20 Hour SAFE Comprehensive: Financing Residential Real Estate

COURSE MANUAL
Part 2

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Overview
- Application Accuracy and Requirements
- Verification and Documentation
- Loan Costs: Fees and Points
- Disclosures
- MDIA – Mortgage Disclosure Improvement Act
- Borrower Analysis

In the following sections, "CFR" stands for "Code of Federal Regulations" and "USC" stands for "United States Code". Once Congress passes a law it is recorded in the United States Code (USC) books, but it usually will not explain what procedures should be followed. The Code of Federal Regulations (CFR) explains how the laws are to be implemented.

Application Accuracy and Required Information

Customer:

When shopping for a mortgage loan the borrower will need to:
- Assess his/her wants, needs, and finances
- Choose a lender
- Compare rates and fees
- Evaluate their financing options

Borrowers need a realistic idea of what they can afford, this includes:
- Maximum monthly payment
- Down payment amount
- Closing costs

In choosing a mortgage lender, borrowers need to identify prospects and use proper criteria to evaluate them. There are several ways for a borrower to find lender:
- Research
- Referrals
- Mortgage brokers
- Borrower's bank

Research - involves reviewing print, online, and other media advertisements
–May be followed with phone calls
–Talking to/interviewing loan officers

Referrals - often the best way to find a good lender
–May ask family, friends, and co-workers
–May ask real estate agent for a referral

Mortgage brokers - specialize in bringing borrowers and lenders together
–Still requires research to find a good broker

Borrower's bank - banks sometimes offer special financing to established customers

Most borrowers will talk to 3-4 lenders before submitting an application.

Borrowers know lenders can be very different; they may ask you for references from recent customers.

Important criteria that they will consider:
- Interest rates
- Fees
- Expertise
- Efficiency
- Honesty

Application Accuracy and Required Information

Loan Application Checklist
A loan application checklist is a good tool to offer to potential borrowers. This list should include all items the borrower will need to provide to the loan originator for any loan type whether it will be a purchase, refinance, FHA, VA, etc.

Some of the things on this list should include:

Income Verification:
- Paystubs for the last 30 days
- Last 2 years W-2's
- If self-employed: Last 2 year tax returns, with all schedules

Assets
- Bank statements for the last 3 months
- Most recent statement for 401K or other type savings plan

Liabilities
- Name, address of landlord for last 2 years
- Name and account numbers for:
  - Revolving debt
  - Cars
  - Student loans
  - Installment debt
  - Mortgage loans

Other items
- Driver's license & Social Security Card
- Divorce Decree
- Purchase agreement
- If a Veteran: DD214 & Eligibility Certificate

This is just a sample listing; each originator will have their own unique catalog of items required for their loan application process.

The Loan Interview

During the loan interview, the borrower will discuss financing options with the loan officer; traditionally this is a face-to-face meeting, but it can be via phone or online.

After borrower has selected a loan program and a lender, the next step is to fill out the loan application. This is where the loan application checklist you handed to the borrower will save time for both the borrower and you.

Pre-qualifying vs. Pre-approval

Pre-qualifying is good alternative for buyers who aren’t ready to apply
- May want to get idea of what’s available and what they can afford

Pre-qualifying is simplified version of lender’s underwriting procedures.
- Arrange to meet in quiet, private place
- Ask about finances, motivations, time frame, and readiness of buyers
- Do pre-qualification calculations using financial calculator or mortgage software

Typical Pre-qualifying questions

- Why do you want to buy a home?
- Have you owned a home before?
- Who is your current mortgage with?
- Is your current home for sale?
- What is your monthly income?
- Any other sources of income?
- What type of credit card debt do you have?
- What other type of monthly debt do you have?
- What type of checking/savings accounts do you have?
- Where will the down payment funds come from?

Basic steps in pre-qualifying:

- Apply income ratios to monthly income to find maximum monthly payment. Must cover principal, interest, taxes, and insurance (PITI)
- Subtract percentage (representing property taxes and insurance) from PITI figure to find maximum principal and interest payment

EXAMPLE:
$2,000 (Gross monthly income) x 28% (Standard Housing Ratio) = $560 (PITI)
$560 minus taxes & insurance (estimate of $60/mo.) = $500 for the maximum monthly housing expense

- Use current market interest rate to calculate maximum loan amount based on maximum principal and interest payment
- Divide maximum loan amount by LTV ratio to determine ceiling of price range

Pre-Approval:

- Formal process – must come from the lender
- Cannot come from real estate broker or loan originator
- For pre-approval, buyers must complete a loan application documenting income, assets, debts, and credit history
- Lender gives buyers a pre-approval letter, agreeing to loan up to a specified amount
- Advantages of pre-approval:
    - Tool in negotiations with sellers
    - Streamlines closing process

Uniform Residential Loan Application *URLA - Form 1003*

And now we will look at the loan application form:

Type of Mortgage and Terms of Loan:
- Type of loan
- Loan amount
- Loan term
- Interest rate
- Whether rate is fixed or adjustable
- Whether there is a special amortization arrangement

Property Information & Purpose
- Next section: address, legal description, and when house was built
- Also asks for purpose of loan. For example:
    - Primary residence
    - Secondary residence
    - Investment property
- Second section also asks how borrowers will take title, source of down payment, and any secondary financing

Borrower/Co-borrower Information - Third section requests info about each applicant:
- Name
- Social security number
- Phone number
- Date of birth
- Years of schooling
- Marital status (unmarried, married, or separated)
- Address
- Lender also will want to know how many dependents each applicant supports

NOTE: It's legal for lender to ask about marital status and dependents. But it is illegal for lender to use this information in discriminatory fashion

Employment Information – Each applicant must also provide:
- Name and address of employer
- Number of years employed at job
- Number of years employed in this line of work
- Position held and title
- Type of business
- Business phone number

Monthly Income and Combined Housing Expenses:
- Base employment income,
- Overtime,
- Bonuses,
- Commissions,

- Dividends and interest,
- Net rental income

Monthly Income and Combined Housing Expenses:
- Rent
- First mortgage
- Other financing
- Hazard insurance, taxes, PMI, etc.
- Other sources of income

Assets and Liabilities
Assets may include:
- Good faith deposit
- Money in bank
- Investments
- Life insurance policy
- Retirement account
- Automobile
- Personal property
- Real property

Assets and Liabilities
Liabilities may include:
- Student loan
- Car loan
- Real estate loan
- Other installment loan
- Charge accounts
- Credit cards
- Alimony/child support
- Job-related expenses

Details of Transaction
- Purchase price
- Cost of alterations and improvements
- Cost of land
- Prepaid expenses
- Closing costs

Declarations
- Outstanding judgments
- Bankruptcies
- Property foreclosures
- Lawsuits
- Loan defaults
- Alimony/child support
- Whether down payment is borrowed
- Citizenship
- Primary residence?
- How title is to be held

Acknowledgement & Agreement
Applicants agree to several provisions in loan application by signing and dating form

Also agree to correct or update information on application if necessary

Uniform Residential Loan Application *URLA - Form 1003*

Information For Government Monitoring

Last section contains optional questions regarding applicants' ethnicity, race, and sex

Though the information has to be provided on the application, the applicant is under no obligation to provide the information. In the case that the mortgage loan originator asks the applicant these questions and the applicant does not answer them, the loan originator must make a determination based on observation or surname.

This information is used by federal government to assess lender's compliance with fair lending laws

Continuation Sheet

Fourth page of application form is for applicants to use if they need more room to answer any of form's questions

URLA Modernization & Update Timeline

The Uniform Residential Loan Application is undergoing changes to modernize and bring the form into a more consumer friendly format. Fannie Mae and Freddie Mac (the GSEs) have had some delays in the mandatory use of the new URLA. The COVID-19 pandemic further impacted implementation. In April 2020, the GSEs published the revised implementation timeline for the redesigned Uniform Residential Loan Application (URLA) and updated automated underwriting systems (AUS). The new mandate date for the use of the redesigned URLA and AUS specifications is March 1, 2021.

Uniform Residential Loan Application(URLA)- Form 1003 Updates

Though all of the information mentioned previously is still included, the form is formatted differently and there are some new additions to the options listed on the application. These changes were made to the 1003 in order to make borrowers more comfortable while filling in the information and make the overall process less intimidating. It is believed that the reformatting makes information clearer for the potential borrower and more efficient with regards to data collection.

Section 1 on the URLA is now solely about Borrower Information. This section only includes the name of the coborrower and leaves out any other information about the coborrower. Coborrower information is now an addendum to the application and will be the same as Section 1, but for the additional borrowers.

Section 2 is now dedicated to financial information about the borrowers assets and liabilities.

Section 3 is now dedicated to financial information regarding any real estate owned by the borrower.

Section 4 is now reserved for all information about the loan itself and the subject property.

Section 5 is left for declarations regarding the borrower's property, funding, and past financial history.

Section 6 lists acknowledgments and agreements about the legal obligations of the borrower after signing the application.

Section 7 is now reserved for all demographic information.

Section 8 is meant to state the loan originators identifying information.

As stated before, the information that is within these sections is the same, but a few items have been added. In Section 1 regarding borrower information, the application states that the loan interview will likely be taken in English, but asks whether the borrower has a preferred language. If available, it is possible for the application or interview to be conducted in that preferred language. To determine whether this is a possibility, assistance can be obtained either by contacting HUD or the CFPB. The options available to the borrower on the application are:

- English
- Chinese
- Korean
- Spanish
- Tagalog
- Vietnamese
- Other:_________
- Or, I do not wish to respond

Aside from this change in the 1003, Section 7, which is reserved for demographic information includes the addition to a few more choices for the borrower to pick from, if he or she wants to provide the information. The additional choices were added after revisions were made to the HMDA rules. As was the case before, if the borrower does not want to furnish this information, the loan officer must fill it out on the application based on visual observation or surname. The following are the categories included in this section with their new listed options:

Ethnicity
- Hispanic or Latino
  - Mexican
  - Puerto Rican
  - Cuban
  - Other Hispanic or Latino (print origin)
- Not Hispanic or Latino

Sex
- Female
- Male
- I do not wish to provide this information

Race
- American Indian or Alaska Native (print name of enrolled or principal tribe)

- Asian
    - Asian Indian
    - Chinese
    - Filipino
    - Japanese
    - Korean
    - Vietnamese
    - Other Asian (print race)
- Black or African American
- Native Hawaiian or Other Pacific Islander
    - Native Hawaiian
    - Guamanian or Chamorro
    - Samoan
    - Other Pacific Islander (print race)
- White
- I do not wish to provide this information

Locking in the Interest Rate

During the loan interview, the loan originator and borrowers should discuss the interest rate and whether to lock in or float the rate.

- Lock-in - lender guarantees certain interest rate for specified period
- Float - interest rate will move up or down with market interest rates until closing

Lock-In Period

- Borrowers should be given information regarding whether the interest rate can be locked in and for how long
    - Period should always extend beyond the expected loan processing time
- Some lenders provide free automatic extension if closing is delayed beyond lock-in period
- Lenders usually charge lock-in fee, which is usually refunded if loan application is denied
    - If borrowers withdraw application, lock-in fee is not refunded
- If market interest rates might drop in near future, it doesn't make sense to lock-in rate
    - Lender can sometimes change a locked-in rate even if market rates have gone down
- Borrowers should be given details of any lock-in agreement in writing
    - An oral agreement isn't enough to protect their interests

Borrower Signature Authorization Form

For verification purposes, a loan originator may prefer to utilize the Borrower Signature Authorization Form. This form allows the lender to have blanket authorization and eliminate the need to have the client sign numerous forms.

This forms authorizes the lender to verify:

- Past and recent employment records
- Bank Accounts
- Credit report
- Mortgage and landlord information

Verification of Employment - VOE - Form 1005

Verifying employment over a two-year period is vital to ascertain if the borrower will be able to re-pay the mortgage loan. Any gaps in employment, longer than one month, should be explained in writing by the borrower.

The mortgage loan officer and underwriter should analyze this explanation and conclude the borrower is likely to succeed in the job market and be able to make regular payments on their mortgage loan. Two key factors regarding a borrower's employment are employment stability and quantity of income.

If a borrower has been on a job for less than two years, a copy any of the following will verify they were in school or the military prior to their employment:

- Diploma
- Transcript
- Discharge papers

A Verification of Employment Form 1005, also known as a VOE, is one way to verify a borrower's employment history. This form will demonstrate the borrower's history with their current (and past employer's if current employment is less than two years). The client will sign this form authorizing the lending institution to request the information listed. Separate forms will be sent to each employer the borrower has worked for in the last two years. The VOE should be mailed or hand delivered to each employer along with a stamped, self-addressed envelope.

Along with the VOE, the following should be requested to verify employment:

- Current paystubs (last 30 days)

- W-2's for the last 2 years
- Verify employer's name through an independent third party
- Verbal Verification of Employment (VVOE) - *Usually performed at least 3 days prior to closing*

Should list the following:
- Name of employer
- Phone number of employer
- Verify information through human resource or payroll department or company owner
- Name and title of person providing information
- Date of hire for borrower
- Borrower's position with this company
- Confirmation borrower is employed
- Confirmation of probability of continued employment

SELF-EMPLOYED BORROWER

A person is considered self-employed if they own 25% or more of a corporation.
The most common documents needed are:
- 2 years of business tax returns
- 2 years of personal tax returns- with all schedules attached
- Letter from CPA confirming two years of self-employment
- Year to date profit loss statement - signed and dated

The following are examples of documents needed for particular types of self-employment:
- Sole Proprietor - Personal Tax Return - Schedule C
- Partnership - 1065 Partnership Return, K-1 Personal income, Schedule E of 1040
- LLC and LLP - 1120S or 1065

Self-employed borrowers will also need to complete the Internal Revenue Service Form 4506-T; this will allow the lender to receive tax transcripts directly from the IRS.

Family Owned Business

If a relative employs the borrower, signed federal income tax returns must be provided for the last two years along with the Verification of Employment. This additional information is important to reduce the chances of information being misstated regarding employment history, income, etc.

Commission Income

To verify a borrower with commission income, an average must be determined using the income from the past two years. Although commission income may fluctuate from year to year, it is important to determine that income has remained level or increased from one year to the next.

If there is a decline for the current year, clear, persuasive offsetting causes must be determined in order to use commission income to qualify the client.

Social Security Income

If an applicant is receiving social security income, one of these two sources may be used to prove the amount of income received:
- Copy of Social Security Award Letter
- Last 12 bank statements showing regular deposit of Social Security checks

A Social Security Award Letter will provide information on how much an individual will receive from the Office of Social Security each month. If there is an expiration date for receipt of benefits, there must be a remaining term of at least three years to be able to use this income for income qualifying purposes.

For the purposes of the application, Social Security Income can be grossed up by 1.25% on an application.

For FHA loans using Social Security Income - lender must verify by obtaining any one of the following:
- Federal tax returns
- Most recent bank statement showing income from SSA
- Proof of income letter or "Budget Letter" or "Benefits Letter"
- Copy of the borrower Social Security Benefit Statement SSA-1099/1042S

In addition, the lender must document the income is likely to continue for at least a three year period from date of the mortgage application by supplying:
- Copy of the last Notice of Award letter
- Equivalent document that establishes award benefits to the borrower

Any income from the SSA that is due to expire within three years of the mortgage application, will only be considered as a compensating factor. Examples of compensating factors include a sizable savings account or a substantial down payment.

Alimony and Child Support

Alimony or child support must continue for three years from the date of application to be considered as acceptable income. To verify the term remaining, a photocopy of the divorce decree or separation agreement must be submitted with the loan file.

These documents should detail the amount of award and the period of time that these funds will be paid to the applicant.

Evidence will need to be provided to prove these funds have been received for the past 12 months. Verification of these funds can be made by providing:

- Copies of canceled checks for last 12 months.
- Court records.
- Tax returns (to prove alimony only).
- Divorce/separation agreement

Verification of Mortgage or Rent- VOR

Two years of residences are needed to complete the loan application. Therefore, if the borrower has only resided at their present address for one and half years, the previous residence(s) address will need to be listed until two full years are covered.

A Verification of Rent or Mortgage form, for each residence listed by the borrower, will document not only their length of time residing there but also their payment history.

The VOR form is used for information regarding:

- Rental Account
- Mortgage Account
- Land Contract

Verification of Available Funds

Another important function of the loan officer is to verify the client has enough funds available to apply towards the down payment, closing costs and certain pre-paid items in association with the purchase of a home.

Pre-paid items include:

- Interim interest
- Interim real estate taxes due before first mortgage payment (if applicable)
- First year premium for homeowner's insurance
- Escrow accruals (if applicable)

Verification of Deposit – VOD - Form 1006s

Checking and savings accounts can be verified by a verification of deposits sent to each bank, savings and loan or credit union.

Sale Proceeds – If the borrower has recently sold real estate, these funds would be acceptable for down payment and closing costs. Verification could be confirmed by obtaining a copy of the fully executed settlement statement or Hud-1 from the sale.

If the house is under contract, a copy of the fully executed purchase agreement is acceptable.

Determining Equity:

Sales price minus mortgages/liens and any costs to the seller associated with sale equals actual equity.

Example:
Sales price = $100,000 minus
Mortgage balance = $50,000
Equity = $50,000

This sale will take place first, then the borrower can close on his new home. Usually these type closings, called back-to-back closings, are coordinated through the same closing attorney to expedite the proceedings and keep them trouble free.

<u>Loan Costs</u>
Primary consideration for most borrowers in choosing lender is how much the loan will cost. Costs can include:

- Loan fees
- Discount points
- Interest rate
- Mortgage broker fees

Types of loan fees
The most significant loan fees are origination fees and discount points.

Point = percentage point
1 point = 1% of loan amount

Example:
1 point on a $100,000 loan = $1,000

Origination fee
Covers the work involved in originating the loan

- Origination - Decision making process to decide if the loan is a good credit risk
  - Verifying income, debts, employment, etc.
- Charged in almost every mortgage transaction

Discount points
Some lenders use the term "points" to mean only discount points; others use it to include discount points and origination fee. Discount points will:

- Increase lender's yield (profit)
- Often lowers interest rate
  - Sometimes referred to as a "buy down" of the interest rate

Discount points have become common; the Good Faith Estimate (GFE) disclosure will help address how to disclose discount points separately from originator fees.

Rule of thumb:
It takes 6 points to increase lender's yield on 30-year loan by 1%. This is a rough estimate. Market conditions can change number of points needed to increase yield
To figure out cost of loan discount, multiply loan amount by number of discount points:

Loan amount × Discount points = Cost of loan discount

Loan amount = $100,000 x 2 discounts points = $2,000 - cost of discount

Points may be paid by buyer or seller. Buy down = seller pays lender points to "buy down" buyer's interest rate. When buyer pays points, lump sum must be paid to lender in cash at closing.

Loan Costs - Other Lender Fees

Lenders may require borrower to pay:

- Application fee
- Document preparation fee
- Underwriting fee
- Different from other closing costs like appraisal fees or credit reports
- These costs will vary from lender to lender
- Borrowers can/should ask loan officers whether fees can be reduced or waived

Loan Costs - No-Fee Loans

Some lenders offer no-fee loans: lender charges no origination fee, discount points, or other lender fees

- Only finance charge is interest
- Lower overhead costs
- Interest rate may be higher than conventional lender
  - Lender compensated with Yield Spread premium

Disclosures - Comparing Loan Costs

Different costs and fees lenders can charge make it hard for borrowers to compare lenders.

- Truth in Lending Act (TILA) - federal consumer protection law that requires lenders to disclose loan costs to borrowers to make process easier to understand
  - Offers the borrower information to shop different lenders [Bureau of Consumer Financial Protection – 12 CFR Chapter X, Part 1026 – Truth in Lending – Regulation Z)]

The most important item on the TILA disclosure is the annual percentage rate (APR), which expresses the relationship of the total finance charge to the amount financed.

