when the consumer pays points to the lender/creditor who then compensates the MLO. A MLO who receives compensation from the lender/creditor in this manner cannot also receive compensation from the consumer.

The rule does not prohibit a consumer from accepting a higher interest rate in return for reducing closing costs, known as **yield spread premium** (YSP). This shows as a credit to the borrower on the Good Faith Estimate and is not considered to be compensation paid by the consumer to the MLO.

Steering and Safe Harbor

To further protect the interests of the consumer, Regulation Z § 1026.36 (e) prohibits mortgage loan originators from "steering"—influencing, advising, counseling, directing—consumers to accept the terms offered by a particular creditor in order to receive greater compensation than might be available from a different creditor, unless the loan is actually in the borrower's interest. For such actions to constitute steering, however, the consumer must actually consummate the transaction in question.

In order to facilitate compliance, the rule creates what is referred to as a **safe harbor** by setting specific requirements for providing loan options to consumers.

To stay within the safe harbor, a MLO must obtain loan options from a significant number of the creditors—three or more—with which the originator regularly does business, and the MLO must have a good faith belief that the options presented to the consumer are loans for which the consumer likely qualifies. For each type of transaction in which the consumer has expressed an interest, a MLO must present loan options that include the following:

- Lowest interest rate
- Lowest interest rate without risky features, i.e., prepayment penalties, negative amortization, interest-only payments, balloon payments in the first seven years of the loan, a demand feature, shared equity or shared appreciation; or, in the case of a reverse mortgage, a loan without a prepayment penalty or shared equity or appreciation
- Lowest total dollar amount for origination fees and discount points

The term "type of transaction" refers to the following types of loans:

- One with an annual percentage rate that cannot increase after consummation
- One with an annual percentage rate that may increase after consummation
- A reverse mortgage

It does not apply to a home equity line of credit or a loan secured by a consumer's interest in a timeshare plan.

For each type of transaction, if a mortgage loan originator presents to the consumer *more than three loans*, the MLO must highlight the loans that satisfy the criteria specified in the rule. The MLO can present *fewer than three loans* and satisfy the safe harbor if the loan(s) otherwise meet the criteria in the rule.

A violation of this steering prohibition may provide a borrower with an affirmative defense in a foreclosure proceeding, and note that the Dodd-Frank Act ensures that such a defense is not subject to the statute of limitations that normally impact private action for damages.

For more information, see Title 12: Banks and Banking, Part 1026 Regulation Z, Supplement I to Part 1026—Official Staff Interpretations at: http://ecfr.gpoaccess.gov

Mortgage Loan Originator Licensing

The SAFE Act

The **Housing and Economic Recovery Act of 2008 (HERA)** is a major housing law designed to assist with the recovery and the revitalization of America's residential housing market (Pub.L. 110-289). HERA has multiple purposes: The modernization of the Federal Housing Administration, foreclosure prevention, and the enhancement of consumer protections.

Title V, the **Secure and Fair Enforcement for Mortgage Licensing Act** or **SAFE Act**, is a key component of HERA. It is designed to enhance consumer protection and reduce fraud by requiring national minimum standards for mortgage training, including prelicensing education and annual continuing education. Furthermore, under the SAFE Act, all mortgage loan originators (MLOs) must be either state-licensed or federally registered. All mortgage loan originators seeking state-licensure—or currently holding a state license—are required to pass the SAFE Mortgage Loan Originator Test, which includes a national component and may have a state-specific component.

The SAFE Act requires all states to implement a mortgage loan originator (MLO) licensing process that meets certain standards through the **Nationwide Mortgage Licensing System & Registry (NMLS).** The NMLS, which was started in 2004 by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), is responsible for providing a centralized and standardized system for mortgage licensing that accommodates both the regulatory agencies and the mortgage industry. The NMLS website contains valuable comprehensive information for all mortgage loan originators, including specific details about the steps necessary to set up an account, schedule a test appointment, and access state-specific requirements.