Total finance charge may include:

- Origination fee [Regulation Z, 12 CFR §1026.4 (b)(1)]
- Discount points paid [Regulation Z, 12 CFR §1026.4 (b)(3)]
- Mortgage broker's fee [Regulation Z, 12 CFR §1026.4 (b)(3)]
- Mortgage guaranty or insurance fees [Regulation Z, 12 CFR §1026.4 (b)(5)]
    - Does not include homeowners hazard insurance

Total finance charge does NOT include:
- Title insurance costs [Regulation Z, 12 CFR §1026.4 (c)(7)(i)]
- Credit report charges [Regulation Z, 12 CFR §1026.4 (c)(1)]
- Appraisal fee [Regulation Z, 12 CFR §1026.4 (c)(7)(iv)]
- Points paid by seller [Regulation Z, 12 CFR §1026.4 (c)(5)]

The APR is almost always higher than quoted interest rate because lenders usually charges fees other than interest.

Comparing APRs is best way for the borrower to determine which loan is least expensive

Mortgage Disclosure Improvement Act – MDIA
- Housing Economic Recovery Act – HERA
    - Includes amendments to Truth in Lending Act
        - Known as the Mortgage Disclosure Improvement Act – MDIA
        - Requires creditors to give consumers transaction-specific cost disclosures
            - For dwelling secured closed end mortgage transactions subject to Real Estate Settlement Procedures Act (RESPA)
                - Even though it is not the consumer's principal dwelling (place of residence)
- Early disclosures now cover more transaction types [Regulation Z, 12 CFR §1026.19 (a)(1)(i)]:
    - Purchase a home
        - Principal dwelling or second home
    - Construct a home
    - Refinance a home
    - Second mortgages
    - Home equity loans
        - Does not include HELOC
            - These have different disclosure requirements
- Before MDIA:
    - TILA, Regulation Z, 12 CFR Section 128 (b)(2) applied only to a "residential mortgage transaction" subject to RESPA
- Now:
    - Extends early disclosure requirement to "any extension of credit secured by the dwelling of a consumer" [Regulation Z, 12 CFR §1026.19 (a)(1)(i)]
        - Now includes refinance and home equity loans
- For all applications received after July 30, 2009
    - Initial fee restrictions prior to the issuance of early disclosures [Regulation Z, 12 CFR §1026.19 (a)(1)(iii)]
        - No upfront fees except for reasonable credit report fee
    - Notice must be clear and conspicuous [Regulation Z, 12 CFR §102619 (a)(4)]
        - "*You are not required to complete this agreement merely because you have received these disclosures or signed a loan application*"
        - Pertains to initial and corrected disclosures
- Timing for disclosures
    - Initial disclosure [Regulation Z, 12 CFR §1026.19 (a)(1)(i)]
        - Delivered or placed in the mail not later than 3 business days after:
            - Receipt of the loan application
    - Business day defined for initial disclosures [Regulation Z, 12 CFR §1026.2 (a)(6)]
        - Days in which creditor is open for business
- Waiting period prior to consummation [Regulation Z, 12 CFR §1026.19 (a)(2)]
    - 7 business days from delivery of initial disclosures
- Business day defined for "new" waiting period [Regulation Z, 12 CFR §1026.2 (a)(6)]
    - All calendar days except for Sundays and legal holidays
- APR Tolerance Levels
    - Regular Transactions (Regulation Z, 12 CFR §1026.22 (a)(2)
        - APR is considered accurate if it varies by not more than 1/8 of 1 percentage point
    - Example: Exact APR is 10 1/8%
        - A disclosed APR from 10% - 10 ¼% is in compliance with this regulation
- Irregular Transactions (Regulation Z, 12 CFR §1026.22 (a)(3)
    - APR is considered accurate if it varies by not more than ¼ of 1 percentage point
    - Examples of an irregular transaction could be:
        - More complex transactions that do not call for a single advance and a regular series of equal payments at equal intervals
            - Construction loan with advances as construction progresses
            - Transactions where payments vary with consumer's seasonal income
            - Graduated payment schedules

        - Does not apply to loans with variable rate features where initial disclosures are based on a regular amortization schedule
            - Even though payments may later change because of the variable rate feature
- If APR changes beyond allowed tolerance [Regulation Z, 12 CFR §1026.19 (a)(2)(ii)]
    - Regular Transactions-1/8 of 1 percentage point
    - Irregular Transactions-1/4 of 1 percentage point
- Corrected disclosure received by consumer on or before third business day before consummation
    - Business day defined [Regulation Z, 12 CFR §1026.2 (a)(6)]
        - Different from initial disclosures
            - All calendar days except Sundays and legal holidays
    - “3-7-3 Rule” of Mortgage Disclosure Improvement Act
- RESPA defines *tolerance*:
  “*Tolerance* means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.” [Regulation Z, 12 CFR §1024.2]
- RESPA defines changed circumstances:
    - Changed circumstances means: [Regulation Z, 12 CFR §1024.2 (b)(1)]
        - (i) Acts of God, war, disaster, or other emergency;
        - (ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;
        - (iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or
        - (iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.
- “No Requirement to Complete Statement” Notice [Regulation Z, 12 CFR §1026.19 (a)(4)]
    - Disclosures and corrected disclosures must contain a notice
        - “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application”

Must be clear and conspicuous

Mortgage Disclosure Improvement Act – MDIA

Timeline for 3-7-3 Rule

SUN	MON	TUE	WED	THU	FRI	SAT
	1 Loan Application is taken, Disclosures Delivered in Person or Disclosures Mailed Disclosures provided during face-to-face application are considered delivered that day – not on the 3rd day. Fees may be collected	2 DAY 1	3 DAY 2	4 DAY 3 Considered Received By Borrower… *Can Collect Additional Fees	5 DAY 4	6 DAY 5
7	8 DAY 6	9 DAY 7 Earliest Loan Can Close	10	11	12	13
14	15 Loan Is Approved, New Rate Quoted & APR Increased By .125	16 New Disclosures Signed and Dated By Borrower In Your Office	17 DAY 1	18 DAY 2	19 DAY 3 Loan May Close & Fund	20

- Waiver of 7 and 3-day waiting period [Regulation Z, 12 CFR §1026.19 (a)(3)]
    - Consumer can expedite consummation for bona fide personal emergency
        - Consumer prepares a handwritten statement that:
            - Specifically describes details of emergency
            - Specifies request for waiver of the waiting period
            - Is dated
            - Is signed by each consumer

Mortgage Disclosure Improvement Act – MDIA

- Protection for Higher-Priced Mortgage Loans [Regulation Z, 12 CFR §1026.35 (a)]
    - To prevent unfairness, deception and abuse on higher priced mortgage loans
        - Consumer-purpose loans
        - Closed-end loans
        - Secured by consumer’s principal dwelling
        - Having an APR that exceeds average prime by at least
            - 1.5 % points for first-lien loans

        - 3.5% points for subordinate-lien loans
- Creditors are prohibited from extending credit without regard to a consumer's ability to repay from sources other than the collateral itself [Regulation Z, 12 CFR §1026.35 (b) (1)]
- Creditors must verify income and assets relied upon in determining repayment ability
- Creditors must establish escrow accounts for taxes and insurance [Regulation Z, 12 CFR §1026.35 (3)(i)]
    - Borrowers my cancel escrows 12 months after consummation of loan [Regulation Z, 12 CFR §1026.35 (3)(iii)]
- Creditors are prohibited from structuring closed-end mortgage loans as open-end lines of credit for the purpose of evading these rules [Regulation Z, 12 CFR §1026.35 (4)]
- Mortgage Disclosure Improvement Act (MDIA) seeks to alert borrowers to risks of payment increases
    - Before loans with variable rates/payments are made

Borrower Analysis

The major considerations when analyzing the borrower are:
- Qualifying the borrower
- Processing and underwriting the loan
- Qualifying ratios

Evaluating Creditworthiness

Qualifying the borrower involves the evaluation of their:
- Income
- Net worth (assets)
- Credit history

A borrower is considered "creditworthy" if their overall financial situation indicates they can be expected to make payments on time.
Assets - Funds for Closing
Liquid assets include cash and assets that can be easily converted into cash. You must ensure the applicant has the funds to cover:
- Costs
- Other Cash down payment
- Closing home expenses

The applicant may be required to have reserves left over after closing, sufficient to cover a certain number of mortgage payments

Shows applicant can handle financial emergencies.

Almost any assets can help a loan applicant. These may include:
- Real estate
- Automobiles
- Furniture
- Jewelry
- Stocks/bonds
- Life insurance policy

<u>Bank Accounts</u>
To verify funds an applicant has in bank accounts:
- Verification of deposit form is sent to the bank
- Bank statements for 3 months

When reviewing returned verification information, underwriter asks:
- Does information match loan application?
- Does applicant have enough money in bank to meet purchase expenses?
- Has bank account been opened only recently (last 3 months)?
- Is present balance notably higher than average balance?
- If account is claimed to be source of earnest money, is balance high enough?

Borrower may include funds from loan secured by an asset such as:
- Car
- Stock
- Certificate of deposit
- Life insurance policy
- Other real estate

Assets – Real Estate for Sale

If applicant is selling another property to raise cash, net equity in property can be counted as a liquid asset
- Net Equity = Market Value minus (Liens + Selling Expenses)
- Market value = $100,000 minus Liens/$50,000. = Net Equity of $50,000
- If equity is exclusive or main source of money for new home purchase, lender will not fund loan until old home has been sold

    - Copy of settlement statement is usually required

Sometimes new home is ready to close before old home is sold. Borrowers may want to apply for swing loan or a bridge loan to cover closing.

- Swing loan or bridge loan is a loan for a short term with expectations of being paid back quickly.

Example - Borrower has a primary residence with $50,000 worth of equity and is ready to buy a new home. To use the equity in his old residence, the borrower would take out a bridge loan for $50,000.00 and apply these funds to the new purchase. When the old house sells, borrower will pay off this bridge loan with the proceeds of that sale.

Assets – Other Real Estate

Some applicants own real estate they aren't planning on selling; it is an asset and should be considered in the loan application process.

Only equity contributes to net worth

Example –
Appraised value = $100,000 minus loan balance/$80,000 = $20,000/ equity
Assets – Gift Funds

- Rules regarding gift funds varies from one loan program to another
- Most programs limit how much of down payment and closing costs may be covered by gift funds
- Generally, lenders require:
    - Gift letter stating that funds don't have to be repaid
    - Funds deposited in applicant's account

Liabilities

Any debt the borrower has that has payments extending beyond ten months will need to be listed on the liabilities section of the loan application. For each debt, you will need to provide the name and address of the company, dollar amount of the monthly payment, months left to pay and the unpaid balance.

The information usually comes from the mortgage credit report. The applicant's personal liabilities are subtracted from their total value of assets to calculate net worth.
Liabilities

Liabilities include:

- Credit card and charge account balances
- Installment debts
- Taxes owed
- Liens against real estate owned
- Student loan
- Car loan
- Real estate loan
    - Includes principal, interest, taxes and insurance
- Alimony/child support

Income

Income Analysis

The Borrower's income is the starting point in determining size of loan, and how expensive a home a borrower can afford.

Income has three dimensions:

- Quantity
- Quality
- Durability

Characteristics of Income

- Quantity - Whether there is enough monthly income to cover proposed monthly mortgage payment
- Quality (Dependability) - Income sources should be reasonably dependable, such as established employer, government agency, or interest-yielding investment account
- Less dependable = lower quality
- Durability (Probability of continuance) - Income is durable if it can be expected to continue in future, preferably for at least next three years

Income that meets tests of quality and durability is "stable monthly income", which includes:

- Bonuses
- Commissions
- Overtime

- Part-time earnings
- Self-employment income
- Retirement income
- Alimony
- Child support
- Public assistance
- Investment income

Employment Income

Permanent income is major income source for most home borrowers
Positive employment history includes:
- Consistency, usually two years in same job or field
- Chances for advancement
- Special training or education

Commissions, overtime and bonuses
Considered durable if consistent part of applicant's overall earnings pattern

Part-time or seasonal work
Considered stable if applicant has held job for at least two years (part-time work), and an established earning pattern exists (seasonal work)

Self-employment income
Includes income from personal business, freelance, or consulting work
Underwriters consider earnings trend, training and experience and nature of business

Lenders consider this very risky income

Information on application must be verified before loan is approved
Employment verification:
- Verification form sent to employer, or
- W-2 forms for 2 years plus pay stubs for 30 days, with phone call to employer
- Lender will also request income tax returns for previous two years to verify earnings

Retirement Income

Pension and social security payments are usually dependable and durable
Lenders can't discriminate against applicants on basis of age
Although life expectancy can be considered

Investment Income

Dividends or interest may be counted as part of stable monthly income
Underwriter calculates an average of investment income for previous two years

Rental Income

If a stable pattern is verified, rental income is considered stable monthly income
Applicant will have to show gross earnings and expenses for previous two years
Many unpredictable factors affect rental income, including repairs, vacancies and tenants who don't pay.

Underwriter includes only a percentage of verified income to leave a margin for error (usually 75% of gross)

Negative rental income is treated as a liability by the underwriter (calculated as a monthly debt)

Maintenance Alimony & Child Support

Considered stable income sources only if it appears payments will be made reliably
Depends on:
- Whether payments are required by court decree
- How long payments have been made
- Financial/credit status of ex-spouse
- Ability to compel payment

Lenders usually require:

- Copy of court decree
- Proof of receipt of payments (last 12 cancelled checks)
- Child support must have payments continuing for a minimum of three years
- Applicants may not want to list these as sources of income if ex-spouse is hostile or uncooperative

Disclosure about income from alimony, child support, or separate maintenance.

A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

Public Assistance

Equal Credit Opportunity Act also prohibits lenders from discriminating on the basis of an applicant receiving public assistance. Here is that section of the law FDCI 6500, Part 202.6(2):

Age, receipt of public assistance.
(i) Except as permitted in this paragraph, a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

Unacceptable Types of Income

Income that usually doesn't count as stable monthly income:

- Wages from temporary job - income from temporary employment is never classified as stable monthly income
- Unemployment compensation - unemployment compensation rarely treated as stable income because eligibility usually lasts for a specified number of weeks
- If applicant can show (through tax returns) that it's a regular part of his income, some lenders are willing to count it
- Contributions from family members - underwriters usually only consider earnings of the head of household

But if borrower's family member is listed as a co-borrower, that person's income is also considered

Underwriter converts all earnings into monthly earnings
Example: Glenda is paid $14.50/hour, and works 40 per week
$14.50 × 40 = $580
$580 × 52 = $30,160
$30,160 ÷ 12 = $2,513
Underwriter uses gross monthly income figures without subtracting taxes, when calculating stable monthly income

Non-Taxable Income
- Certain types of income are exempt from taxation
  - Child support
  - Disability payments
  - Some public assistance
- Underwriter may take this into account by "grossing up" income (adding amount of gross taxable income represented by payments)

Credit Report

Credit Reputation
Lenders rely on credit reports to evaluate loan applicant's credit reputation (willingness to repay).

Derogatory information on report could mean denial of loan

Personal credit report covers 7 years of information about an individual's:
- Loans
- Credit purchases
- Debt repayment
- Utility, medical bills, etc. aren't listed unless they are turned over to collection agency

Credit reporting agencies are private companies. There are three major credit agencies in U.S.:
- Equifax
- Experian (formerly TRW)
- TransUnion

Credit information important to underwriter includes:
- Length of credit history
- Payment record
- Derogatory credit incidents

- Credit scores

Length of Credit History
- “Credit history” can refer to someone’s credit reputation or duration of applicant’s experience with credit
- Applicant should have 2 years of credit history (and at least 3 trade lines active)

Payment Record
- Each account listed on credit report has payment record showing whether payments have been made on time
- Late payments are shown as 30 days, 60 days, or 90 days overdue
- Underwriters view chronic late payments as sign applicant is financially overextended
- Spotless payment record not necessary

Major Derogatory Incidents
Negative information on credit report:
- Slow payment
- Charge-offs - Charge-off - tax code allows creditors to write off debt that hasn’t had payment in 6 months - Doesn’t relieve debtor of liability (and has a heavy impact on scores)
- Collections - if unpaid bills are turned over to collection agencies, they will appear on a credit report
- Repossessions - if someone fails to make payments, a creditor can repossess the collateral property
- Judgments - when someone loses a lawsuit, court may order her to pay money (damages) to the person who sued
- Foreclosures - not surprisingly, lenders don’t look favorably upon real estate foreclosures
- Bankruptcies - bankruptcy on applicant’s credit report is also taken very seriously

Credit Scores
- Credit reporting agencies calculate individual credit scores
- Scoring models are based on statistical analysis of large numbers of mortgages
  - Predict likelihood of default
  - Determine appropriate level of review
- Two most widely used types of credit scores:
  - FICO bureau scores
  - Management Decisions Systems (MDS) bankruptcy scores
- FICO scores
  - Range from 300 to over 850, and are used more often than MDS bankruptcy scores
  - A score (over 680) is a good sign
- MDS scores
  - Range from zero to over 1,000
  - A score (over 550) is a bad sign
- Underwriters use credit scores to determine level of review applied to applicant’s credit history
  - Good score = basic review
  - Poor score = in-depth review
- Several other factors can negatively impact credit score, such as:
  - Chronic late payments
  - Maintaining high balance on credit card
  - Applying for too much credit

The credit report is divided into four sections:

- Identifying information
  - Full legal name, including any aliases, such as a maiden name. Also includes Junior, Senior, II, III, IV, etc. This section will also contain social security number, current and previous addresses, date of birth, telephone numbers, driver’s license number, employer information and spouse’s name
- Credit history
  - Date account was opened
  - Type of credit – installment, revolving, etc.
  - Joint or individual account
  - Initial loan amount or credit limit
  - Balance on debt
  - Monthly payment
  - Status of account – open, closed, paid, etc.
  - History of payments
- Public records
  - Lists bankruptcies, judgments, tax liens, and/or any item filed in the Parish/County Court House records against the consumer. The section handles only the monetary related data and will list the file date, dismissal or discharge date and if it is paid or unpaid. These numbers will show the value of additional real estate owned by the borrower, such as second homes, rental units, etc.
- Inquiries
  - Lists creditors who have reviewed consumer’s credit history. When a creditor requests a credit report, an inquiry will be posted with that creditors name and the date requested. An inquiry usually remains on a credit report for up to 120 days.

Delinquencies:

- Delinquencies can remain on a consumer's credit report for seven years from the date of the first missed payment. These items are usually reported to the credit bureau after 30 days of non-payment. The credit reports will lists delinquencies from 30 to 180 days, showing the number of times the consumer was late 30 days. .
- For instance, if the client was 30 days past due in March and April of 2015, the credit report will normally show 2/30 or two times past due by 30 days. The report will then disclose to the creditor which months the delinquencies occurred. Other accounts they can remain on a credit report for seven years are collection accounts, charged-off accounts and Chapter 13 Bankruptcies, child support judgments and civil and small claim judgments..
- Chapters 7, 11 and 12 Bankruptcies will remain on a credit report for 10 years from the filing date.
- City, County, state, and federal tax liens remain on a consumer's credit history for a total of 15 years from the filing date. Paid tax liens will remain for seven years from the date of payment.

Obtaining Credit Information
- Prospective borrowers should look at their credit reports and scores before applying for mortgage
- May have incorrect information.

Explaining Credit Problems
- If underwriter is convinced past problems don't reflect applicant's attitude towards credit, borrower may be approved:
- Letter explaining negative report should:
    - State reason for problem
    - Identify problem was short term
    - Show problem no longer exists
    - Highlight good credit before and since
    - Provide documentation from third party
    - Not blame creditors

Trended Credit Data

Trended credit data will be included in the assessment of an applicant's credit history.

With this data, the following can be observed regarding the applicant:
- an applicant's scheduled payment,
- an applicant's balance on revolving accounts, and
- an applicant's actual payment made each month on all revolving accounts.

With this information, the lender has a better picture of what the applicant's credit behavior is like.

Trended credit data will enable the differentiation between "Transactors" versus "Revolvers."
- A transactor is an individual who typically carries large credit card balances, but shows a pattern of paying them off in full every month. Due to their pattern of behavior, they are considered a better credit risk.
- A revolver is an individual who carries large credit card balances, but only makes the minimum required monthly payments towards those balances. To the lender, this type of behavior is riskier than that of a transactor.
    - It is, however, important to note that the above does not mean that transactors are creditworthy and reactors are not creditworthy.

How Trended Data Works:
- provides a larger more detailed perspective of consumer credit history
- uses 24 months of consumer past balance, payment, and credit utilization history
- having a better picture of credit history enables the lenders determination of potential risk and therefore creditworthiness

Trended data will be available on the consumer credit report. It will be added to the report on data fields that will include monthly minimum payments by creditors, the actual payments made, and the accounts ending balance.

Trended credit data will not impact consumer credit scores. It will simply provide a better picture of credit history.

Qualifying Ratios

Each loan program will have its own set of qualifying ratios. Ratios are used by lenders to determine if the borrower and property will qualify for the loan.

Income Ratios
To measure adequacy of applicant's monthly income, underwriters use "income ratios"
Difficult for borrower to make payments if borrower's expenses are greater than the percentage of monthly income

Debt-to-Income Ratios
Measures proposed monthly mortgage payment and any other regular debt payments against monthly income

Income Analysis - Applying the Ratio
Borrower has the following debts:
Principal, interest, taxes and insurance = $425
Credit cards, car loans, >10 months = $250

Gross monthly income = $6,100
DTI Maximum = 36%
Add monthly obligations together to get total
$425 + 250 = $675 monthly obligations

Multiply stable monthly income by obligations to arrive at debt to income ratio
$6,100 × 36% = $2,196

Subtract monthly obligations from that figure to get maximum mortgage payment.
$2,196 – $675 = $1,521

Note: Fannie Mae no longer applies a housing expense to income ratio

Higher Ratios & Compensating Factors
If compensating factors exist, Fannie Mae and Freddie Mac will consider income ratios that exceed benchmarks.

These compensating factors may include:
- Large down payment
- Substantial net worth
- Demonstrated ability to incur few debts and accumulate savings
- Education, job training, or employment history indicating potential for increased earnings
- Short-term income that doesn't count as stable monthly income
- Demonstrated ability to devote large portion of income to basic needs, such as housing expense
- Significant energy-efficient features in home being purchased

Loan to Value (LTV) Ratios
- Determines the amount of mortgage based on an appraised value
- Purchase – Will use appraised value or purchase price, the lesser of the two
- Refinance – Will use current loan balance divided by appraised value

The loan-to-value ratio (LTV) expresses the relationship between the loan amount and value of home being purchased.

Example: Borrower wants to borrow $80,000 to purchase a home worth $100,000. The LTV ratio is $80,000/$100,000 or 80%. Typically the bank will use the lesser of the A/V or purchase price to determine LTV.

Borrower will make a down payment of $20,000 for a $100,000 purchase priced home

The higher the LTV ratio, the smaller the down payment.

Loan with lower LTV is generally less risky than one with high LTV.

Combined Loan to Value (CLTV)
Expresses relationship between loan balances on all mortgages and value of home. In this example, the borrower wants to purchase property valued at $250,000 and is taking out a first and second mortgage.

Example:
A/V = $250,000
First mortgage balance = $100,000
Second mortgage balance = $25,000
Add $100,00 to $25,000
Divide $125,000 by $250,000
50% CLTV

Home Equity Total Loan to Value - HTLTV

Calculated using the loan amount, amount of subordinate financing, and the entire credit line of the Home Equity Line of Credit (HELOC) divided by the lesser of the sales price or appraised value.

Example:
Loan Amount = $100,000
Subordinate Financing = $20,000
HELOC = $20,000
Appraised Value = $200,000
HTLTV = 70%

Lesson Summary

Borrower Needs
- Assess his/her wants, needs, and finances
- Choose a lender
- Compare rates and fees

- Evaluate their financing options

What can borrower afford?

- Maximum monthly payment
- Down payment amount
- Closing costs

Ways for borrower to find lender

- Research
- Referrals
- Mortgage brokers
- Borrower's bank

Important considerations

- Interest rates
- Fees
- Expertise
- Efficiency
- Honesty

Loan interview

- Pre-qualifying – to get idea of what's available and what they can afford
- Pre-approval – Formal process by lender
- Buyers must complete a loan application documenting income, assets, debts, and credit history
- Lender gives buyers a pre-approval letter, agreeing to loan up to a specified amount

Interest rate lock-in

- Lock-in - lender guarantees certain interest rate for specified period
- Lock-in period should always extend beyond the expected loan processing time
- Some lenders provide free automatic extension if closing is delayed beyond lock-in period
- Lenders usually charge lock-in fee, which is usually refunded if loan application is denied (not refunded if borrowers withdraw application)
- Lock-in rate may change if rates fall.
- lock-in agreement should always be in writing

- Real Estate Settlement Procedures Act (RESPA)
- Fair Lending Laws - Equal Credit Opportunity Act (EOCA)
- Truth in Lending Act (TILA)

Real Estate Settlement Procedures Act – RESPA

Learning Objectives
- Explain the purpose of RESPA
- Identify disclosures required
- Explain RESPA's statutes
- Describe enforcements to violators of RESPA's Statutes
- Define Escrow Accounts and RESPA

Real Estate Settlement Procedures Act (RESPA) –
[FDIC Law, Regulations, Related Acts, 6500 – Consumer Protection, Part 12 CFR 1024 – Real Estate Settlement Procedures 12 USC]

The Real Estate Settlement Procedures Act, also known as RESPA, was passed in 1974 with two main goals: to provide borrowers with information about closing costs, and, to eliminate kickbacks and referral fees that unnecessarily increase settlement costs.

RESPA ensures that consumers are provided with helpful information about all costs involved in their mortgage transaction and are protected from unnecessary high charges and abusive lending practices.

The Real Estate Settlement Procedures Act is divided into two groupings:
- One section manages disclosures and servicing requirements for transactions involving a "federally related residential loan".
- The second set prohibits the payment or receipts of fees from the borrower that were not actually earned.
  - The payment or receipt of unearned fees (fee-splitting) or referral fees are prohibited for anyone, not just the borrower. [12 CFR 1024.14 (a)(b)]

Application is defined as the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include:
- Borrower's name and monthly income
- Borrower's social security number
- Property address
- Estimate of property value and loan amount
- Any other information deemed necessary by the loan originator.

Covered Transactions: RESPA applies to "federally related" loan transactions. [12 CFR 1024.2 (b)
A loan is federally related if it is secured by a mortgage or deed of trust against:
- Property with (or money will be used to build) dwelling of four units or less:
- Condominium unit or cooperative apartment, or
- Lot with a mobile home, and,
- Lender is federally regulated, has federally insured accounts, is assisted by federal government, makes loans in connection with federal program, sells loans to Fannie Mae, Ginnie Mae, or Freddie Mac, or makes real estate loans that total more than $1,000,000 per year.

Exemptions:
There are exemptions to the Real Estate Settlement Procedures Act. RESPA will not apply to loans: [12 CFR 1024.5 (a)(b)]:
- To purchase 25 acres or more
- Primarily for business, commercial, or agricultural purpose
- To purchase vacant land
  - unless within 2 years from the date of settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds
- Temporary financing (construction loan)

- Assumption without lender approval

Relevant definitions:

Origination service means 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 the loan, and the processing and administrative services required to perform these functions

Loan originator: Lender or mortgage broker

Mortgage broker means a person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction.

- A loan correspondent approved under 12 CFR 1024.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.

Third party: A settlement service provider other than a loan originator.

Title service: Any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions.

- *The term also includes the service of conducting a settlement.*

The Real Estate Settlement Procedures Act has certain requirements for federally related loan transactions and ensures the consumer will receive certain disclosures in a timely manner to:
- Detail the costs associated with each loan transaction,
- Provide information on lender servicing and escrow account practices, and;
- Describe business relationships between settlement providers.

RESPA involves one-to-four family residential property - this will include most loans secured by a lien, either in first or subordinate position. [12 CFR 1024.2 (b)
- Purchase loans
- Assumptions
- Refinances
- Property improvement loans
- Equity lines of credit
- Reverse mortgages

Real Estate Settlement Procedures Act (RESPA) – Disclosures Required at Application:

The lender must give applicants specific documents within 3 business days of application:
- Mortgage servicing disclosure statement. [12 CFR 1024 (All)]
    - If borrower required to make deposits into impound account, lender cannot require excessive deposits [12 CFR 1024.17 (a)]

The lender must give applicants specific documents within 3 business days of application:

Property seller may not require buyer to use a particular title company [12 CFR 1024.14 (f)(2)]

Real Estate Settlement Procedures Act (RESPA) – Disclosures Required Before Settlement/Closing

Affiliated Business Arrangement (AfBA) Disclosure [12 CFR 1024.15 (All)]
- Required whenever a settlement provider refers the consumer to a provider with whom the referring party has an ownership or other beneficial interest [12 CFR 1024.15 (b)(1)]
- Necessary whenever a transaction involves a RESPA covered transaction.
- The referring party is responsible for providing the Affiliated Business Arrangement Disclosure to the consumer either at or prior to the time of the referral [12 CFR 1024.15 (b)(1)]
    - Gives a description of the business affiliation between the two parties [12 CFR 1024.15 (b)(1)]
    - An estimate of the second provider's charges [12 CFR 1024.15 (b)(1)]
        - Sample located in RESPA under Appendix D

Real Estate Settlement Procedures Act (RESPA) – Disclosures Required After Settlement
- The loan servicer usually produces the following two documents:
    - The Annual Escrow Statement [12 CFR 1024.17 (i)(1)(i–viii)(2)(3)(4)(i)(ii)(iii)(j)]
    - The Servicing Transfer Statement [12 CFR 1024.21 (All)]
- Annual Escrow Statement
    - A summary, delivered to the borrower annually,
    - Lists deposits and payments made during lenders 12-month computation year
    - Notifies borrower of over/short in the account
    - What action needed to correct discrepancies

- Servicing Transfer Agreement:
    - It is common in the lending industry for a loan servicer to sell or assign the servicing rights of a borrower's loan to another servicer
- The loan servicer must notify the borrower with a Servicing Transfer Statement
    - The current loan servicer has 15 days before the effective date of the loan transfer to notify the borrower
    - The borrowers new loan servicer has 15 days after the effective date of the loan transfer to notify the borrower of this action

Real Estate Settlement Procedures Act (RESPA) – **Consumer Protections and Prohibited Practices**

Section 8 of RESPA prohibits anyone from giving or accepting a fee, kickback, or anything of value in exchange for a referral involving a federally related mortgage loan transaction.

No bartering, substitutions, or trading can take place for a referral. This includes fee splitting and receiving fees that were not actually earned.

Section 8 - Kickbacks, Fee Splitting, Unearned Fees [12 CFR 1024.14]

- Section 8 (a) of RESPA states, "No person shall give and no person shall accept any fee, kickback or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person." [12 CFR 1024.14 (a)(b)]
- Section 8 (b) states, "No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate service in connection with a transaction involving a federally related mortgage loan other than for services actually performed." [12 CFR 1024.14 (c)]

<u>EXAMPLE OF SECTION 8 – PROHIBITED PRACTICES</u>

Suppose a lender is offering a contest for appraisers, realtors, and attorneys where the person who sends the lender the most referrals for the month of March wins four free dinners for two at an area restaurant. This would not be allowed under RESPA since the dinner is considered a thing of value in exchange for the referral of business. Also, the fact the lender offered or gave an opportunity to win the dinners is considered a thing of value.

- Alternatively the lender can offer to a borrower an incentive
    - Such as a chance to win the same dinner for two as long as the promotion is not based on borrower referring business to lender
- Promotional items from the lender, can be given to realtors, attorneys, etc., such as: Ink pens, Post it note pads, Magnets
- Materials must be normal promotional items with the lenders information attached
- Lender may not purchase promotional items for an attorney, with that attorneys name on the items, for the attorney to use to market clients for real estate business
- This is an item of value given for referral of loan business
- Section 8 (c) does not prohibit these practices [12 CFR 1024.14]
    - An attorney is compensated for services performed [12 CFR 1024.14 (g)(i)]
    - A title company is paid a fee to its appointed agent for services fulfilled in the issuance of a title insurance policy. [12 CFR 1024.14 (g)(ii)]
    - A lender compensating its mortgage loan originator for services performed in the making of a loan [12 CFR 1024.14 (g)(iii)]
        - As long as it's a bona fide payment to a person for services actually performed or salary or compensation for goods furnished [12 CFR 1024.14 (g)(iv)]

Real Estate Settlement Procedures Act (RESPA) – **Consumer Protections and Prohibited Practices**

Violation of Section 8 [12 CFR 1024.19 (All)]

- Violations of Section 8's anti-kickback, referral fees, and unearned fees provisions of RESPA are subject to criminal and civil penalties
- Section 8 (d) specifies anyone who violates this section shall be fined not more than $10,000 or imprisonment for not more than one year, or both
- It continues to state in a private lawsuit, a person who violates Section 8 may be liable to the person charged for the settlement service, an amount equal to three times the amount of the charge initially paid for the service
- There is a one-year deadline to bring forth a private law suit for violations of Sections 8 or 9

Section 9 of RESPA prohibits a seller from requiring the buyer to use a particular title insurance company as a condition of the sale:

- Section 9 – Title Companies [12 CFR 1024.16 (All)]
- It is a violation of Section 9 for the seller of a property to require the homebuyer to use a particular title company as a condition of the sale

Those in violation of Section 9 are subject to:

- If this provision is violated the seller shall be liable to the buyer in an amount equal to three times the charges for title insurance

Real Estate Settlement Procedures Act (RESPA) – Escrow Accounts

Section 10 under RESPA sets limits on amounts a lender can require a borrower to maintain in an escrow account for insurance, taxes, and any other property related charges. If this provision is violated the seller shall be liable to the buyer in an amount equal to three times the charges for title insurance.

- An escrow account is:
    - A system that guarantees to the lender the taxes and property insurance will be paid.
    - A non-interest bearing account designed for use in paying borrower's annual taxes, insurance and any other charges related to the property.
- The same method is performed for city and parish/county taxes:
    - The lender will charge the borrower 1/12 of the total annual taxes and places this amount in the escrow account each month
    - At the end of the one-year period, funds are available to pay the taxes
- Lenders are allowed to maintain a "cushion" in the escrow account to make up for any shortages that may arise from increasing insurance costs or tax increases over the term of the loan.
    - Cushion amount may not exceed 1/6 of the total disbursement for the year
    - Cushion amount is allowed but not a requirement of RESPA

Escrow analysis
- An escrow analysis is to be performed annually by the lender
- Any excess of $50 or more over the cushion amount must be returned to the borrower.
- Any shortages in the escrow account must be disclosed to the borrower on this analysis.

Escrow review
- It is the individual lender's discretion to decide when and if an escrow account is required
- HUD regulations only limit the maximum amount that a lender can require a borrower to maintain in an account

FDIC Law – Section 1 - Equal Credit Opportunity Act (ECOA) 12 CFR 1002 (REGULATION B)

Learning Objectives
- Explain the purpose of the Equal Credit Opportunity Act
- Discuss the ECOA disclosure
- Understand required collection of information
- Understand the right for applicant to receive a copy of their appraisal

Equal Credit Opportunity Act (ECOA) - Fair Lending Laws

[Title 12—Banks and Banking, Chapter ii—Federal Reserve System, Subchapter A—Board of Governors of the Federal Reserve System Part 202-Equal Credit Opportunity Act (Regulation B)]

The Equal Credit Opportunity Act (ECOA), Regulation B, was passed in 1974 and applies to all consumer credit. The definition of consumer credit under the ECOA is:
- Credit extended to an individual for personal, family, or household purposes [12 CFR 1002. 2 (h)]

The purpose of the ECOA is: [12 CFR 1002.1 (b)]
- The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling- related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions."

ECOA Reg-B prohibits discrimination based on: [12 CFR 1002.1 (b)]
- Race/color
- Religion
- National origin
- Sex
- Marital status
- Age
- Public assistance

The Equal Credit Opportunity Act was established to grant all consumers an equal chance to obtain credit. This law requires lending institutions and mortgage brokers to perform specific actions and applies to anyone involved in granting credit:
- Real Estate Brokers who arrange financing
- Small loan and finance companies
- Retail and department stores

- Credit card companies
- Credit unions

Lenders must comply with ECOA in: [12 CFR 1002.4]
- Interviewing/communicating with applicants
- Analyzing applicants' finances
- Offering credit terms to applicants

The Equal Credit Opportunity Law was put in place to:
- Protect individuals and businesses applying for credit
- Establish equality to the many consumers who apply for credit to
    - Finance the purchase or remodel of a home
    - Acquire a small business loan or to help fund an education

Lenders may not discourage anyone from applying for a loan.

It is illegal to base lending decisions on assumptions of creditworthiness. [12 CFR 1002.4 (b)].

Although the lender may ask about applicant's age or marital status [12 CFR 1002.13 (a)(iii)(iv)].

They cannot ask about the applicant's childbearing plans [12 CFR 1002.5 (d)(3)].

ECOA – Required Disclosures

The mortgage loan officer shall provide an ECOA disclosure notice to each client [12 CFR 1002.9 (3)(ii)(b)(1)]
- Sometimes referred to as an ECOA Disclosure
- Explains the purpose of the Equal Credit Opportunity Act
- The consumer's rights pertaining to this Act
- Recognizes the Federal Agency that administers compliance with the Equal Credit Opportunity Law
- Supplies their address to consumer should they decide to submit a complaint

Fair Lending Laws – ECOA Guidelines

The Equal Credit Opportunity Disclosure will:
- Advise the consumer of their rights
- Discuss the applicant's right to disclose or not to disclose income from alimony, child support or separate maintenance

The ECOA enforces fair credit lending practices in the taking of loan applications:
- During the loan application process the mortgage loan officer should ensure the client's best interests are always first and foremost
- The mortgage loan officer may not make any oral or written statement that would discourage an applicant or potential applicant, from making or pursuing a loan application [12 CFR 1002.5 (a)]

This rule applies to:
- The application process
- Advertising
- Any method of promoting loan services

The mortgage lending industry should:
- Promote homeownership to all people
- Encourage and counsel potential and existing clients

The federal government requires lenders to report information regarding the applicant when applying for credit primarily for the purpose of [12 CFR 1002.13 (a)(1) (2)(3)(4)]
- Obtaining a dwelling
- Refinancing a dwelling
    - Occupied (or to be occupied) by the applicant

The required information to be reported is as follows [12 CFR 1002.13 (a)(i)(ii)(iii)(iv)]:
- Race or national origin
- Sex
- Marital Status
- Age

The categories used for race or national origin will be [12 CFR 1002.13 (a)(i)]:
- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or other Pacific Islander
- White

- ➢ This category on the updated loan application has expanded to include:
- o American Indian or Alaska Native (print name of enrolled or principal tribe)
- o Asian
  - o Asian Indian
  - o Chinese
  - o Filipino
  - o Japanese
  - o Korean
  - o Vietnamese
  - o Other Asian (print race)
- o Black or African American
- o Native Hawaiian or Other Pacific Islander
  - o Native Hawaiian
  - o Guamanian or Chamorro
  - o Samoan
  - o Other Pacific Islander (print race)
- o White
- o I do not wish to provide this information

The categories used for ethnicity will be either [12 CFR 1002.13 (a)(i)]:

- Hispanic or Latino
- Not Hispanic or Latino
  - ➢ This category on the updated loan application has expanded to include:
  - o Hispanic or Latino
    - o Mexican
    - o Puerto Rican
    - o Cuban
    - o Other Hispanic or Latino (print origin)
  - o Not Hispanic or Latino

"The applicants shall be asked but are not required to provide this information to the mortgage loan officer. If the client chooses not to supply this information, it is necessary for the mortgage loan officer to note on the form, to the best of their ability, the race and national origin and sex of the applicant(s) on the basis of visual observation and surname" [12 CFR 1002.13 (b)]

The Marital Status category will allow the use of [12 CFR 1002.13 (a)(iii)]:

- Married
- Unmarried (includes single, divorced, and widowed persons)
- Separated

Fair Lending Laws – ECOA Guidelines: Spouse or Former Spouse Info

The following information will pertain to a spouse or former spouse. It will also provide information regarding what the lender is allowed to request:

- If the client lives in a community property state or is relying on property located in such a state, the lender is permitted to request information concerning an applicant's spouse [12 CFR 1002.5 (c)(2(iv)]
- Information regarding a former spouse may be requested if the applicant is relying on alimony, child support, or separate maintenance as a means for repayment of the debt [12 CFR 1002.5 (c)(2(v)]

The following information will pertain to a spouse or former spouse. It will also provide information regarding what the lender is allowed to request:

- If a client is applying for a separate, unsecured debt, the mortgage loan officer is not allowed under the Equal Credit Opportunity Act to request marital status, unless the applicant lives in a community property state [12 CFR 1002.5 (c)(3(d)(1)]

The states with community property laws are:

- Arizona
- California
- Idaho
- Louisiana
- Nevada
- New Mexico
- Texas
- Washington
- Wisconsin

To clarify the rules regarding spousal information, a creditor may request information on a spouse when:

- The spouse will be permitted to use the account [12 CFR 1002.5 (c)(2(i)]
- The spouse will liable on the account [12 CFR 1002.5 (c)(2(ii)]
- The applicant is relying on the spouse's income as a basis for repayment of the debt [12 CFR 1002.5 (c)(2(iii)]

To clarify the rules regarding spousal information, a creditor may request information on a spouse when:

- The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the debt [12 CFR 1002.5 (c)(2(iv)]
- The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested [12 CFR 1002.5 (c)(2(v)]

Fair Lending Laws – ECOA Guidelines: Age Discrimination

Age may not be a consideration in the loan decision process provided that the applicant has the capacity to enter into a binding contract [12 CFR 1002.6 (b)(2)(i).]