Provisions of the SAFE Act are implemented as **Regulation G** (12 C.F.R. 1007) for federal licensing and as **Regulation H** (12 C.F.R. 1008) for state licensing.

Objectives of the SAFE Act

Among the objectives of the SAFE Act are to:

- Provide uniform license applications and reporting requirements for state-licensed mortgage loan originators.
- Provide a comprehensive licensing and supervisory database.
- Aggregate and improve the flow of information to and between regulators.
- Provide increased accountability and tracking of mortgage loan originators.
- Streamline the licensing process and reduce regulatory burden.
- Enhance consumer protections and support anti-fraud measures.
- Provide consumers with free, easy-to-access information about a mortgage loan originator's employment history and any public disciplinary and enforcement actions.
- Establish a means by which residential mortgage loan originators are required to act in the best interests of the consumer.
- Facilitate responsible behavior in the subprime mortgage market place.
- Provide comprehensive training and examination requirements related to nontraditional mortgage products.
- Facilitate the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

Fulfilling the Mandates of the SAFE Act

With the enactment of the SAFE Act, the **Conference of State Bank Supervisors** (CSBS) and the **American Association of Residential Mortgage Regulators** (AARMR) worked with the Department of Housing and Urban Development (HUD) to fulfill the mandates of the Act, including the requirements that states establish minimum standards for the licensing or registration of all mortgage loan originators. To that end, CSBS and AARMR developed a model state law that met the minimum standards in the SAFE Act, including definitions, education and testing requirements, and financial responsibility and criminal background standards for mortgage loan originators. HUD reviewed the model legislation and determined that it did indeed meet the requirements of the SAFE Act. Therefore, any state legislation that follows the model has also met the applicable minimum requirements of the SAFE Act.

Loan Originator Defined

The SAFE Act defines a loan originator (Sec. 1503) as an individual who:

(A) Takes a residential mortgage loan application.

(B) Offers or negotiates terms of a residential mortgage loan for compensation or gain.

An individual "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

The definition does **not** include:

- Any individual who performs purely administrative or clerical tasks on behalf of a licensee.
- A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.
- A person or entity solely involved in extensions of credit relating to timeshare plans.

A **loan processor** or **underwriter** who does *not* represent to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that he or she can or will perform any of the activities of a loan originator shall not be required to be a state-licensed mortgage loan originator.

An **independent contractor** may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a state-licensed mortgage loan originator.

The SAFE Act requires all residential mortgage loan originators to be identified by a unique NMLS identifier number as either:

- **Federally registered**—any mortgage loan originator employed by a depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.
- **State-licensed**—all other mortgage loan originators, without exception.

Other Definitions

Administrative or Clerical Tasks. The receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

Depository Institution. Has the same meaning as in section 3 of the Federal Deposit Insurance Act (i.e., any bank or savings association) and includes any credit union.

Federal Banking Agencies. The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

Loan Processor or Underwriter. In general, an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of:

- A state-licensed mortgage loan originator; or
- A registered mortgage loan originator.

"Clerical or support duties" may include:

- The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

Nontraditional Mortgage Product. Any mortgage product other than a 30-year fixed rate mortgage.

Real Estate Brokerage Activity. Any activity that involves offering or providing real estate brokerage services to the public, including:

- Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- Offering to engage in any activity, or act in any capacity described above.

Registered Loan Originator. Any individual who:

(A) meets the definition of loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and (B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

Residential Mortgage Loan. Any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

State-Licensed Loan Originator. Any individual who:

(A) is a loan originator;

(B) is not an employee of:

(i) a depository institution;

(ii) a subsidiary that is

(I) owned and controlled by a depository institution; and

(II) regulated by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a state or by the Secretary under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

Unique Identifier. In general, a number or other identifier that:

- Permanently identifies a loan originator;
- Is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- Shall not be used for purposes other than those set forth under the SAFE Act.

To the greatest extent possible and to accomplish the purpose of the SAFE Act, states shall use unique identifiers in lieu of Social Security numbers.

The NMLS unique identifier is required on all marketing materials, applications, required disclosures, and business cards. If the marketing materials are referencing the company only, the company's unique identifier must be used. If the marketing materials and business cards are issued in the name of the mortgage loan originator, then the marketing materials and business cards require the MLO's unique identifier. All disclosures require the MLO's unique identifier.

SAFE Act Licensing Requirements (Sec. 1505-1506)

To meet its objectives, the SAFE Act requires that applicants for a mortgage loan originator license must:

- Submit to a background check (including fingerprints, state and national criminal check).
- Provide personal history and experience.
- Provide authorization to obtain an independent credit report, and information relative to any administrative, civil, or criminal findings.
- Never had a mortgage loan originator license revoked in any government jurisdiction (a subsequent formal vacation of such revocation is not considered a revocation).
- Not have been convicted of or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during **the seven-year period preceding** the date of the application for licensing and registration or at **any time preceding** such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering (any pardon of a conviction is not considered a conviction).

Character and Fitness

The model state language of the SAFE Act indicates that an applicant must demonstrate financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.

A person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

- Current outstanding judgments, except judgments solely as a result of medical expenses.
- Current outstanding tax liens or other government liens and filings.
- Foreclosures within the past three years.
- A pattern of seriously delinquent accounts within the past three years.

Prelicensing Education Requirements

To become a state-licensed mortgage loan originator, applicants must complete **at least twenty (20) hours** of approved prelicensing education which includes:

- Federal law and regulation (3 hours)
- Ethics, including fraud, consumer protection, and fair lending (3 hours)

- Nontraditional mortgage products, which the SAFE Act defines as anything other than 30-year fixed rate loan (2 hours)
- Elective topics (12 hours)

It is up to each state to determine whether or not to also require state-specific topics, either as part of the 12 hours of electives or in addition to the 20 hours required. .

Mortgage Loan Originator Exam

The SAFE Act mandates that all applicants for a state mortgage loan originator license pass the SAFE Mortgage Loan Originator Test, which is comprised of two parts:

- National component
- State component, which is specific to each jurisdiction in which the MLO chooses to be licensed

The national component covers these topics:

- Federal mortgage-related laws (35%)
- General mortgage knowledge (25%)
- Mortgage loan origination activities (25%)
- Ethics (15%)

The state-specific component covers topics as mandated by each particular jurisdiction.

According to the final rule implementing the SAFE Act, any candidate for licensure who enrolls to take a test may only take and fail the national or a state component of the SAFE MLO Test **three consecutive times**. After the third failure, that candidate must wait at least **six (6) months** before taking the test again (12 C.F.R. § 1008.105).

License Renewal Requirements

State-licensed mortgage loan originators must complete **at least eight (8) hours of continuing education every year, including these topics:**

- Federal law and regulation (3 hours)
- Ethics, including fraud, consumer protection, and fair lending (2 hours)
- Nontraditional mortgage products (2 hours)
- Elective (1 hour)

Each state may impose additional continuing education requirements. Mortgage loan originators cannot get credit for the same continuing education class twice in consecutive years.