Although there are certain situations to consider where age may be a factor

- Applicant is too young to sign the application (or any legal contract) [12 CFR 1002.6 (b)(2)(i)]
  - In most states the legal age is 18 years old

Although there are certain situations to consider where age may be a factor

- Client is 62 years old or older [12 CFR 1002.2 (o)]
  - Consideration may be given to grant credit in favor of the applicant [12 CFR 1002.6 (b)(2)(iv)]
  - When age is a positive factor it can be used to extend credit

Other factors allowing age to be a consideration

- Client is near retirement age [12 CFR 1002.6 (b)(5)]
  - Creditor can consider the client's occupation and length of time until retirement
  - Income may decrease and this could possibly have a negative impact on the client's ability to re-pay the credit obligation
- Evaluate applicant's retirement income to see if it will support the loan through to maturity
- Evaluate on a case by case basis
- Always assess borrower's total status

The mortgage loan officer is allowed to ask the client for information regarding outstanding debts [12 CFR 1002.6 (b)(6(i)].

Other information allowed to be collected is [12 CFR 1002.5 (c)(3)]:

- Name and address under which the accounts are listed
- Former names used by the client to obtain credit in the past

Fair Lending Laws – ECOA Guidelines: Childbearing, Childrearing

In regards to childbearing and childrearing the ECOA allows a mortgage loan officer to inquire about the [12 CFR 1002.5 (d)(4)]

- Number of dependents the applicant has
- The dependent's ages
- Dependent-related financial obligations or expenses, provided such information is requested without regard to:
  - Sex,
  - Marital status
  - Any other prohibited basis

The following inquiries will not be allowed:

- The loan officer may not inquire about the consumer's
  - Childbearing
  - Childrearing
  - Birth control practices
  - Whether they are able to bear children

Fair Lending Laws – ECOA Guidelines: Additional Regulations

The consumer has the right to know whether their credit application was accepted or rejected within 30 days of filing a completed loan application. [12 CFR 1002.9 (a)(i)]

An application is considered complete once a creditor has obtained all the information it normally considers in making a credit decision. [12 CFR 1002.2 (f)]

Application means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application. [12 CFR 1002.2 (f)]

The rules of the ECOA require the consumer to receive either of the following within 30 days of filing a completed loan application: [12 CFR 1002.9 (a)(i)]

- Approval
- Denial
- Counteroffer

The notification for approval can be: [12 CFR 1002.9 (a)(2)]

- Expressed
- Implied

An incomplete application would be a denial for incompleteness and also the following: [12 CFR 1002.9 (c)(1)(i) and (ii)]

- Applicant could complete the application but chose not to
- Creditor lacked sufficient data to warrant a credit decision

If an application is incomplete but there is enough information to grant a denial, the following apply: [12 CFR 10022.9 (c)(1)(i)]

- Applicant must be given the specific reason for the denial
- Notice of right to receive the reasons
    - Incompleteness of the application cannot be given as the reason for denial

Fair Lending Laws – ECOA: Adverse Actions

If the application for credit is rejected, the lender must disclose specific reasons to the client for rejection:
[12 CFR 1002.9 (a)(2)(i)]

- The reasons for rejecting the credit file should be clear and concise [12 CFR 1002.9 (a)(2)]
- Indefinite or vague reasons are illegal

It is important to always give explicit details when explaining the reason for denial. The notification of adverse action is required to be in writing and must contain the following: [12 CFR 1002.9 (a)(2)]

- A statement of action taken
- The name and address of the lender
- A statement of the provision known commonly as the ECOA Notice
- The name and address of the federal agency that administers compliance with respect to the lender
- Either a statement of specific reasons for the action taken or a disclosure of the applicant's right to a statement of specific reasons within a specified period of time

If the application was taken by phone, the following apply: [12 CFR 1002.9 (a)(1)]

- Creditor must request the applicants name and address to provide written notification
- If applicant does not provide this information, the creditor is exempt from issuing notification

Fair Lending Laws – ECOA: Appraisal Notification

Mortgage lenders are required to notify applicants of their right to receive a copy of the appraisal. Under ECOA the following will apply regarding appraisal notification: [Regulation B, 12 CFR §1002.14 (a)(1)(2)]

- The client will receive a "Right to Receive a Copy of Appraisal" including the address, phone number, and contact name of lender within three days of application.
    - The creditor shall mail or deliver the disclosure no later than the 3rd business day after receipt of application for credit.
- A creditor shall provide a copy of the appraisal:
    - §1002.14(a)(1) requires that the creditor provide copies of appraisals and other written valuations to the applicant promptly upon completion, or no later than 3 business days before consummation
        - "Completion" means when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required.
        - This means that the copy of the appraisal must be delivered and *delivery* is defined as occurring 3 business days after mailing or delivering the copies to the last known address of the applicant or when evidence indicates actual receipt by the applicant
            - whichever happens first
            - Actual receipt of the copy by the applicant by electronic means must comply with the E-Sign Act (Regulation B, 12 CFR §1002.14(a)(5).

Truth In Lending Act – TILA

Learning Objectives

- Explain the purpose of the TILA
- Define the rules under the MDIA
- Explain consumer's right to rescind
- Explain the relationship of Adjustable Rate Mortgages (ARM) to TILA

[FDIC Law, Regulations, Related Acts, 6500 – Part 12 CFR 1026 – Truth In Lending (Regulation Z)]
The Truth in Lending Act (TILA) of 1968 is implemented by Federal Reserve Board's Regulation Z.

- Regulates disclosure of finance charges
- Shows the estimated total costs of borrowing, the expected payment amounts over the life of the loan, and other significant loan features

The Truth in Lending Act has as its stated purpose:
"To promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card

practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable rate contracts secured by the consumer's dwelling. It also imposes limitation on home equity plans that are subject to the requirement of Sec 12 CFR 1026.5b and mortgages that are subject to the requirements of Sec 12 CFR 1026.32."

The TILA requires all creditors to follow the same guidelines when disclosing certain charges and rates to consumers. It also ensures all creditors will use the same format when revealing these items in relation to the credit offer. The Truth in Lending Act was created to put into practice the Truth in Lending and Fair Credit Billing Acts. The documents required by these acts provide consumers with pertinent information regarding their credit transaction and allows the consumers to cancel a credit transaction if it includes a lien on their principal property.

The application of this regulation, by an individual or business entity, should be adhered to when the following conditions are met: [Regulation Z, 12 CFR §1026.1 (c)(1)]

- When offering or extending credit to consumers [Regulation Z, 12 CFR §1026.1 (c)(1)(i)]
- The service of offering or extending credit is done on a regular basis [Regulation Z, 12 CFR §1026.1 (c)(1)(ii)]
- If a finance charge is attached to this credit or is payable in more than four monthly installments as per a written agreement [Regulation Z, 12 CFR §1026.1 (c)(1)(iii)]
- The use of this credit will be primarily for personal, family, or household purposes [Regulation Z, 12 CFR §1026.1 (c)(1)(iv)]

The Truth in Lending Act contains rules for open-end and closed end credit transactions [Subpart B – Open End Credit and Subpart C Closed End Credit]

- Open-end credit involves the consumer being given credit in which creditor reasonably contemplates repeated transactions [Regulation Z, 12 CFR §1026.2 (a)(20)(i)]
- The creditor may impose a finance charge from time to time on an outstanding unpaid balance [Regulation Z, 12 CFR §1026.2 (a)(20)(ii)]
- The amount of credit limited by the creditor may be extended to the consumer during the term of the plan [Regulation Z, 12 CFR §1026.2 (a)(20)(iii)]
- Generally made available to the extent that any outstanding balance is repaid [Regulation Z, 12 CFR §1026.2 (a)(20)(iii)]

The Truth in Lending Act contains rules for open-end and closed end credit transactions [Subpart B – Open End Credit and Subpart C Closed End Credit]

- Examples of open-end credit would be:
  - Bank credit cards
  - Home Equity Lines of Credit (HELOC)
  - Department store or fuel service cards
  - Overdraft privileges
- Closed-end credit involves all other transactions, such as, car loans or mortgages [Regulation Z, 12 CFR §1026.2 (a)(10)]

One objective of the Truth in Lending Act is to require the mortgage originator to disclose to the consumer their interest rate reflected as an annual percentage rate (APR), showing [Regulation Z, 12 CFR §1026.22 (a)]

- The cost of credit, within three business days of application [Regulation Z, 12 CFR §1026.19 (a)]
- Pre-Paid finance charge and what it includes [Regulation Z, 12 CFR §1026.4 (a)]
- How it was used to calculate the annual percentage rate

A consumer loan (a loan used for personal, family, or household purposes) is covered by TILA if it is to be repaid in more than four installments (or is subject to finance charges) and is either: [Regulation Z, 12 CFR §1026.1 (c)(1)(i)(ii)(iii)(iv)]

- For $25,000 or less
- Secured by real property

The TILA applies to any mortgage loan used for personal, family, or household purposes such as:

- Buying/remodeling a home
- Consolidating personal debt
- Sending kids to college

The Truth in Lending Act only applies to loans made to natural persons [Regulation Z, 12 CFR §1026.2 (a)(11)]
It will not apply to::

- Loans made to corporations or organizations [Regulation Z, 12 CFR §1026.3 (a)]
- Loans made for business, commercial, or agricultural purposes [Regulation Z, 12 CFR §1026.3 (a)(1)]
- Loans > $25,000 not secured by real property [Regulation Z, 12 CFR §1026.3 (b)]
- Most seller financing is also exempt

TILA's disclosure requirements apply to lenders and credit arrangers (including mortgage brokers). Lenders and credit arrangers must:

- Give applicant disclosure statement with estimates of loan costs within 3 business days of receiving written application [Regulation Z, 12 CFR §1026.19 (a)]

The Truth in Lending Act was created to ensure the same format is used when disclosing:

- Rates
- Terms
- Charges

Construction Loan – provides for interest-only payments for construction

Variable Rate Feature – check if this is an adjustable rate mortgage [Regulation Z, 12 CFR §1026.18 (f)]

Assumption – informs consumer if loan can be transferred to a third party with mortgage terms remaining the same [Regulation Z, 12 CFR §1026.18 (q)]

Security – the property being secured (by a security instrument, such as a mortgage) is either a purchase or a refinance [Regulation Z, 12 CFR §1026.18 (m)]

Late Charge – must show the percentage of the monthly payment due if late by a certain amount of days. Example: If a payment is more than 15 days late, you will be charged 5.000% of the payment [Regulation Z, 12 CFR §1026.18 (l)]

Prepayment - discloses information about paying the loan off early [Regulation Z, 12 CFR §1026.18 (k)]

- If the "may" box is checked, a fee will be charged to pay this loan off before it is due

Deposit – if checked, APR does not include deposit

Demand Feature – The ability of creditor to accelerate payment of a loan balance or make balance due and payable immediately [Regulation Z, 12 CFR §1026.18 (i)]
Disclaimer – There is no guarantee that you will be able to refinance to lower your rate and payments.

Property Insurance – appropriate box(es) must be checked. In almost all cases, property insurance is required; but flood insurance only if applicable

Credit Life Insurance – lets consumer know if credit life or disability is a requirement along with premium amount and terms

Prepayment - Discloses information about paying the loan off early. [Regulation Z, 12 CFR §1026.18 (k)]
- If the "may" box is checked, a fee will be charged to pay this loan off before it is due

Finance Charge Refund - Refers to interest due to the consumer
- If the loan is paid off early the consumer will not have to pay the full amount of finance charges initially disclosed, they are responsible only for the amount of the interest on the dollar amount used

Assumption – Informs consumer if loan can be transferred to a third party with mortgage terms remaining the same [Regulation Z, 12 CFR §1026.18 (q)]

Lenders are expected to use the best information reasonably available when preparing a Truth in Lending disclosure and calculating the total finance charge and annual percentage rate.
- Lenders are allowed to use "banker's months"
  - 30 days rather than exact number of days in each month [Regulation Z, 12 CFR §1026.17 (c)(3)(iii)]
- Disclosures considered accurate if the total finance charge is accurate to within $100 [Regulation Z, 12 CFR §1026.18 (d)(1)(i)(ii)]
- Disclosure considered accurate if the APR is accurate to within one-eighth of one percent

TILA and Adjustable Rate Mortgages – ARMS

Lenders are required to give applicants a general brochure about ARMs: "Consumer Handbook on Adjustable-Rate Mortgages" [Regulation Z, 12 CFR §1026.19 (b)(1)]
- Must establish guidelines for calculating and disclosing APR
- Must make specific disclosures for ARM program applied for [Regulation Z, 12 CFR §1026.19 (b)(2) (i – xii)]

The TILA requires detailed additional disclosures for any ARM program applicant asks about:
- Fact that interest rate, payment, or loan term may change [Regulation Z, 12 CFR §1026.18 (b)(2)(i)]
- Index used to determine interest rate [Regulation Z, 12 CFR §1026.18 (b)(2)i(i)]
- Where borrower can find index [Regulation Z, 12 CFR §1026.18 (b)(2)(ii)]
- How interest rate and payment will be determined [Regulation Z, 12 CFR §1026.18 (b)(2)(iii)]
- Statement that applicant should ask about loan's margin and current interest rate [Regulation Z, 12 CFR §1026.18 (b)(2)(iv)]

The TILA requires detailed additional disclosures for any ARM program applicant asks about:
- If initial rate is discounted, disclosure statement that applicant should inquire about amount of discount [Regulation Z, 12 CFR §1026.18 (b)(2)(v)]
- Rate and payment adjustment periods [Regulation Z, 12 CFR §1026.18 (b)(2)(vi)]
- Any rules about changes in index, interest, rate, payment amount, or loan balance [Regulation Z, 12 CFR §1026.18 (b)(2)(vii)]
- Explanation of how to calculate monthly payments for loan [Regulation Z, 12 CFR §1026.18 (b)(2)(viii)(A)(B)]
- Statement that loan has acceleration clause [Regulation Z, 12 CFR §1026.18 (b)(2)(x)]

The TILA requires detailed additional disclosures for any ARM program applicant asks about:

- Description of info included in adjustment notices and how often lender will send those notices to borrower [Regulation Z, 12 CFR §1026.18 (b)(2)(xi)]
- Statement that disclosure forms are available for lender's other ARM programs [Regulation Z, 12 CFR §1026.18 (b)(2)(xii)]

When calculating the APR for ARM loans, the lender may base the APR on the loan's initial interest rate using an example.

- APR subject to increase after closing [Regulation Z, 12 CFR §1026.19 (b)(i)]
    - Example: "6.41% APR, subject to increase after closing"

Once loan is made, Regulation Z requires the lender to give the borrower advance notice of any change in payment, interest rate or loan balance: [Regulation Z, 12 CFR §1026.20 (c)(1-5)]

- Must be made to borrower at least 25 days—but no more than 120 days—before it takes effect
- If security property for a home equity loan is borrower's existing principal residence, borrower has "right of rescission" [Regulation Z, 12 CFR §1026.23 (All)]
- May rescind any time within 3 days after:
- Signing, Receiving disclosure statement or Receiving notice of right of rescission

NOTE: If borrower does not receive statement or notice, right of rescission does not expire for 3 years

Right of Rescission on a refinance:

- Refinancing with a new lender
- A refinance with cash out over and above paying off old mortgage
- Designed to give borrowers an opportunity
    - Think over deal
    - Decide if this is in their best interest
    - Back out if they choose
    - Retrieve any monies they have paid

The right of rescission is sometimes called a "cooling off" period

TILA – Right of Rescission

A business day is defined as a day on which the creditor's offices are open to the public for conducting the majority of their business: [Regulation Z, 12 CFR §1026.2 (a)(6)]

- For the purpose of rescission this term shall mean all calendar days except Sundays and legal holidays
- Day one of rescission begins after the last of these three conditions have occurred [Regulation Z, 12 CFR §1026.23 (a)(3)]
    - Consummation of the transaction
    - They receive a Truth in Lending Disclosure Form
    - Each consumer receives two copies of Notice of Right to Rescind
- If there is a borrower and co-borrower, both clients have the authority to rescind the offer [Regulation Z, 12 CFR §1026.232 (a)(4)]
- The consumers will have until midnight of the third business day to cancel or revoke this entire transaction [Regulation Z, 12 CFR §1026.23 (a)(3)]
- Notice of Right to Cancel Form-Consumers Right to Rescind [Regulation Z, 12 CFR §1026.23 (b)(1)(i)(ii)(iii)(iv)(v)]
    - The Notice of Right to Cancel must be clearly revealed and the following must be conveyed:
        - Consumer must understand they are allowing the creditor to place a security interest on their home
        - The document states their right under federal law to cancel the entire transaction within three business days
        - It also will detail the three actions that must occur to start the rescission period
- To begin rescission period:
    - The creditor is obligated to complete the date of transaction on the Notice of Right to Cancel
    - The date consumer receives the Truth in Lending disclosures
    - The date the notice of cancellation was received

Usually these three items occur on the same day, but if not, consumer's time allowed to cancel begins with whichever of the three events occurs last

- Notice of Right to Cancel will also contain:
    - Information on how the consumer can exercise their right to cancel the transaction
    - Creditor's name and address
    - The effects of rescinding the offer must be described in detail
    - Information regarding time limits
    - Necessary steps to be performed by the creditor regarding cancellation of the security interest
- Notice of Right to Cancel will also contain:
    - The return of any money or property given to anyone in connection with the transaction
    - Expiration of the rescission period must also be addressed on this form
- A Business Day Defined for Rescission [Regulation Z, 12 CFR §1026.2 (a)(6)]
    - If the loan closes on a Monday the loan would come out of rescission on the following Thursday at midnight, and the funds disbursed on Friday
    - Consideration must be given to legal holidays
        - If Wednesday were New Year's Day, then the loan would come out of rescission on Friday at midnight, and the funds disbursed on Saturday
- Consumers Waiver of Right to Rescind

    - The consumer is allowed by law to waive their right to rescind if it is a "bonafide personal financial emergency" [Regulation Z, 12 CFR §1026.23 (e)(1)(2)]
- If consumer cannot wait 3 business days
    - They may submit, in writing, details of the emergency or state clearly why they wish to waive their right to rescind
    - This Waiver of Right to Rescind statement must be signed and dated by consumer and all owners of the home
- Waiver of Right to Rescind may not be on a "pre-printed" form [Regulation Z, 12 CFR §1026.23 (e)(1)]
- Situations where no Right of Rescission is required: [Regulation Z, 12 CFR §1026.23 (f)]
    - Application is to purchase or build a home [Regulation Z, 12 CFR §1026.23 (f)(1)]
    - Creditor being used for transaction already has a loan secured by consumer's home and no additional funds are borrowed. This is merely a consolidation or refinance with same creditor [Regulation Z, 12 CFR §1026.23 (f)(2)]
    - The creditor for the loan is a state agency [Regulation Z, 12 CFR §1026.23 (f)(3)]

Cancelling the transaction/Rescinding the loan requires [Regulation Z, 12 CFR §1026.23 (e – All)]
    - Notification in writing from the consumer.
    - Notice signed and dated and
    - Must be delivered to the creditor, in person,
    - No later than three business days after consummation of the transaction.
- Cancellations by telephone, fax transmission, or face-to-face conversation are not an acceptable means of following through with rescinding the transaction
- If all conditions for rescinding a transaction have been satisfied by the consumer, they will not be liable for any dollar amount including any finance charge [Regulation Z, 12 CFR §1026.23 (d)(1)]
- Creditor shall return any money consumer has given to anyone in connection with this transaction within 20 calendar days [Regulation Z, 12 CFR §1026.23 (d)(2)]

Home Ownership and Equity Protection Act – HOEPA

Both state and federal predatory lending laws are designed to stop predatory lending. The Home Ownership and Equity Protection Act (HOEPA) is a series of provisions that were added to the *Truth in Lending Act* in 1994.
- Only applies to high-cost home equity loans
- Doesn't apply to residential purchase mortgages or to reverse mortgages

NOTE: The Consumer Financial Protection Bureau (CFPB) is required by statute to annually adjust the dollar amount that triggers requirements for home mortgage loans bearing fees above a certain amount. The HOEPA trigger for 2020 was raised from the thresholds set for 2019. The threshold went from $21,549 in 2019 to $21,980 and the current points and fees threshold went from $1,077 to $1,099. Thus, a transaction is deemed a high-cost mortgage if:
- the loan amount is $21,980 or more and the points and fees are greater than 5% of the loan amount, or
- the loan amount is less than $21,980 and the points and fees are greater than the lesser of $1,099 or 8% of the loan amount.

Similarly, the trigger for 2021 is raised to $22,052 with the points and fee threshold set at $1,103

Lender must make certain disclosures with loans covered by HOEPA. Some of HOEPA's rules:
- Lender can't make loan without regard to applicant's ability to repay
- Prepayment penalty can't be charged if applicant's debt-to-income ratio is over 50%
- Prepayment penalty period can't exceed two years
- If loan term is less than 5 years, loan can't be structured so that balloon payment will be necessary

Lender must make certain disclosures with loans covered by HOEPA. Some of HOEPA's rules:
- Negative amortization isn't allowed
- Interest rate can't be raised because of default
- Disclosure statement must explain that applicant could lose his home if loan obligations aren't met
- The lender will have a mortgage on the residence; therefore, the residence and any money put into it could be lost if payments are not made

If lender violates HOEPA, applicant has three-year right of rescission available under Truth in Lending Act

State Predatory Lending Laws

About half of our states have their own state predatory lending laws. The coverage and provisions of these laws will vary, but at least some apply to high-cost home purchase loans as well as home equity loans.

For example, California predatory lending statute applies if:
- Loan is secured by a one- to four-unit property used as loan applicant's principal residence
- Loan amount doesn't exceed FNMA conforming loan limit
- And either:
    - APR exceeds yield on Treasury securities by more than 8%, or
    - Total points and fees payable by borrower at or before closing will exceed 6% of total loan amount

It is important to note that conforming loan limits are subject to change. In fact, the conforming and high-cost area loan limits where increased in 2020. Conforming loan limits increased by almost 5.4% from 2019 to 2020. In all but 71 counties in the United States, the conforming loan limit for 2020 is $510,400. The new limit for high-cost area loans is $765,600 for one-unit properties in the United States.

Like HOEPA, California law requires certain disclosures and prohibits a number of predatory provisions in the loans it covers

LESSON SUMMARY

RESPA has two major groupings
- One section manages disclosures and servicing requirements for transactions involving a “federally related residential loan”.
- The second set prohibits the payment or receipts of fees from the borrower that were not actually earned.

Application
- Defined as the submission of a borrower‘s financial information in anticipation of a credit decision relating to a federally related mortgage loan

Covered Transactions
- RESPA applies to "federally related" loan transactions.
- A loan is federally related if it is secured by a mortgage or deed of trust against:
- Property with dwelling of four units or less
- Condominium unit or cooperative apartment
- Lot with a mobile home
- Lender is federally regulated

Exemptions
- There are exemptions to the Real Estate Settlement Procedures Act. RESPA will not apply to loans:
- To purchase 25 acres or more
- Primarily for business, commercial, or agricultural purpose
- To purchase vacant land
- unless within two years from the loan settlement date, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds.
- Temporary financing (construction loan)
- Assumption without lender approval

Origination service
- 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 the loan, and the processing and administrative services required to perform these functions.

Loan originator
- Lender or mortgage broker

Mortgage broker
- A person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction.
- A loan correspondent approved for FHA programs is a mortgage broker for purposes of this part.

Third party
- A settlement service provider other than a loan originator.

Title service
- Any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and other processing and administrative services.

RESPA required disclosures
- Disclosures are required to be in a timely manner with respect to:
- Detail the costs associated with each loan transaction
- Provide information on lender servicing and escrow account practices
- Describe business relationships between settlement providers

RESPA applies to 1-4 family residential property
- Purchase loans
- Assumptions
- Refinances
- Property improvement loans
- Equity lines of credit
- Reverse mortgages

RESPA – Consumer Protections & Prohibited Practices
- Section 8

    - Prohibits anyone from giving or accepting a fee, kickback, or anything of value in exchange for a referral involving a federally related mortgage loan transaction.
    - No bartering, substitutions, or trading can take place for a referral. This includes fee splitting and receiving fees that were not actually earned.
    - No Kickbacks, Fee Splitting, Unearned Fees
    - Alternatively the lender can offer to a borrower an incentive such as a chance to win the same dinner for two as long as the promotion is not based on borrower referring business
    - Promotional items from the lender, can be given to realtors, attorneys, etc., such as: Ink pens, Post it note pads, Magnets
    - Materials must be normal promotional items with the lenders information attached
    - Lender may not purchase promotional items for an attorney, with that attorneys name on the items, for the attorney to use to market clients for real estate business.

Section 8 does not prohibit

- An attorney who is compensated for services performed
- A title company that is paid a fee to its appointed agent for services fulfilled in the issuance of a title insurance policy.
- A lender compensating its mortgage loan originator for services performed in the making of a loan as long as it's a bona fide payment to a person for services actually performed or salary or compensation for goods furnished

Violations of Section 8

- Violations of Section 8's anti-kickback, referral fees, and unearned fees provisions of RESPA are subject to criminal and civil penalties
- Section 8 (d) specifies anyone who violates this section shall be fined not more than $10,000 or imprisonment for not more than one year, or both
- It continues to state in a private lawsuit, a person who violates Section 8 may be liable to the person charged for the settlement service, an amount equal to three times the amount of the charge initially paid for the service
- Any violations of Sections 8 or 9 have a one-year deadline to bring forth a private law suit

Section 9 Title companies

- It is a violation of Section 9 for the seller of a property to require the homebuyer to use a particular title company as a condition of the sale.
- If this provision is violated the seller shall be liable to the buyer in an amount equal to three times the charges for title insurance.

Section 10 Escrow accounts

- Sets limits on amounts a lender can require a borrower to maintain in an escrow account for insurance, taxes, and any other property related charges. If this provision is violated the seller shall be liable to the buyer in an amount equal to three times the charges for title insurance.
- Lenders are allowed to maintain a "cushion" in the escrow account to make up for any shortages that may arise from increasing insurance costs or tax increases
- Cushion amount may not exceed 1/6 of the total disbursement for the year
- Cushion amount is allowed but not a requirement of RESPA
- An escrow analysis is to be performed annually by the lender
- Any excess of $50 or more over the cushion amount must be returned to the borrower
- Any shortages in the escrow account must be disclosed to the borrower on this analysis
- It is the individual lender's discretion to decide when and if an escrow account is required. HUD regulations only limit the maximum amount that a lender can require for escrow

Fair Lending Laws

- The Equal Credit Opportunity Act (ECOA), Regulation B, was passed in 1974 and applies to all consumer credit

ECOA Reg-B

- Prohibits discrimination based on:
    - Race/color
    - Religion
    - National origin
    - Sex
    - Marital status
    - Age
    - Public assistance
- Was established to grant all consumers an equal chance to obtain credit. This law requires lending institutions and mortgage brokers to perform specific actions and applies to:
    - Real Estate Brokers who arrange financing
    - Small loan and finance companies
    - Retail and department stores
    - Credit card companies
    - Credit unions
- Lenders must comply with ECOA in:
    - Interviewing/communicating with applicants
    - Analyzing applicants' finances
    - Offering credit terms to applicants

- Protects individuals and businesses applying for credit and establishes equality to the many consumers who apply for credit.
- Lenders may not discourage anyone from applying for a loan.
- It is illegal to base lending decisions on assumptions of creditworthiness.
- Although the lender may ask about applicant's age or marital status. They cannot ask about the applicant's childbearing plans.
- The mortgage loan officer shall provide an ECOA disclosure notice to each client:
    - Sometimes referred to as an ECOA Disclosure
    - Explains the purpose of the Equal Credit Opportunity Act
    - The consumer's rights pertaining to this Act
    - Recognizes the Federal Agency that administers compliance with the Equal Credit Opportunity Law
    - Supplies their address to consumer should they decide to submit a complaint

ECOA Guidelines

- The Equal Credit Opportunity Disclosure will:
    - Advise the consumer of their rights
    - Discuss the applicant's right to disclose or not to disclose income from alimony, child support or separate maintenance
- The ECOA enforces fair credit lending practices in the taking of loan applications:
    - During the loan application process the mortgage loan officer should ensure the client's best interests are always first and foremost
    - The mortgage loan officer may not make any oral or written statement that would discourage an applicant or potential applicant, from making or pursuing a loan application
- This rule applies to:
    - The application process
    - Advertising
    - Any method of promoting loan services
- The mortgage lending industry should:
    - Promote homeownership to all people
    - Encourage and counsel potential and existing clients
- The federal government requires lenders to report information regarding the applicant when applying for credit primarily for the purpose of:
    - Obtaining a dwelling
    - Refinancing a dwelling
- The required information to be reported is as follows:
    - Race or national origin
    - Sex
    - Marital Status
    - Age
- The categories used for race or national origin will be:
    - American Indian or Alaska Native
    - Asian
    - Black or African American
    - Native Hawaiian or other Pacific Islander
    - White
- The categories used for ethnicity will be either:
    - Hispanic or Latino
    - Not Hispanic or Latino
- Married
- Unmarried (includes single, divorced, & widowed persons)
- Separated

Spouse or Former Spouse Info

- The following information will pertain to a spouse or former spouse. It will also provide information regarding what the lender is allowed to request:
    - If the client lives in a community property state or is relying on property located in such a state, the lender is permitted to request information concerning an applicant's spouse
    - Information regarding a former spouse may be requested if the applicant is relying on alimony, child support, or separate maintenance as a means for repayment of the debt
- To clarify the rules regarding spousal information, a creditor may request information on a spouse when:
    - The spouse will be permitted to use the account
    - The spouse will liable on the account
    - The applicant is relying on the spouse's income as a basis for repayment of the debt
    - The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the debt
    - The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested

Age

- Age may not be a consideration in the loan decision process provided that the applicant has the capacity to enter into a binding contract.
- Although there are certain situations to consider where age may be a factor
    - Where applicant is too young to sign the application (or any legal contract)
    - Client is 62 years old or older

    - Consideration may be given to grant credit in favor of the applicant
    - When age is a positive factor it can be used to extend credit
- Other factors allowing age to be a consideration:
- Client is near retirement age
    - Creditor can consider the client's occupation and time to retirement
    - Income may decrease and this could possibly have a negative impact on the client's ability to re-pay the loan
- Evaluate retirement income to see if it will support the loan through to maturity
- Evaluate on a case by case basis
- Always assess borrower's total credit status
- Other information allowed to be collected is:
    - Name and address under which the accounts are listed
    - Former names used by the client to obtain credit in the past

Childbearing/Childrearing

- In regards to childbearing and child-rearing the ECOA allows a mortgage loan officer to inquire about the:
    - Number of dependents the applicant has
    - The dependent's ages
    - Dependent-related financial obligations or expenses, provided such information is requested without regard to:
        - Sex
        - Marital status
        - Any other prohibited basis

- The loan officer may not inquire about the consumer's
    - Childbearing
    - Childrearing
    - Birth control practices
    - Whether they are able to bear children

Additional regulations

- The consumer has the right to know whether their credit application was accepted or rejected within 30 days of filing a completed loan application.
- An application is considered complete once a creditor has obtained all the information it normally considers in making a credit decision.
- The rules of the ECOA require the consumer to receive either of the following within 30 days of filing a completed loan application:
    - Approval
    - Denial
    - Counteroffer
- The notification for approval can be:
    - Expressed
    - Implied
- An incomplete application would be a denial for incompleteness and also the following:
    - Applicant could complete the application but chose not to
    - Creditor lacked sufficient data to warrant a credit decision
- If an application is incomplete but there is enough information to grant a denial, the following apply:
    - Applicant must be given the specific reason for the denial
    - Notice of right to receive the reasons
        - Incompleteness of the application cannot be given as the reason for denial

Adverse actions

- If the application for credit is rejected, the lender must disclose specific reasons to the client for rejection:
    - The reasons for rejecting the credit file should be clear and concise
    - Indefinite or vague reasons are illegal
- If the application for credit is rejected, the lender must disclose specific reasons to the client for rejection:
    - The reasons for rejecting the credit file should be clear and concise
    - Indefinite or vague reasons are illegal
- The notification of adverse action is required to be in writing and must contain the following:
    - A statement of action taken
    - The name and address of the lender
    - A statement of the provision known commonly as the ECOA Notice
    - The name and address of the federal agency that administers compliance with respect to the lender
    - Either a statement of specific reasons for the action taken or a disclosure of the applicant's right to a statement of specific reasons within a specified period of time
- If the application was taken by phone, the following apply:
    - Creditor must request the applicants name and address to provide written notification
    - If applicant does not provide this information, the creditor is exempt from issuing notification

Appraisal Notification

- Under ECOA mortgage lenders are required to notify applicants of their right to receive a copy of their appraisal.

- The client will receive a "*Right to Receive a Copy of Appraisal*" including the address, phone number, and contact name of lender within 3 days of application
- A creditor shall provide a copy of the appraisal:
  - §1002.14(a)(1) requires that the creditor provide copies of appraisals and other written valuations to the applicant promptly upon completion, or no later than 3 business days before consummation
    - "Completion" means when the last version is received by the creditor, or when the creditor has reviewed and accepted the appraisal or other written valuation to include any changes or corrections required.
    - This means that the copy of the appraisal must be delivered and *delivery* is defined as occurring 3 business days after mailing or delivering the copies to the last known address of the applicant or when evidence indicates actual receipt by the applicant
      - whichever happens first
      - Actual receipt of the copy by the applicant by electronic means must comply with the E-Sign Act (Regulation B, 12 CFR §1002.14(a)(5).
- The Truth in Lending Act (TILA) of 1968 is implemented by Federal Reserve Board's Regulation Z.
  - Regulates disclosure of finance charges
  - Shows the estimated total costs of borrowing, the expected payment amounts over the life of the loan, and other significant loan features

- The application of this regulation, by an individual or business entity, should be adhered to when the following conditions are met:
  - When offering or extending credit to consumers
  - Offering or extending credit is done on a regular basis
  - If a finance charge is attached to this credit or is payable in more than four monthly installments as per written contract
  - Credit is primarily for personal, family, or household purposes

Open-end Credit

- Open-end credit involves the consumer being given credit in which creditor reasonably contemplates repeated transactions
  - The creditor may impose a finance charge from time to time on an outstanding unpaid balance
  - The amount of credit limited by the creditor may be extended to the consumer during the term of the plan
  - Generally made available to the extent that any outstanding balance is repaid
- Examples of open-end credit would be:
  - Bank credit cards
  - Home Equity Lines of Credit (HELOC)
  - Department store or fuel service cards
  - Overdraft privileges
- Closed-end Credit
  - Involves all other transactions, such as, car loans or mortgages
- One objective of the Truth in Lending Act is to require the mortgage originator to disclose to the consumer their interest rate reflected as an annual percentage rate (APR), showing:
  - The cost of credit, within three business days of application
  - Pre-Paid finance charge and what it includes
  - How it was used to calculate the annual percentage rate
- A consumer loan (a loan used for personal, family, or household purposes) is covered by TILA if it is to be repaid in more than four installments (or is subject to finance charges) and is either:
  - For $25,000 or less
  - Secured by real property
- The TILA applies to any mortgage loan used for personal, family, or household purposes such as:
  - Buying/remodeling a home
  - Consolidating personal debt
  - Sending kids to college

Who TILA applies to:

- The Truth in Lending Act only applies to loans made to natural persons and does not apply to:
  - Loans made to corporations or organizations
  - Loans made for business, commercial, or agricultural use
  - Loans > $25,000 not secured by real property
  - Most seller financing is also exempt

Terms

- **Construction Loan** – provides for interest-only payments for construction
- **Variable Rate Feature** – check if this is an adjustable rate mortgage
- **Assumption** – informs consumer if loan can be transferred to a third party with mortgage terms remaining the same
- **Security** – the property being secured (by a security instrument, such as a mortgage) is either a purchase or refinance
- **Late Charge** – must show the percentage of the monthly payment due if late by a certain amount of days. Example: If a payment is more than 15 days late, you will be charged 5.000% of the payment
- **Prepayment** - discloses information about paying the loan off early. If the "may" box is checked, a fee will be charged to pay this loan off before it is due
- **Deposit** – if checked, APR does not include deposit
- **Demand Feature** – The ability of creditor to accelerate payment of a loan balance or make balance due and payable immediately

- **Property Insurance** – appropriate box(es) must be checked. In almost all cases, property insurance is required; but flood insurance only if applicable
- **Credit Life Insurance** – lets consumer know if credit life or disability is a requirement along with premium amount and terms
- **Prepayment** - Discloses information about paying the loan off early. If the "may" box is checked, a fee will be charged to pay this loan off before it is due.
- **Finance Charge Refund** - Refers to interest due to the consumer
- **Assumption** – Informs consumer if loan can be transferred to a third party with mortgage terms remaining the same
- Lenders are expected to use the best information reasonably available when preparing a Truth in Lending disclosure and calculating the total finance charge and annual percentage rate.
  - Lenders are allowed to use "banker's months"
    - 30 days rather than exact number of days in each month
  - Disclosures considered accurate if the total finance charge is accurate to within $100
  - Disclosure considered accurate if the APR is accurate to within one-eighth of one percent

TILA & ARMS

- Lenders are required to give applicants a general brochure about ARMs: "Consumer Handbook on Adjustable-Rate Mortgages"
  - Must establish guidelines for calculating and disclosing APR
  - Must make specific disclosures for ARM program applied for
- The TILA requires detailed additional disclosures for any ARM program applicant asks about:
  - Fact that interest rate, payment, or loan term may change
  - Index used to determine interest rate
  - Where borrower can find index
  - How interest rate and payment will be determined
  - Statement that applicant should ask about loan's margin and current interest rate
  - If initial rate is discounted, disclosure statement that applicant should inquire about amount of discount
  - Rate and payment adjustment periods
  - Any rules about changes in index, interest, rate, payment amount, or loan balance
  - Explanation of how to calculate monthly payments for loan
  - Statement that loan has acceleration clause
- The TILA requires detailed additional disclosures for any ARM program applicant asks about: [continued]
  - Description of info included in adjustment notices and how often lender will send those notices to borrower
  - Statement that disclosure forms are available for lender's other ARM programs
- Once loan is made, Regulation Z requires the lender to give the borrower advance notice of any change in payment, interest rate or loan balance
  - Must be made to borrower at least 25 days—but no more than 120 days—before it takes effect
  - If security property for a home equity loan is borrower's existing principal residence, borrower has "right of rescission"
  - May rescind any time within 3 days after signing, receiving disclosure statement or receiving notice of right of rescission

Right of Rescission

- Right of Rescission on a refinance:
  - Refinancing with a new lender
  - A refinance with cash out over and above paying off old mortgage
  - Designed to give borrowers an opportunity
    - Think over deal
    - Decide if this is in their best interest
    - Back out if they choose
    - Retrieve any monies they have paid
- A business day is defined as a day on which the creditor's offices are open to the public for conducting the majority of their business.
- For the purpose of rescission this term shall mean all calendar days except Sundays and legal holidays.
- Day one of rescission begins after the last of these three conditions have occurred
  - Consummation of the transaction
  - They receive a Truth in Lending Disclosure Form
  - Each consumer receives two copies of Notice of Right to Rescind
  - If there is a borrower and co-borrower, both clients have the authority to rescind the offer.
  - The consumers will have until midnight of the third business day to cancel or revoke this entire transaction.