Chapter 4 Summary

Requiring Financial Disclosures		
Federal Law	Highlights	Disclosures/Notices
Truth in Lending Act (Regulation Z, TILA) 1968; amended by Mortgage Disclosure Improvement Act (MDIA) 2009 Enforced by Consumer Financial Protection Bureau	• Promotes the informed use of credit by disclosing costs in a uniform manner • Applies to loans with more than four installments • Provides right of rescission for three business days after loan consummation on refinance of owner-occupied property • Completed application requires use of TIL Statement (credit terms, including APR and total finance charges, payment amounts, and due dates) • Imposes a prescribed tolerance between TIL APR and final APR • 3/7/3 Rule – initial disclosure within 3 business days; earliest close 7th business day after initial disclosure; 3 business-day waiting period before consummation if redisclosure required	Within 3 Business Days of Completed Application: • TIL disclosure statement / guide to TIL Statement • When Home is on the Line (*home equity loans)* • CHARM booklet *(ARM loans)* At Settlement (for loans on primary residence): • Notice of right to *rescind (2 copies)* General • Disclosure of APR in advertising with certain triggering terms
Real Estate Settlement Procedures Act (Regulation X, RESPA) 1974 Enforced by Consumer Financial Protection Bureau	• Helps consumers compare settlement services and eliminate unnecessary increases in the costs of certain settlement services • Covers loans secured with a mortgage placed on a one- to four-family residential property • Prohibits kickbacks, fee-splitting, and unearned fees • Sets limits on escrow accounts • Prohibits sellers from requiring home buyers to use a particular title insurance company • Requires Good Faith Estimate (GFE) showing amount of settlement charges the borrower is likely to pay; includes tools for consumers to compare • Requires use of HUD-1 or HUD-1A Settlement Statement to clearly show all charges imposed on borrowers and sellers in connection with the settlement (except for open-end home equity)	Within 3 Business Days of Completed Application: • Good Faith Estimate • Mortgage Servicing Disclosure • HUD Booklet on Settlement Costs Before Settlement: • Affiliated Business Arrangement Disclosure • HUD-1 Settlement Statement (within 1 business day of settlement if requested) At Settlement: • HUD-1 Settlement Statement • Initial Escrow Statement After Settlement: • Annual Escrow Statement • Servicing Transfer Statement
Homeowners Protection Act (HPA) 1998 Enforced by Consumer Financial Protection Bureau	• Applies to single-family residential dwellings • Allows borrowers to request PMI cancellation when LTV reaches 80% • Automatically terminates PMI when LTV reaches 78% if borrower is not delinquent • Allows borrowers to accelerate the cancellation date by making additional payments that bring the LTV to 80%	• Initial disclosure of HPA provisions with annual reminders • Disclosure of cancellation and automatic termination dates for fixed rate loans

Privacy and Consumer Identification		
Federal Law	Highlights	Disclosures/Notices
Fair Credit Reporting Act (Regulation V, FCRA) 1968 Enforced by Consumer Financial Protection Bureau	• Gives consumers access to the same information about themselves that lenders use when making credit decisions • Entitles consumers to free credit report upon adverse action or identity theft • Allows consumers to dispute credit report • Provides additional rights for identity theft victims and active duty military personnel	• One-time written notice of derogatory information, separate from Truth in Lending disclosures
Fair and Accurate Credit Transaction Act of 2003 (FACT Act) Enforced by Consumer Financial Protection Bureau	• Amends the Fair Credit Reporting Act to help consumers fight identity theft • Mandates limits on information sharing • Entitles consumers to annual free credit report • Allows consumers to place fraud alerts and credit freezes • Requires businesses to truncate credit/debit card numbers on receipts • Mandates businesses to secure and properly dispose of sensitive personal information in a consumer's credit report • Red Flag Rules require financial institutions and creditors to implement a written identity theft prevention program	When Applying for Credit: • Home Loan Applicant Credit Score Information Disclosure
Gramm-Leach-Bliley Act or Financial Services Modernization Act of 1999 (The Privacy Act) Privacy of Consumer Financial Information (Reg P) provisions enforced by Consumer Financial Protection Bureau	Financial Privacy Rule: • Restricts when and under what circumstances personal financial information may be disclosed to non-affiliated third parties • Allows consumers to opt out of allowing information to be shared Safeguards Rule: • Requires all financial institutions to design, implement, and maintain safeguards to protect customer information while it is in the custody and control of the institution and its agents and in the transfer of such information Pretexting Provisions: • Protects consumers from those who obtain personal information under false, fictitious, or fraudulent pretenses	Before Disclosing Information to Non-Affiliated Third Parties: • Consumer Privacy Policy (and annually to customers as long as the relationship continues)
National Do Not Call Registry Enforced by Federal Trade Commission	• Allows consumers to put phone numbers on a national Do Not Call list • Applies to any plan, program, or campaign to sell goods or services through interstate phone calls • Requires companies to maintain national and internal lists of customers and prospects and keep them updated regularly • Allows business to call a consumer with whom it has an established business relationship (EBR) for up to 18 months after the consumer's last purchase, delivery, or payment; or up to 90 days after an inquiry • Imposes fines of up to $16,000 per violation	None