Notice of Right to Cancel Form

- The Notice of Right to Cancel must be clearly revealed and the following must be conveyed:
  - Consumer must understand they are allowing the creditor to place a security interest on their home
  - The document states their right under federal law to cancel the entire transaction within three business days
  - It also will detail the three actions that must occur to start the rescission period
- To begin rescission period:
  - The creditor is obligated to complete the date of transaction on the Notice of Right to Cancel
  - The date consumer receives the Truth in Lending disclosures
  - The date the notice of cancellation was received
- Notice of Right to Cancel will also contain:
  - Information on how the consumer can exercise their right to cancel the transaction
  - Creditor's name and address

- The effects of rescinding the offer must be described in detail
  - Information regarding time limits
  - Necessary steps to be performed by the creditor regarding cancellation of the security interest
  - The return of any money or property given to anyone in connection with the transaction
  - Expiration of the rescission period must also be addressed on this form
- A Business Day Defined for Rescission
  - If the loan closes on a Monday the loan would come out of rescission on the following Thursday at midnight, and the funds disbursed on Friday
  - Consideration must be given to legal holidays
- Consumers Waiver of Right to Rescind
  - The consumer is allowed by law to waive their right to rescind if it is a "bonafide personal financial emergency"
- If consumer cannot wait 3 business days
  - They may submit, in writing, details of the emergency or state clearly why they wish to waive their right to rescind
  - This Waiver of Right to Rescind statement must be signed and dated by consumer and all owners of the home
- Waiver of Right to Rescind may not be on a "pre-printed" form

Right of Rescission

- Situations where no Right of Rescission is required:
  - Application is to purchase or build a home
  - Creditor being used for transaction already has a loan secured by consumer's home and no additional funds are borrowed. This is merely a consolidation or refinance with same creditor
  - The creditor for the loan is a state agency
- Cancelling the transaction/Rescinding the loan requires [12 CFR 1026.23 (e – All)]
  - Notification in writing from the consumer.
  - Notice signed and dated and
  - Must be delivered to the creditor, in person,
  - No later than three business days after consummation of the transaction.
- Cancellations by telephone, fax transmission, or face-to-face conversation are not an acceptable means of following through with rescinding the transaction.
- If all conditions for rescinding a transaction have been satisfied by the consumer, they will not be liable for any dollar amount including any finance charge.
- Creditor shall return any money consumer has given to anyone in connection with this transaction within 20 calendar days.

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  - Prepayment penalty can't be charged if applicant's debt-to-income ratio is over 50%
  - Prepayment penalty period can't exceed two years
  - If loan term is less than 5 years, loan can't be structured so that balloon payment will be necessary
  - Negative amortization isn't allowed
  - Interest rate can't be raised because of default
  - Disclosure statement must explain that applicant could lose his home if loan obligations aren't met
  - The lender will have a mortgage on the residence; therefore, the residence and any money put into it could be lost if payments are not made

State Predatory Lending Laws

- About half of our states have their own state predatory lending laws. The coverage and provisions of these laws will vary, but at least some apply to high-cost home purchase loans as well as home equity loans.
- For example, California predatory lending statute applies if:
- Loan is secured by a one- to four-unit property used as loan applicant's principal residence
- Loan amount doesn't exceed FNMA conforming loan limit
- And either:
- APR exceeds yield on Treasury securities by more than 8%,
- Total points and fees payable by borrower at or before closing will exceed 6% of total loan amount
- California law requires certain disclosures and prohibits a number of predatory provisions in the loans it covers

Upon completion of this lesson you should be able to:

- Understand the different sections of the integrated forms; the Loan Estimate and the Closing Disclosure
- Realize the benefits of these forms
- Know which type of mortgages will be covered by the disclosure rules

In the following sections, "CFR" stands for "Code of Federal Regulations" and "USC" stands for "United States Code". Once Congress passes a law it is recorded in the United States Code (USC) books, but it usually will not explain what procedures should be followed. The Code of Federal Regulations (CFR) explains how the laws are to be implemented.

Background

For more than 30 years, Federal law had required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also had generally required two different forms at or shortly before closing on the loan. Two different Federal agencies developed these forms separately, under two Federal statutes: The Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA).

The information on these forms was overlapping and the language was inconsistent. Not surprisingly, consumers often found the forms confusing. It is also not surprising that lenders and settlement agents found the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) directs the Consumer Financial Protection Bureau (the Bureau) to integrate the mortgage loan disclosures under TILA and RESPA sections 4 and 5. Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. The Bureau satisfied this statutory mandate and issued proposed rules and forms on July 9, 2012.

To accomplish this, the Bureau engaged in extensive consumer and industry research, analysis of public comment, and public outreach for more than a year. After issuing the proposal, the Bureau conducted a largescale quantitative study of its integrated disclosures with approximately 850 consumers, which concluded that the Bureau's integrated disclosures had on average statistically significant better performance than the current disclosures under TILA and RESPA. The Bureau finalized a rule with new, integrated disclosures (TILA-RESPA rule).

The TILA-RESPA rule also provides a detailed explanation of how the forms should be filled out and used.
The first form (the Loan Estimate) is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage loan for which they are applying. The Loan Estimate must be provided to consumers no later than three business days after they submit a loan application. This disclosure was created as a replacement to the Good Faith Estimate, or GFE, which was uniformly used in the industry. The GFE was a disclosure that listed a breakdown of the estimated payments due at the closing of a mortgage loan. This document enabled a borrower to compare costs and shop around. The Loan Estimate disclosure that replaced this document as well as the initial Truth-in-Lending disclosure as of October 3, 2015, provides the same information within three business days of having completed a loan application. The Loan Estimate provides an estimate of the interest rate, monthly payment, closing costs, taxes and insurances, prepayment penalties, and other loan features for the particular loan for which the borrower is applying.

The second form (the Closing Disclosure) is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. The Closing Disclosure must be provided to consumers three business days before they close on the loan. This particular disclosure was created as a replacement to the HUD-1 Settlement Statement, which was uniformly used in the industry. The Closing Disclosure includes the final terms and costs of the loan. These terms and costs are meant to be compared with those received earlier in the Loan Estimate document. The Closing Disclosure will include the loan terms, the projected monthly payments, and closing costs and fees associated with the mortgage loan. This disclosure was also implemented along with the Loan Estimate starting on October 3, 2015.

The forms use clear language and are designed to make it easy for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The forms also provide information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.

We will examine these disclosures as well as when they need to be used in further detail.

Consumer Financial Protection Bureau (CFPB) Integrated Disclosures

The Loan Estimate

- Definition of application includes: [Regulation Z, 12 CFR §1026.2(a)(3)(i)]
  - Consumer's name
  - Income
  - Social Security number to obtain a credit report
  - Property address
  - Estimate value of the property
  - Amount of mortgage loan applying for
    - Other information deemed necessary for properly underwriting and assessing the borrower's ability to repay may be requested and obtained by the mortgage loan originator
- Loan Estimate Form - This information will be detailed more in the next section
  - First page
    - Information on borrower and loan
    - Loan terms, amount, payments and rate
    - Prepayment penalties and balloon features
    - Projected payments
    - Estimated costs to close and settlement fees
  - Second page
    - Settlement costs and fees
    - Details on escrows and down payment
  - Third page
    - Discloses payments over 5 years, Annual Percentage Rate (APR), Total Interest Payment (TIP) and several other disclosures

Delivery of the Loan Estimate

- The Loan Estimate must be delivered or placed in the mail no later than the third business day after receiving the application. (Regulation Z, 12 CFR §1026.19(e)(1)(iii))
- *Business Day* will include any day the creditor's offices are open to the public to carry on substantially all of its business functions (Regulation Z, 12 CFR §1026.2(a)(6) (effective October 3, 2015)
- If the Loan Estimate is not provided to the consumer in person
    - It will be considered they received the Loan Estimate within the three business day time schedule after delivery or placed in the mail (Regulation Z, 12 CFR §1026.19(e)(1)(iv))
- If the loan application will not or cannot be approved within the three business day time period or if the application is withdrawn
  - Creditor does not have to provide a Loan Estimate (Comment 19(e)(1)(iii)-3)
- If the borrower amends the application in a favorable manner and the application process can continue
  - Creditor must comply with delivery of the Loan Estimate guidelines
    - Within three business day of receiving the updated application (Comment 19(e)(1)(iii)-3)
- The Loan Estimate must be delivered or placed in the mail not later than the seventh business day before consummation of the mortgage loan (Regulation Z, 12 CFR §1026.19(e)(1)(iii)(B))
- Borrower may waive the seven business day waiting period for a bona-fide personal financial emergency (Regulation Z, 12 CFR §1026.19(e)(1)(v)).
  - Example: Imminent sale of consumer's home at foreclosure
  - Borrower must provide lender with a
    - A dated, written statement describing the emergency
    - Explain reason for a waiver of the waiting period
    - Must be signed by all borrowers
      - Pre-printed waiver forms are not acceptable (Regulation Z, 12 CFR §1026.19(e)(1)(v))
- The Loan Estimate is an estimate in "Good Faith"
  - Mortgage loan originators must act in good faith when assessing costs for the Loan Estimate
  - If exact dollar amount is not available when the Loan Estimate is prepared
    - Estimates may be used
      - Keep in mind, new disclosures may be required (Regulation Z, 12 CFR §1026.17(c) or 1026.19)
      - Estimated items must be shown as an "Estimate" (Comment 17(c)(2)(i)-2)
  - Good faith by lender will be determined when comparing the original Loan Estimate with the actual charges shown on the Closing Disclosure Regulation Z, 12 CFR §1026.19(e)(3)(i) and (ii))
    - If charge is in excess of original disclosed amount, this is considered not in good faith
    - If charge is less, this is considered to be in good faith
- Circumstances where mortgage loan originators can charge more than amount on Loan Estimate
  - Charged amount is within tolerance thresholds (Regulation Z, 12 CFR §1026.19(e)(3)(ii))
  - A changed circumstance allows for a revised Loan Estimate or Closing Disclosure (Regulation Z, 12 CFR §1026.19(e)(3)(iv))
- Items not subject to tolerance limitation
  - Prepaid interest (Regulation Z, 12 CFR §1026.19(e)(3)(iii)(A)-(C))
  - Charges paid to third party service provider (Regulation Z, 12 CFR §1026.19(e)(3)(iii)(E))
    - These are charges or services not required by the lender
  - Use best information available when quoting these charges (Regulation Z, 12 CFR §1026.19(e)(3)(iii))

- For items paid at closing that exceed original amount on the Loan Estimate
  - If beyond allowable threshold
    - Lender must refund excess dollar amount to the borrower
      - No later than 60 days after consummation (Regulation Z, 12 CFR §1026.19(f)(2)(v))
    - Zero tolerance items
      - Any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer. (Regulation Z, 12 CFR §1026.19(e)(3)(i))
    - 10% cumulative tolerance items
      - Difference refunded to the borrower (Regulation Z, 12 CFR §1026.19(e)(3)(ii))

The Closing Disclosure

- Will provide the consumer with a detailed analysis of their mortgage transaction
- Will be provided three days before the closing takes place Regulation Z, 12 CFR §1026.19(f)(1)(ii)
  - This gives the consumer additional time to review their final loan documents
- Business day defined for the Closing Disclosure
  - Different from the Loan Estimate
- All calendar days except Sundays and legal holidays (Regulation Z, 12 CFR §1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii))
  - Legal public holidays
    - New Year's Day
    - Martin Luther King, Jr., Birthday
    - Washington's Birthday
    - Memorial Day
    - Independence Day
    - Labor Day
    - Columbus Day
    - Veterans Day
    - Thanksgiving Day
    - Christmas Day
- The Closing Disclosure must contain the actual terms and costs associated with the loan transaction (Regulation Z, 12 CFR §1026.19(f)(1)(i)).
  - As with the Loan Estimate, lenders must act in good faith when preparing the Closing Disclosure
  - The Closing Disclosure will contain all actual terms and costs of the loan transaction (1 Regulation Z, 12 CFR §026.19(f)(1)(i))
  - Any changes in costs or terms will require a corrected disclosure delivered to the borrower
    - A new three day waiting period may be required for a corrected Closing Disclosure (1 Regulation Z, 12 CFR §026.19(f)(2))
  - Three categories of changes requiring a corrected Closing Disclosure (Regulation Z, 12 CFR §1026.19(f)(2))
    - Changes occurring
      - Before consummation not requiring a new three business day waiting period (Regulation Z, 12 CFR §1026.19(f)(2)(i))
      - Before consummation that require a new three business day waiting period (Regulation Z, 12 CFR §1026.19(f)(2)(ii))
      - After consummation (Regulation Z, 12 CFR §1026.19(f)(2)(iii))
- If any of the following changes take place after delivery of the Closing Disclosure and before consummation, a corrected disclosure will be provided to the consumer showing the changed items (Regulation Z, 12 CFR §1026.19(f)(2)(ii
  - No later than three business days before consummation
- Those changes are
  - APR becomes inaccurate
    - Closing Disclosure must show correct APR and any other changed terms
  - Loan product changes
    - Closing disclosure must show correct loan product and any other changed items
  - Prepayment penalty has been added
    - Closing disclosure must show the prepayment provision and any other changed items
- If terms or costs change after consummation and within a 30 day period and Closing Disclosure becomes inaccurate, a corrected Closing Disclosure must be delivered to the borrower
  - Delivery of the corrected Closing Disclosure must take place within 30 days of lender's knowledge of the error (Regulation Z, 12 CFR §1026.19(f)(2)(iii))
- Allowable fees prior to consumer's receipt of the Loan Estimate
  - Lender may not impose any fee until the Loan Estimate is received by the consumer, including: (Regulation Z, 12 CFR §1026.19)(e)(2)(i)(B)
    - Application fee
    - Appraisal fees
    - Underwriting fees
    - Other fees imposed on the consumer
      - With the exception of a bona fide and reasonable fee for obtaining a consumer's credit report

LESSON SUMMARY

The Loan Estimate

- The Loan Estimate must be delivered or placed in the mail no later than the third business day after receiving the application.
- Business Day for the loan estimate will include any day the creditor's offices are open to the public to carry on substantially all of its business functions.
- The Loan Estimate is an estimate in "Good Faith" and mortgage loan originators must act in good faith when assessing costs for this document.

The Closing Disclosure

- Must be provided to the consumer, with a detailed analysis of their mortgage transaction, three days before the closing takes place. This gives the consumer additional time to review their final loan documents and compare these figures with the Loan Estimate given at application.
- A business day defined for the Closing Disclosure will be different from the Loan Estimate - All calendar days except Sundays and legal holidays.

Mortgages covered by the disclosure rules are closed end consumer credit transactions secured by real estate and subject to RESPA. This includes loans secured by vacant land on which a home will be constructed with the loan proceeds used within two years after settlement. Loans not covered are Home Equity Lines of Credit (HELOC), Reverse Mortgages, mortgages secured by a dwelling not attached to land, for example a mobile home, and loans by a creditor with five or fewer mortgages made in one year.

The definition of application includes the consumer's name, income, social security number to obtain a credit report, property address, estimate value of the property, amount of mortgage loan applying for. Other information deemed necessary for properly underwriting and assessing the borrower's ability to repay may be requested and obtained by the mortgage loan originator.

Overview

- Title IX Investor Protections and Improvements to the Regulations of Securities
  - Purpose of the Dodd-Frank Act
  - Agencies Created
  - Office of Credit Rating Agencies
  - Regulation of Risk Retention
- Title X - Bureau of Consumer Financial Protection
  - Office of Fair Lending and Equal Opportunity
  - Office of Financial Education
  - Office of Financial Education for Older Americans
  - Combined Mortgage Loan Disclosure
  - Amendments to Certain Acts
- Title XIV - Mortgage Reform and Anti-Predatory Lending Act
  - Compensation for Mortgage Originator
  - Liability Provisions
  - New Definitions of Mortgage Originator, Qualified Mortgage and Residential Mortgage Loan
  - Changes to Lending Laws
  - Home Affordable Modification Program
  - New Changes to Regulation X and Regulation Z
  - Office of Housing Counseling

Government Offices

There are many organizations listed in the Dodd-Frank Act; please use this key as a guide:

- CRA - Credit Reporting Agency
- FTC - Federal Trade Commission
- SEC - U.S. Securities and Exchange Commission
- CFTC - Commodity Futures Trading Commission
- OCC - Office of the Comptroller of the Currency
- FDIC - Federal Deposit Insurance Corporation
- CFPB - Bureau of Consumer Financial Protection
- FHFA - Federal Housing Finance Agency
- NCUA - National Credit Union Administration
- FSOC - Financial Stability Oversight Council
- OTS - Office of Thrift Supervision
- CEO - Chief Executive Officer
- HUD - Housing and Urban Development
- OFR - Office of Financial Research

The Dodd-Frank Act

The *Dodd-Frank Wall Street Reform and Consumer Protection Act* is categorized into 16 titles that address many issues and weaknesses believed to have caused the financial crisis of 2008.

The document itself is more than 2300 pages in length – asking for more than 60 studies to be performed with more than 50 committees formed.

The statute was initially proposed on December 2, 2010 in the House of Representatives by Congressman Barney Frank and in the Senate Banking Committee by Chairman Senator Chris Dodd.

With their immense involvement in creating this bill the Conference Committee voted to name the bill after these two members of Congress – thus the name – The Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Dodd-Frank federal statute was signed into law on July 21, 2010, by President Barack Obama.

The main reasons for this act are to create new agencies and to merge or move some agencies in an effort to streamline the regulatory process, increase oversight to those institutions that are seen as a hazard to the industry, and streamline the financial regulatory fields and agencies.

The stated aim of the 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.

Reasons for this Act…

- Create new agencies
- Merge/remove some agencies
- Effort is to streamline the regulatory process
- Increase oversight to those institutions who may pose a risk
- Amend the Federal Reserve Act

The three titles from the Dodd-Frank Act we will review are IX, X, and XIV – these deal mainly with the lending industry.