Privacy and Consumer Identification		
Federal Law	Highlights	Disclosures/Notices
U.S. Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) 2001	• Requires lenders and banks to create and maintain customer identification programs (CIPs) to verify identity of customers entering into a "formal relationship" • Mortgage brokers must also perform the lender's CIP	Patriot Act Information Disclosure
Prohibiting Discrimination		
Federal Law	Highlights	Disclosures/Notices
Civil Rights Act 1866	• Prohibits all racial discrimination, private or public, in the sale and rental of property • Allows someone claiming unlawful discrimination to sue only in federal district court	None
Fair Housing Act 1968	• Prohibits any discrimination in the sale, lease, or loan terms for residential property based on race, color, religion, sex, national origin, disability, or familial status • Allows someone claiming discrimination to file a written complaint to the nearest HUD office within one year of the alleged violation	• Fair/Equal Housing/Lending posters and logos • Post availability of information in lobby (depository institutions)
Equal Credit Opportunity Act (Regulation B, ECOA) 1974 Enforced by Consumer Financial Protection Bureau	• Prohibits discrimination in granting credit to people based on sex, age (if at least 18), marital status, race, color, religion, national origin, receipt of public assistance, or exercised rights under the Consumer Credit Protection Act • Requires credit bureaus to keep separate files on married spouses, if requested • Prohibits creditors from refusing to consider or discounting income from alimony, child support, maintenance if borrower chooses to disclose it • Allows borrowers to request copy of appraisal report used in credit decision within 90 days	• ECOA statement of rights, including right to receive a copy of appraisal report • Notification of credit decision within 30 days of application (statement of adverse action if declined, incomplete, or change of terms offered)
Home Mortgage Disclosure Act (Federal Reserve Board's Regulation C, HMDA) 1975 Enforced by B Consumer Financial Protection Bureau	• Determines if financial institutions are serving the housing needs of their communities • Applies to financial institutions and non-depository institutions with assets in excess of $10 million or who originate more than 100 loans/year • Identifies possible discriminatory lending patterns through the collection and disclosure of data about applicant and borrower characteristics	Loan/Application Register (LAR): Report to supervisory agencies on a loan-by-loan and application-by-application basis every March
Community Reinvestment Act (CRA) 1977	• Encourage financial institutions to help meet the credit needs of the communities in which they operate. • Requires periodic examinations by federal agencies responsible for supervising depository institutions	None

Against Predatory Lending		
Federal Law	Highlights	Disclosures/Notices
Home Ownership and Equity Protection Act (HOEPA) 1994 Enforced by Consumer Financial Protection Bureau	• Amends Regulation Z (Section 32) to prohibit deceptive and unfair practices in lending • Establishes additional disclosure requirements for high cost loans • Defines high cost loan as: The APR exceeds the rates on Treasury securities of comparable maturity by more than eight percentage points for a first mortgage or more than ten percentage points for a second mortgage; or the total points and fees exceed 8% of the loan amount, or total dollar amount exceeds $611 for 2012 • Uses some different criteria to define total finance charges, e.g., counts optional credit insurance premiums • Prohibits balloon payments (on loans of less than 5 years), negative amortization, demand clauses • Limits prepayment penalties • Allows three business-day right of rescission for HOEPA loans	Section 32 disclosures include: • Notice that consumer is not required to complete the transaction • Warning that the lender will have a mortgage on the home and the borrower could lose it and equity if in default • The annual percentage rate (APR) • The regular payment amount (including any balloon payment where the law permits balloon payments) • The loan amount • Credit insurance premiums, if applicable • For variable rate loans, the amount of the maximum monthly payment and the fact that the rate and monthly payment may increase
Higher-Priced Loans – Regulation Z § 1026.35 as amended by Housing and Economic Recovery Act of 2008 Enforced by Consumer Financial Protection Bureau	• Closed-end mortgage loan secured by borrower's principal dwelling where APR exceeds applicable average prime offer rate by at least 1.5% for first lien loans or 3.5% for junior lien loans • Creditors obligated to verify repayment ability • Prepayment penalties generally prohibited • Escrow account must be established for property taxes and mortgage-related insurance premiums required by creditor	None
MLO Compensation Rule –Regulation Z § 1026.36 Enforced by Consumer Financial Protection Bureau	• Amends Regulation Z (12 C.F.R. § 1026.36) • Prohibits compensation based on loan interest rates or other terms/conditions other than loan amount • Prohibits dual compensation (borrower paid and lender paid) to MLOs • Prohibits steering consumers to specific lenders to gain greater compensation unless loan is in borrower's interest • Sets safe harbor rules for presenting loan options to consumers	Present loan options from significant number of creditors

MLO Licensing		
Federal Law	Highlights	Disclosures/Notices
The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act, Title V of Housing and Economic Recovery Act); Regulation G (federal) and Regulation H (state) Enforced by Consumer Financial Protection Bureau	• Establishes minimum standards for the licensing of state-licensed mortgage loan originators and registered mortgage loan originators • Provides for the establishment and maintenance of a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry • Requires 20 hours of prelicensing education for state-licensed MLO applicants • Requires background checks for applicants • Requires passage of national NMLS exam (which may include state/territory component) • Requires at least 8 hours of annual continuing education for state-licensed MLOs • Requires contractor loan processors and underwriters to have MLO license	• Display of license • Use of NMLS unique ID on applications and other documents

Chapter 4 Quiz

1. ***Which law requires mortgage loan originators to provide borrowers with a Good Faith Estimate of closing costs?***
   A. FCRA
   B. HMDA
   C. RESPA
   D. TILA

2. ***The most important disclosure requirement under the Truth in Lending Act is the***
   A. amount of index.
   B. amount of the loan origination fee.
   C. APR.
   D. name of the secondary market purchaser.

3. ***How many business days after closing does the consumer have the right to rescind a refinance of his personal residence?***
   A. 2
   B. 3
   C. 5
   D. There is no right of rescission.

4. ***Which will trigger the required disclosures of the Truth in Lending Act if included in an advertisement for credit?***
   A. "Affordable Financing"
   B. "Easy Monthly Payments"
   C. "FHA Financing Available"
   D. "Only 360 Monthly Payments"

5. ***If an advertisement discloses only the APR, what additional disclosures are required?***
   A. amount of any finance charges
   B. percentage of down payment
   C. terms of repayment
   D. no additional disclosures are required

6. ***Which act requires mortgage lenders to give consumers information about obtaining their credit report when they are turned down for a loan?***
   A. ECOA
   B. FCRA
   C. RESPA
   D. TILA

7. ***Under what circumstances does RESPA allow a sale to be conditioned on the use of a particular escrow company chosen by the seller?***
   A. if full disclosure is made
   B. if no kickbacks are involved
   C. if no unearned fees are involved
   D. under no circumstances

8. ***Which regulation mandates the use of the HUD-1 Settlement Statement?***
   A. Regulation B
   B. Regulation C
   C. Regulation X
   D. Regulation Z

9. ***For how many months after a loan closes may a mortgage loan originator call a customer whose phone number is on the National Do Not Call Registry to solicit new business?***
   A. 3 months
   B. 6 months
   C. 18 months
   D. No calls can be made to a number on the registry.