- Title IX will handle provisions for risk retention and qualified residential mortgages.
- Title X will establish the Bureau of Consumer Financial Protection (CFPB) along with their responsibilities.
- Title XIV is the Mortgage Reform and Anti Predatory Lending Act; it includes, but is not limited to, specifics regarding originator compensation and qualified mortgage provisions.

Agencies Created by Dodd-Frank

- The Financial Stability Oversight Council - FSOC (Sec. 111)
- The Office of Financial Research - OFR (Sec. 152)
- The Bureau of Consumer Financial Protection - CFPB (Sec. 1011)
- The Office of National Insurance (Sec. 502)
- The Office of Credit Rating Agencies - CRA (Sec. 932)

The Financial Stability Oversight Council - FSOC (Sec. 111-123)

- Responsible for identifying and responding to risks in financial system. The council is made up of:
  - 10 federal financial regulators
  - 1 independent member
  - 5 nonvoting members
- Chaired by Treasury Secretary and includes all financial regulators, including the Federal Reserve Board, SEC, CFTC, OCC, FDIC, FHFA, and the NCUA.

The Office of Financial Research with the Treasury to support the Council (Sec. 152-156)

- Has authority to collect data to support the FSOC
- Regulates how parties are identified
- Implement policy for identifying parties

Office of Credit Rating Agencies (Sec. 932-939)

- Administers SEC rules
- Conduct annual exams
- Issue public report summarizing:
  - Findings of exam
  - Deficiencies
  - Discover if previous recommendations resolved
- Must maintain a documented, effective system of internal controls

Title IX Improvements to the Regulation of Credit Rating Agencies (Subtitle C, Sec. 931)

Congress finds the following:

- Activities and performances of credit rating agencies are matters of national public interest
- The role of a credit rating agency justifies a similar level of public oversight and accountability
- Credit rating agencies are subject to the same standards of liability and oversight as auditors, securities analysts, and investment bankers
- Certain activities, particularly in advising on potential ratings of financial products, conflicts of interest need to be carefully monitored by the SEC
- Increase accountability on the part of credit rating agencies when rating structured financial products

Enhanced Regulation, Accountability, and Transparency of Nationally Recognized Statistical Rating Organizations (Section 932, a,3,A,B,I,ii,iii)

- CRA's must have an effective internal control structure in determining credit ratings – with factors prescribed by the Commission
- CRA's must provide annual internal controls report containing:
  - Responsibilities of management to establish and maintain an effective internal control structure
  - Assessment of the effectiveness of this structure
  - Attestation of the CEO of the CRA

Summary of Title IX

- Amendments to improve investor protection
  - Improved regulations for CRAs
  - Tighter laws for asset backed securities
  - Stipulations regarding executive compensation
- Improve SECs performance
  - Create investor advocate and advisory commission
  - Establish a whistleblower program

Title X – Bureau of Consumer Financial Protection - CFPB (1011-1037)

- Establishes an independent bureau within the Federal Reserve System.
  - Regulates the offering and provision of consumer financial product or services
  - Considered an Executive agency
  - Ensures markets are fair, transparent and competitive
- Regulates consumer financial products and services
- Consolidate consumer protection responsibilities managed by the Federal Reserve, OCC, OTS FDIC, NCUA, FTC and HUD
- Will have operational and policymaking independence
- One office in charge of consumer protection
- Toll-free number for consumer complaints/concerns
- U.S. Dept. of Treasury
  - CFPB – independent bureau w/in the Fed Reserve
- Help empower consumers with information to make financial decisions.
- Will promote fairness and transparency.
- Enforce clear rules for competition of banks.

Functions of the CFPB:

- Implementing and enforcing Federal consumer financial laws;
- Reviewing business practices to ensure that financial services providers are following the law;
- Monitoring the marketplace and taking appropriate action to make sure markets work as transparently as they can for consumers; and
- Establishing a toll-free consumer hotline and website for complaints and questions about consumer financial products and services.

Title X – Office of Fair Lending and Equal Opportunity (Sec 1013,c,1,2,A,B,C,D)

Established by the Director and has the power to:

- Provide oversight and enforcement of Federal laws ensuring fair, equitable and nondiscriminatory access to credit (Including ECOA and HMDA)
- Coordinate fair lending efforts with other Federal agencies and State regulators by promoting consistent, efficient and effective enforcement of Federal fair lending laws
- Promote fair lending compliance and education with private industry, fair lending, civil rights, consumer and community advocates
- Provide annual reports to Congress on efforts of Bureau to fulfill fair lending mandate

Title X – Office of Financial Education (Sec 1013,d,1,2,A,B,C,D,E,F)

- Responsible for developing and implementing initiatives to educate and empower consumers
- Improve financial literacy of consumers through:
  - Financial counseling
  - Assistance with understanding and the evaluation of credit histories and scores
  - Services at financial institutions
  - Savings, borrowing, etc.
- Activities to:
  - Prepare consumer for educational expenses, submission of aid applications
  - Reduce debt
  - Improve their financial situation
  - Help consumers to develop long-term savings plan
  - Wealth building and financial services during prep process
  - To claim earned income tax credits
  - Federal benefits

Title X – Office of Financial Education for Older Americans (Sec 1013,d,1,2,A,B,C,D,E,F)

- Design activities to facilitate the financial literacy of those 62 years and older
    - Protection from unfair, deceptive and abusive practices
    - Current and future financial choices
- The Office shall:
    - Help seniors recognize warning signs of immoral practices
    - Provide one-on-one financial counseling
        - Long-term savings
        - Later-life economic security
    - Provide personal consumer credit advocacy re: consumer problems
    - Monitor certifications/designations of financial advisors
        - Alert system for deceptive practices

Office of Financial Protection for Older Americans will also:

- Submit to Congress and the Commission recommendations for best practices for
    - Distributing information regarding legitimacy of certification of financial advisors
    - Methods for seniors to identify a financial advisor appropriate for their needs
    - Methods to verify a financial advisor's credentials

Office of Financial Protection for Older Americans will also:

- Conduct research for seniors with a focus on
    - Protecting themselves from unfair, deceptive and abusive practices
    - Long-term savings
    - Planning for retirement and long-term care

Office of Financial Protection for Older Americans will also:

- Coordinate consumer protection efforts with
- Other Federal agencies
- State regulators
    - promoting consistent, effective and efficient enforcement

Office of Financial Protection for Older Americans will also:

- Work with community organizations, non-profits, and other entities involved with educating and assisting seniors
    - Including, but not limited to: National Education and Resource Center on Women and Retirement Planning

Title X – Reverse Mortgage Study and Regulations (Sec 1076, a,b,1,2,A,B,c)

Bureau will conduct study on reverse mortgages to determine:

- If conditions or limitations are needed to protect borrowers when borrowing to fund investments, annuities & other investments
- Identify unfair, deceptive or abusive practices

Combine TILA and RESPA disclosures

- Propose for public comment
- A single integrated model disclosure
    - No deadline mandated for new form
    - Bureau anticipates final rules published in 2014

Summary of Title X, Dodd-Frank Act

Bureau of Consumer Financial Protection

- Established July 21, 2011
- a/k/a CFPB and The Bureau
- Regulates consumer financial products & services
- Submits bi-annual reports
- Operates independently
- Separated into 5 units

Title XIV - Mortgage Reform and Anti-Predatory Lending Act

Expands definition of Mortgage Originator (Subsection A,1401,cc,2,A,i-iii, B,C,D,E,i-v,F,G,)

- Person who for direct or indirect compensation
- Takes a residential loan application
- Assists a consumer in obtaining/applying for loan
- Offers or negotiates terms of residential mortgage loan
- Represents to the public through advertising using business cards, stationary, brochures, sign, etc.

Mortgage Originator

Does not include:
- Person who perform purely administrative or clerical tasks
- Employee of manufactured homes
- Who does not advise consumers on loan terms
- Who only performs real estate brokerage activities
- Creditors and loan servicers

Definition-Residential Mortgage Loan (Subsection A,1401,cc,5)

- Any residential real property secured by a mortgage, deed of trust or equivalent security interest on a dwelling or resident property that includes a dwelling. Example: Includes second homes
- Does not include open-end plans and sometime shares.

Title XIV - Mortgage Reform and Anti-Predatory Lending Act

Duty of Care
- When required-registered and licensed
- Originators required to include unique identifier on loan docs
    - Provided by the Nationwide Registry
- Depository institutions will establish and maintain
    - Procedures to monitor compliance

Mortgage originator cannot receive from any person, varying compensation based on loan terms, other than principal loan amount

Prohibition on Steering Incentives
- Mortgage originator may receive origination fee if
- Mortgage originator does not receive any compensation directly from consumer
- Consumer does not make an upfront payment of disc. or orig. points or fees
- Bona fide 3rd party charges are allowed

Exceptions
- Can receive based on loan amount if not receiving compensation or upfront payments from consumer
- Person, other than consumer, from paying or receiving origination fee if
- Originator does not receive compensation from consumer
- Consumer does not pay discount / origination points or fees

Compensation Summary
- Prohibits yield spread premiums
- Mortgage originator cannot receive compensation based on loan terms
- Except for the principal loan amount

If mortgage originator receives compensation directly from consumer may not also receive compensation from lender or any other person – except bona fide 3rd party
- Exceptions
    - May receive compensation from creditor if
    - They do not receive compensation directly from the consumer, and
    - Consumer does not make any upfront payment for discount / origination points or fees
    - Except for bona fide 3rd party charges

Title XIV - Mortgage Reform and Anti-Predatory Lending Act

Prohibits mortgage originators from steering consumer to a mortgage loan that:
- Consumer lacks ability to repay
- Has predatory characteristics
- Steering consumer from a loan they qualify for
- Abusive or unfair lending practices

Prohibits mortgage originators from
- Mischaracterizing credit history of consumer
- Mischaracterizing appraised value
- Discouraging a consumer from seeking loan from another originator

Violations to this section
- Amends TILA under Section 129B
- Maximum liability of a mortgage originator for violation to a consumer
    - Shall not exceed the greater of actual damages, or
    - An amount equal to 3 times the total amount of direct and indirect compensation, plus costs to the consumer, including attorney fees

Title XIV - Mortgage Reform and Anti-Predatory Lending Act (Sec. 1404, all)

Rules of Construction

- Provisions should not be construed as
  - Permitting YSP or similar compensation that permit total amount of compensation to originator to vary based on loan terms, other than principal
  - No restrictions on consumer to finance origination fees or costs
  - Incentive payments to MOs based on # of loans originated within a certain time frame are also allowed

Subtitle B–Minimum Standards for Mortgages – Ability to repay

- Amends Chapter 2 of TILA
- Creditor must make reasonable and good faith determinations for residential mortgage loans
  - Based on verified and documented info
  - Consumer has the ability to repay the loan

Multiple Loans

- If creditor knows one or more residential mortgage loans – secured by same dwelling
  - Make a good faith determination consumer has ability to repay combined payments

Basis for Determination

- Consideration of consumer's
  - Credit history
  - Current income
  - Expected income
  - Current obligations
  - Debt-to-income ratio
  - Employment status

Income Verification

- Verify income and/or assets including expected income or assets
- Review W-2, tax returns, payroll receipts, financial institution records and other 3rd party docs

Exemptions

- Loans made, guaranteed, or insured by Federal Departments
  - May exempt streamlined refinance's from income verification if
    - Consumer is not 30 days + past due
    - Refinance does not increase principal balance
    - Points and fees, do not exceed 3% of new loan
    - Lowers current interest rate – unless ARM to Fixed
  - Refinance is subject to a fully amortizing payment schedule
  - Terms of refinance do not result in a balloon payment

Nonstandard Loans

- Loans made, guaranteed, or insured by Federal Departments:
  - Variable rate loans that defer payment of principal or interest
    - Creditor to use fully amortizing repayment schedule
  - Interest-only loans
  - Use payment amount required to amortize the loan by final maturity

Calculation for Negative Amortization

- Loans made, guaranteed, or insured by Federal Departments:
  - Consider balance increase accruing from negative amortization
  - Calculation assumes
    - Loan proceeds are fully disbursed on consummation date
    - Loan is repaid in equal monthly amortizing payments

Refinance of Hybrid Loans with Current Lender

- In the case of refinance from Hybrid to Standard loan creditor may:
  - Consider mortgagor's good standing on current mortgage
  - Consider if the extension would prevent default
  - Offer rate discounts and favorable terms

Fully-Indexed Rate Defined

- Index rate at the time loan is made plus the margin after intro rate expires

Reverse Mortgages and Bridge Loans

- Does not apply to loans with terms of 12 months or less, including a loan to purchase new dwelling and sell a different dwelling w/in 12 months

Seasonal Income

- Underwriter may consider the seasonality and irregularity

Summary for Ability to Repay

- Creditors will make certain borrower has the ability to repay based on verified and documented evidence even if more than one mortgage loan secured by same dwelling
- Basis for determination will be – credit history, current income, expected income, current obligations, debt-to-income ratio, employment status
- Income/assets verified with W-2s, tax returns, payroll receipts, financial institution records, etc
- Streamlined refinances are exempt with certain conditions
- Variable rate loans that defer payment will use a fully amortizing schedule
- Interest only loans will use amortizing schedule through maturity
- Negative amortization will be taken into consideration
- Calculation assumes loan proceeds are fully disbursed at closing and payments are equally amortizing monthly
- Adaptable options for refinance of hybrid loan
- Fully index rate will be index rate plus margin after intro expires
- Does not apply to reverse mortgages or bridge loans with terms of 12 months or less
- Seasonal income can be considered

Title XIV - Mortgage Reform and Anti-Predatory Lending Act (Sec. 1412, all)

Safe Harbor and Rebuttable Presumption (Section 1412)

Definition of Qualified Mortgage

- No negative amortization on these mortgages
- Repayment of principal cannot be deferred
  - Exceptions made for specific balloon loans, although a scheduled balloon payment cannot be twice as large as previous payment

Definition of Qualified Mortgage

- Income and financial resources of consumer are verified and documented
- Fixed rate loan – underwriting must include fully amortizing payment, over term, along with taxes, insurance and assessments
- ARMs underwriting with max rate permitted during first 5 years, along with a payment schedule showing a fully amortized loan over the term
  - Consideration is also given to taxes, insurance and assessments
- Loan is in compliance with Board regulations relating to debt-to-income ratios or residual income
- Loans total points and fees may not exceed 3% of the total loan amount
  - Loan term does not exceed 30 years
  - Exception – may be extended by the Board - As in high cost areas
- Reverse mortgages that meet the standards for a qualified mortgage
- With regards to the ability to repay rules for qualified mortgages, there are some adjusted thresholds for 2020 to consider:
  - The maximum thresholds for total points and fees in cannot exceed 3 percent of loans of $109,898 or more; $3,297 for loans between $65,939 and $109,898; 5 percent for loans between $21,980 and $65,939; $1,099 for loans between $13,737 and $21,980; and 8 percent for loans of less than $13,737.

__Prepayment Penalties__

- Prohibited on non-qualified mortgages
- Qualified mortgage with a fixed rate – meets additional rate and other restrictions
  - Limited prepayment penalties for 3 years
  - Phased out – 3%, 2%, 1% of outstanding balance
    - Must offer consumer loans with and without penalty

__Arbitration__

- Arbitration not allowed for open end loan secured by principal dwelling
- May arbitrate after argument arises
- Will not bar consumer from bringing action

__Negative Amortization Loans__

- Other than reverse mortgages
- If negative amortization will occur, creditor provides statement that
  - Pending transaction may, or will, result in negative amortization
  - Describes the negative amortization as required by the Board
- Disclose that negative amortization
  - Increases the outstanding principal balance
  - Reduces the consumers equity in the dwelling
- First-time borrower must receive homeownership counseling

Protection Against Loss of Anti-Deficiency Protection

- Anti-deficiency law means – law of any State that provides in the event of foreclosure, consumer is not liable for any deficiency between sales price and outstanding loan balance.
- Notice from creditor to consumer with terms of anti-deficiency law
  - Protection it provides
  - Importance of law
- Includes refinancing

Policy Regarding Acceptance of Partial Payment

- Creditor to disclose policy on acceptance of partial payments, and
- How payments are applied, and
- If such payments are placed in escrow
- Rule of Construction
  - Makes clear no provisions to the TILA noted in this law shall be construed as superseding, repealing or affecting any duty or remedy of any person under provisions of the TILA or stipulations of Federal or State law.

Home Ownership and Equity Protection Act (HOEPA) High-Cost Mortgages

- High-Cost Mortgage = a consumer credit transaction secured by consumer's principal dwelling, (other than a reverse mortgage)
  - Loan is a first lien and APR at consummation exceeds 8% points for the Average prime offer rate (APOR)
- APR at consummation exceeds 10% of the APOR: Points and Fees – excluding 3rd party charges not retained by MO, creditor or affiliate of either
- Introductory Rates Taken into Account
- 3 rules applied for calculating APR
  - Fixed rate transaction whereby the APR will not vary, the interest rate on date of closing will be used
  - Variable rate transaction, whereby interest varies with index, rate will be determined by adding index value on date of closing to max margin during term
  - Other transactions – highest interest rate that may be charged during loan term will be used.
- Mortgage Insurance
  - When computing points and fees, mortgage insurance paid by federal or state government will be excluded
  - PMI that meets certain government standard, will be excluded from points and fees
  - PMI paid by consumer – after consummation of loan – will be excluded
- Points and Fees – New Definition- now includes:
  - All compensation, directly or indirectly paid by a consumer or creditor to a MO, including those in a table funded transaction
  - Premiums/other charges paid at or before closing for credit ins and debt cancellation or suspension contracts
  - Max prepayment fees and penalties that can be charged and collected
- Prepayment fees or penalties consumer may incur if loan refinances a previous loan made or currently held by the same creditor or affiliate.
  - Calculation of points and fees for open-end consumer credit plans and is calculated by adding points and fees at or before closing

Bona Fide Loan Discount Points

- Excluded from points and fees, (only one may be excluded)
  - 2 discount points paid by consumer if interest rate does not exceed the APOR by more than 1%
  - 1 discount point paid by consumer if interest rate does not exceed APOR by more than 2%
  - Discount points must be knowingly paid, result in a reduction of interest rate and consistent with secondary market norms and practices

Amendments to Existing Requirements for Certain Mortgages

- Repeals prepayment penalty
  - No penalty on high-cost mortgages under any circumstances
- High-cost mortgages cannot contain a balloon payment
- Creditor cannot recommend or encourage a default on loan refinanced by high-cost mortgage
- Late Fees
  - Restrictions on High-Cost Mortgages
    - Maximum late fee of 4% of amount past due, unless loan docs specify otherwise
    - 15 day grace period
    - One late fee may be charged per each late payment
    - No stacking of late fees
    - If borrower fails to make a payment but resumes making regular payments without paying all past due installments, a separate late charge may be impose until default is cured
  - Acceleration of debt limited to:
    - Loan accelerated due to default in payment
    - Exercise due-on-sale clause
    - Violation of other provision in loan document
  - Restrictions for Financing Points and Fees
    - Prepayment fees, points or other fees may not be financed by a high cost mortgage

- Prohibition on Evasions
  - Restricts evasive structuring of transaction
    - Cannot structure a loan as an open-end transaction or divide transaction into separate parts to avoid guidelines of this title
- Modifications or deferral fees
- No charges to consumer will be allowed for
  - Modification fee
  - Renewal fee
  - Extension fee
  - Amendment fee
  - Deferral fee
- Payoff Statements
  - No charge for payoff statements
    - Reasonable transaction fee may be charged
    - Although fee may be charged for 5th and subsequent requests in a calendar year
  - Creditor or servicer will disclose that payoff balances are free, unless courier or fax charges were incurred
  - Delivered within 5 business days after receipt of request
- Pre-Loan Counseling
  - Consumer must attend HUD approved counseling
  - Counselor must not be employed or affiliated with the creditor
  - Consumer must receive statements, prior to counseling, required by RESPA
- Corrections and Unintentional Violations
  - Failure to comply with requirements when acting in good faith, will not be in violation if restitution is made within 30 - 60 days

Regulation X and Z
These rules apply for High Cost Mortgages

Regulation X-12 CFR §§ 1024.20 and Regulation Z - 12 CFR 1026.31, 1026.34, 1026.36

Types of loans under HOEPA coverage.