10. ***Which law includes Red Flag Rules that require financial institutions and creditors to implement procedures to protect customer identity?***
    A. Fair and Accurate Credit Transaction Act
    B. Fair Credit Reporting Act
    C. Gramm-Leach-Bliley Act (The Privacy Act)
    D. Homeowners Protection Act

11. ***The SAFE Act requires state-licensed originators to have a minimum of how many hours of approved prelicensing education?***
    A. 8
    B. 12
    C. 20
    D. 24

12. ***The Home Ownership and Equity Protection Act***
    A. amends the Homeowners Protection Act.
    B. does not consider optional credit insurance as a finance charge.
    C. gives borrowers with high-cost loans three business days to rescind the loan.
    D. permits negative amortization only for the first five years of a loan.

13. ***According to the Homeowners Protection Act, borrowers may request cancellation of their mortgage insurance premiums when the LTV reaches***
    A. 75%.
    B. 78%.
    C. 80%.
    D. 82%.

14. ***As a result of the Mortgage Disclosure Improvement Act, how soon can a residential loan close?***
    A. the next business day
    B. after three business days for a refinance or home equity loan
    C. within three business days of applying
    D. on the seventh business day after delivery of required disclosures

15. ***Which fee can be collected prior to delivery of a Truth in Lending Statement and a Good Faith Estimate?***
    A. appraisal fee
    B. credit report fee
    C. origination fee
    D. No fees can be collected prior to delivery of these disclosures.

16. ***A mortgage broker rents office space from a title company at a discount in exchange for referring customers for settlement services. Which federal law does this arrangement violate?***
    A. RESPA
    B. SAFE Act
    C. TILA
    D. It does not violate any federal law.

17. ***The APR on an initial TIL for a 30-year fixed rate loan is 6.25%, and the APR on the final TIL is 6.5%. After redisclosure, how long must the borrower wait to close the loan?***
    A. 1 business day
    B. three business days after redisclosure
    C. seven business days after redislcosure
    D. There is no waiting required since the difference is within the acceptable tolerance.

18. ***A "higher-priced loan" is one that has***
    A. an APR that exceeds the applicable average prime offer rate by at least 1.5% for a first lien loan.
    B. an APR that exceeds the rates on Treasury securities of comparable maturity by more than 8%.
    C. total points and fees greater than 8% of the loan amount.
    D. total points and fees greater than 10% of the loan amount for junior liens.

19. ***Which statement about loan origination fees on a GFE is FALSE?***
    A. The fee cannot change unless there is a changed circumstance.
    B. The fee includes services performed by or on behalf of the mortgage loan originator.
    C. Lender and mortgage broker fees for the same transaction must be itemized.
    D. Origination fees must be expressed as lump sum.

20. ***According to the SAFE Act, which incident from 10 years ago would NOT automatically disqualify an applicant for a mortgage loan originator license?***
    A. conviction for felony assault
    B. conviction for felony fraud
    C. conviction for felony money laundering
    D. revocation by the state of a mortgage broker's license

21. ***Which of these circumstances would NOT be an acceptable reason to provide a revised GFE to a borrower?***
    A. The borrower lost the income from a part-time job and so was no longer eligible for the specific loan terms identified in the GFE.
    B. The borrower requested to change the loan term from 15 to 30 years.
    C. The mortgage loan originator regretted overlooking certain liabilities in order to qualify the borrower for a better interest rate.
    D. The title company discovered a junior lien on the property that was not considered when preparing the GFE.

22. ***A 10% tolerance is allowed between the amount shown on the GFE and the actual amount due at closing for which of these charges?***
    A. charge for the interest rate chosen when locked
    B. government recording charges
    C. origination fee
    D. transfer taxes