The following types of mortgages may be subject to HOEPA coverage. These types of mortgages are mostly secured by a consumer's principal dwelling:

- Purchase-money mortgages
- Refinances
- Closed-end home-equity loans
- Open-end credit plans
  - Home equity lines of credit - HELOC

The following loans are exempt:

- Reverse mortgages
- Construction of a dwelling
- Originated and financed by Housing Finance Agencies
- Originated through the U.S. Dept of Agriculture's Rural Housing- USDA Section 502, Direct Loan Program

The following higher priced loans will be covered by HOEPA:

- APR exceeds APOR by 6.5% for first lien mortgages, or 8.5%for a first lien mortgage if the dwelling is personal property and the transaction is under $50,000
- The APR exceeds the applicable APOR by more than 8.5% for subordinate and junior liens
- Points and fees exceed 5% of the total transaction amount or, for loans less than $20,000, the lesser 8% of transaction amount or $1,000 (adjusted annually for inflation)
- The creditor is permitted to charge or collect a prepayment penalty more than 36 months after closing or permit such fees or penalties to exceed, in the aggregate, more than 2% of the amount prepaid

Restrictions on Loan Terms for HOEPA Covered Loans

- Balloon payments
  - except for those that account for seasonal or irregular borrower income, short-term bridge loans, made by specialized and approved creditors that may operate in rural or underserved areas
- Prepayment penalties and financing points and fees
- Late fees are restricted to 4% of past due payment
- Prohibit lenders from charging for payoff statements
- Loan modification fees
- Creditors originating HELOCs must assess the consumers' ability to repay
- Creditors and mortgage brokers are restricted from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage

The following are the new Home Ownership Counseling Requirements for HOEPA loans:

- Lenders must provide a list of homeownership counseling organizations to consumers within three business days after they apply for a mortgage loan

- Lender must obtain a list from a website that will be developed by the Bureau or data that will be made available by the Bureau and HUD
- Creditors must obtain confirmation a first time buyer has received homeownership counseling from a federally certified or approved homeownership counselor or organization before making a loan that has any negative amortization features

ESCROW REQUIREMENTS – REGULATION Z §1026.35

Currently the minimum escrow duration is one year. Escrow changes will extend the required duration of a mortgage loan escrow account to five years. Although rural and underserved areas will be exempt from these changes if they meet certain other criteria.

ESCROW REQUIREMENTS – Mortgage Reform and Anti-Predatory Lending Act (Subtitle D, Sec. 1441, all)

Office of Housing Counseling
- Established by HUD
- Director will be head of office, appointed by Secretary
    - Functions include
        - Activities and matters relating to homeownership counseling and rental housing
        - Research, grant administration, public outreach and policy development
        - Establish, coordinate and administration of all regulations, requirements standards & performance measures that relate to counseling for
        - Housing, homeownership, mortgage-related and rental housing
- Specific Functions of Director
    - Carrying out any functions regarding lending practices in areas of :
        - Abuse
        - Deception
        - Unscrupulous behavior
    - Advisory committee will collaborate with community based organizations with expertise in housing counseling
    - Provide building for housing counseling services
        - Including underdeveloped areas lacking basic water and sewer systems, electricity services and safe, sanitary housing
- Advisory Committee
    - Secretary to appoint
    - Committee will advise regarding functions of Director
    - Committee consists of not more than 12 individuals
    - Membership Committee will equally represent the mortgage and real estate industry
    - Will serve a term of 3 years
    - May be reappointed
    - Discretion of Secretary
    - Serve without pay
    - Will receive travel expenses
    - Will have no role in the reviewing or awarding of housing counseling grants
- Director will ensure
    - Homeownership counseling addresses the entire process of homeownership
        - Including decision to purchase a home, the selection & purchase of a home, issues arising during or affecting the period of ownership
        - This includes refinancing, default & foreclosure

LESSON SUMMARY

Dodd Frank Act
- Enacted to address the many issues and weaknesses believed to have caused the financial crisis of 2008.
- Proposed on Dec 2, 2010 by Congressman Barney Frank and Senator Chris Dodd.
- Dodd-Frank was signed into law on July 21, 2010, by President Barack Obama.

Dodd Frank was enacted to:
- Create new agencies
- Merge/remove some agencies
- Effort is to streamline the regulatory process
- Increase oversight to those institutions who may pose a risk
- Amend the Federal Reserve Act

Title IX - To handle provisions for risk retention and qualified residential mortgages.

Title X - To establish the Bureau of Consumer Financial Protection (CFPB) along with their responsibilities.

Title XIV- Mortgage Reform and Anti Predatory Lending Act; it includes, but is not limited to, specifics regarding originator compensation and qualified mortgage provisions.

Agencies Created by Dodd-Frank
- Financial Stability Oversight Council - FSOC (Sec. 111)
- Office of Financial Research - OFR (Sec. 152)
- Bureau of Consumer Financial Protection - CFPB (Sec. 1011)
- Office of National Insurance (Sec. 502)
- Office of Credit Rating Agencies - CRA (Sec. 932)

Financial Stability Oversight Council - FSOC
- Responsible for identifying and responding to risks in financial system. The council is made up of:
  - 10 federal financial regulators
  - 1 independent member
  - 5 nonvoting members
- Chaired by Treasury Secretary and includes all financial regulators, including the Federal Reserve Board, SEC, CFTC, OCC, FDIC, FHFA, and the NCUA.

The Office of Financial Research
- Has authority to collect data to support the FSOC
- Regulates how parties are identified
- Implement policy for identifying parties

Office of Credit Rating Agencies
- Administers SEC rules
- Conduct annual exams
- Issue public report summarizing: Findings of exam, Deficiencies, Discover if previous recommendations have been resolved
- Must maintain a documented, effective system of internal controls

Credit Rating Agencies
- Considers credit rating agencies are matters of national public interest
- Provides public oversight and accountability
- Subject to the same standards of liability and oversight as auditors, analysts, and investment bankers
- Monitors activities regarding financial product ratings
- Increase accountability on the part of credit rating agencies when rating structured financial products

Office of Credit Rating Agencies
- Enhanced Regulation, Accountability, and Transparency of Nationally Recognized Statistical Rating Organizations
- CRA's must have an effective internal control structure in determining credit ratings
- CRA's must provide annual controls report containing:
  - Responsibilities of management to establish and maintain an effective internal control structure
  - Assessment of the effectiveness of this structure
  - Attestation of the CEO of the CRA

Title X - CFPB
- Establishes an independent bureau within the Federal Reserve System.
  - Regulates the offering and provision of consumer financial product or services
  - Considered an Executive agency
  - Ensures markets are fair, transparent and competitive
- Regulates consumer financial products and services
- Consolidate consumer protection responsibilities managed by the Federal Reserve, OCC, OTS FDIC, NCUA, FTC and HUD
- Has operational and policymaking independence
- One office in charge of consumer protection
- Toll-free number for consumer complaints/concerns
- U.S. Dept. of Treasury
  - CFPB is an independent bureau within the Federal Reserve

Title X -Functions of the CFPB
- Implement & enforce Federal consumer financial laws
- Reviewing business practices for compliance
- Monitoring the marketplace and take appropriate action to protect consumers
- Establishing a toll-free consumer hotline and website for complaints and questions

Title X – Office of Fair Lending and Equal Opportunity
- Established by the Director and has the power to:
  - Provide oversight and enforcement of Federal laws ensuring fair, equitable and nondiscriminatory access to credit (Including ECOA and HMDA)
  - Coordinate fair lending efforts with other Federal agencies and State regulators
  - Promote fair lending compliance and education
  - Provide annual reports to Congress

Title X – Office of Financial Education

- Responsible for developing and implementing initiatives to educate and empower consumers
    - Improve financial literacy of consumers through:
    - Financial counseling
    - Assistance with understanding and the evaluation of credit histories and scores
    - Services at financial institutions
    - Savings, borrowing, etc.
- Prepare consumer for educational expenses, submission of aid applications
- Reduce debt
- Help consumers to develop long-term savings plan
- Wealth building and financial services during prep process
- To claim earned income tax credits
- Federal benefits

Title X – Office of Financial Education for Older Americans

- Design activities to facilitate the financial literacy of those 62 years and older:
- Protection from unfair, deceptive and abusive practices
- Current and future financial choices
- The office shall:
    - Help seniors recognize warning signs of immoral practices
    - Provide one-on-one financial counseling
    - Monitor certifications/designations of financial advisors
    - Submit to Congress and the Commission recommendations for best practices for:
        - Distributing information regarding legitimacy of certification of financial advisors
        - Methods for seniors to identify a financial advisor appropriate for their needs
        - Methods to verify a financial advisor's credentials
    - Conduct research for seniors focusing on protecting themselves from unfair, deceptive and abusive practices, and developing long-term savings
- The office shall also:
    - Coordinate consumer protection efforts with other Federal agencies and State regulators to Promote consistent, effective and efficient enforcement
    - Work with community organizations, non-profits, and other entities involved with educating and assisting seniors

Title X – Reverse Mortgage Study and Regulations

- Bureau will conduct study on reverse mortgages to determine:
    - If conditions or limitations are needed to protect borrowers when borrowing to fund investments, annuities & other investments
    - Identify unfair, deceptive or abusive practices

Title X – Combined Mortgage Disclosures

- Combine TILA and RESPA disclosures
- Propose for public comment
- A single integrated model disclosure
- No deadline mandated for new form
- Bureau anticipates final rules published in 2014

Title XIV - Mortgage Reform and Anti-Predatory Lending Act

- Definition of a Mortgage Originator
    - Person who for direct or indirect compensation
    - Takes a residential loan application
    - Assists a consumer in obtaining/applying for loan
    - Offers or negotiates terms of residential mortgage loan
    - Represents to the public through advertising using business cards, stationary, brochures, sign, etc.

Definition-Residential Mortgage Loan

- Does not include open-end plans and some timeshares

Title XIV - Mortgage Reform and Anti-Predatory Lending Act

- Duty of Care
    - When required-registered and licensed
    - Originators required to include unique identifier on loan docs
    - Provided by the Nationwide Registry
    - Depository institutions will establish and maintain
    - Procedures to monitor compliance
- Mortgage originator cannot receive from any person, varying compensation based on loan terms, other than principal loan amount

Prohibition on Steering Incentives

- Mortgage originator may receive origination fee if mortgage originator does not receive any compensation directly from consumer

- Consumer does not make an upfront payment of disc. or orig. points or fees
- Bona fide 3rd party charges are allowed
- Exceptions:
    - Can receive based on loan amount if not receiving compensation or upfront payments from consumer
    - Person, other than consumer, from paying or receiving origination fee if
        - Originator does not receive compensation from consumer
        - Consumer does not pay discount / origination points or fees
- Compensation Summary
    - Prohibits yield spread premiums
    - Mortgage originator cannot receive compensation based on loan terms
        - Except for the principal loan amount
- If mortgage originator receives compensation directly from consumer
    - May not also receive compensation from lender or any other person – except bona fide 3rd party
- Exceptions:
    - May receive compensation from creditor if
    - They do not receive compensation directly from the consumer, and
    - Consumer does not make any upfront payment for discount / origination points or fees
        - Except for bona fide 3rd party charges
- Prohibits mortgage originators from steering consumer to a mortgage loan that:
    - Consumer lacks ability to repay
    - Has predatory characteristics
    - Steering consumer from a loan they qualify for
    - Abusive or unfair lending practices
- Prohibits mortgage originators from
    - Mischaracterizing credit history of consumer
    - Mischaracterizing appraised value
    - Discouraging a consumer from seeking loan from another originator

Violations

- Violations to this section
    - Amends TILA under Section 129B
    - Maximum liability of a mortgage originator for violation to a consumer
        - Shall not exceed the greater of actual damages, or
        - An amount equal to 3 times the total amount of direct and indirect compensation, plus costs to the consumer, including attorney fees

Rules of Construction

- Provisions should not be construed as
    - Permitting YSP or similar compensation that permit total amount of compensation to originator to vary based on loan terms, other than principal
    - No restrictions on consumer to finance origination fees or costs
    - Incentive payments to MOs based on # of loans originated within a certain time frame are also allowed

Subtitle B–Minimum Standards for Mortgages – Ability to repay

- Amends Chapter 2 of TILA
- Creditor must make reasonable and good faith determinations for residential mortgage loans
    - Based on verified and documented info
    - Consumer has the ability to repay the loan

Multiple loans

- If creditor knows one or more residential mortgage loans – secured by same dwelling
    - Make a good faith determination consumer has ability to repay combined payments

Basis for Determination

- Credit history
- Current income
- Expected income
- Current obligations
- Debt-to-income ratio
- Employment status

Income verification

- Verify income and/or assets including expected income or assets
- Review W-2, tax returns, payroll receipts, financial institution records and other 3rd party docs

Exemptions

- Loans made, guaranteed, or insured by Federal Depts.
    - May exempt streamlined refinance's from income verification if
        - Consumer is not 30 days + past due
        - Refinance does not increase principal balance
        - Points and fees, do not exceed 3% of new loan
        - Lowers current interest rate – unless ARM to Fixed
    - Refi subject to a fully amortizing payment schedule
    - Terms of refinance do not result in a balloon payment

Non-standard loans

- Loans made, guaranteed, or insured by Federal Depts:
    - Variable rate loans that defer payment of principal or interest
        - Creditor to use fully amortizing repayment schedule
    - Interest-only loans
    - Use payment amount required to amortize the loan by final maturity

Calculation for Negative Amortization

- Loans made, guaranteed, or insured by Federal Depts:
- Consider balance increase accruing from negative amortization
- Calculation assumes
    - Loan proceeds are fully disbursed on consummation date
    - Loan is repaid in equal monthly amortizing payments

Refinance of Hybrid Loans

- In the case of refinance from Hybrid to Standard loan creditor may:
    - Consider mortgagor's good standing on current mortgage
    - Consider if the extension would prevent default
    - Offer rate discounts and favorable terms

Fully-Indexed Rate Defined

- Index rate at the time loan is made plus the margin after intro rate expires

Reverse Mortgages and Bridge Loans

- Does not apply to loans with terms of 12 months or less, including a loan to purchase new dwelling and sell a different dwelling within 12 months

Seasonal income

- Underwriter may consider the seasonality and irregularity

Safe Harbor & Rebuttable Presumption

- Definition of Qualified Mortgage
    - No negative amortization on these mortgages
    - Repayment of principal cannot be deferred
        - Exceptions made for specific balloon loans, although a scheduled balloon payment cannot be twice as large as previous payment
    - Fixed rate loan – underwriting must include fully amortizing payment, over term, along with taxes, insurance and assessments
    - ARMs underwriting with max rate permitted during first 5 years, along with a payment schedule showing a fully amortized loan over the term
    - Consideration is also given to taxes, insurance and assessments
    - Loan is in compliance with Board regulations relating to debt-to-income ratios or residual income
    - Loans total points and fees may not exceed 3% of the total loan amount
    - Loan term does not exceed 30 years
    - Exception – may be extended by the Board - As in high cost areas
    - Reverse mortgages that meet the standards for a qualified mortgage

Prepayment penalties

- Prohibited on non-qualified mortgages
- Qualified mortgage with a fixed rate – meets additional rate and other restrictions
    - Limited prepayment penalties for 3 years
    - Phased out – 3%, 2%, 1% of outstanding balance
        - Must offer consumer loans with/without penalty

Arbitration

- Arbitration not allowed for open end loan secured by principal dwelling
- May arbitrate after argument arises
- Will not bar consumer from bringing action

Negative Amortization Loans

- Other than reverse mortgages
- If negative amortization will occur, creditor provides statement that
    - Pending transaction may result in negative amortization
    - Describes the negative amortization
- Disclose that negative amortization
    - Increases the outstanding principal balance
    - Reduces the consumers equity in the dwelling
- First-time borrower must receive homeownership counseling

Protection Against Loss of Anti-Deficiency Protection

- Anti-deficiency law means – law of any State that provides in the event of foreclosure, consumer is not liable for any deficiency between sales price and outstanding balance.
- Notice from creditor to consumer with terms of anti-deficiency law showing the protection it provides and the importance of law
- Includes refinancing

Policy Regarding Acceptance of Partial Payment

- Creditor to disclose policy on acceptance of partial payments
- How payments are applied
- If such payments are placed in escrow

Rule of Construction

- Makes clear no provisions to the TILA noted in this law shall be construed as superseding, repealing or affecting any duty or remedy of any person under provisions of the TILA or stipulations of Federal or State law.

Required Disclosures

- ARMs with Escrows
    - If loan has an escrow account, Reg Z must disclose:
        - Monthly payments with and without escrows
        - Fully indexed monthly payment with and without escrows
- Settlement charges
    - Must disclose:
        - Aggregate amount of settlement charges
        - Charges included in the loan
        - Charges paid at closing by consumer
        - Approximate amount of wholesale rate of funds
        - Aggregate amount of other fees
        - Aggregate amount of fees paid to the mortgage originator, paid by consumer or paid by creditor to mortgage originator
- Interest paid as a Percentage of Principal
    - Must disclose total interest paid by consumer over life of loan as a percentage of the principal loan amount.
    - Assuming all payments are made for the amount due and paid on time

Disclosures Required in Monthly Statement

- Interest paid as a Percentage of Principal
    - Transmit statement for each billing cycle detailing
        - Principal loan amount
        - Current interest rate
        - Next adjustment date
        - Prepayment fee
- Describe late fees, if any
- Contact information for information regarding mortgage
- Contact information of counseling agencies programs (Board will develop form)

Shall not apply to fixed rate mortgages that supply coupon books with similar info

HOEPA High-Cost Mortgages

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- High-cost mortgages cannot contain balloon payment
- Creditor cannot recommend or encourage a default on loan refinanced by high-cost mortgage

Amendments to Existing Requirements for Certain Mortgages - LATE FEES

- Restrictions on High-Cost Mortgages
    - Maximum late fee of 4% of amount past due, unless loan docs specify otherwise
    - 15 day grace period
    - One late fee may be charged per each late payment
    - No stacking of late fees
    - If borrower fails to make a payment but resumes making regular payments without paying all past due installments, a separate late charge may be impose until default is cured
- Acceleration of debt limited to:
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    - Home equity lines of credit – HELOC

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Escrow Requirements – Regulation Z

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  - Research, grant administration, public outreach and policy development
- Establish, coordinate and administration of all regulations, requirements standards & performance measures that relate to counseling for housing, homeownership, mortgage-related and rental housing
- Specific Functions of Director
  - Carrying out any functions regarding lending practices in areas of :
    - Abuse
    - Deception
    - Unscrupulous behavior
  - Advisory committee will collaborate with community based organizations with expertise in housing counseling
  - Provide building for housing counseling services
    - Including underdeveloped areas lacking basic water and sewer systems, electricity services and safe, sanitary housing
- Advisory committee
  - Secretary to appoint
  - Committee will advise regarding functions of Director
  - Committee consists of not more than 12 individuals
  - Membership Committee will equally represent the mortgage and real estate industry
  - Will serve a term of 3 years
  - May be reappointed
  - Discretion of Secretary
  - Serve without pay
  - Will receive travel expenses
  - Will have no role in the reviewing or awarding of housing counseling grants
- Director will ensure
  - Homeownership counseling addresses the entire process of homeownership
    - Including decision to purchase a home, the selection & purchase of a home, issues arising during or affecting the period of ownership
    - This includes refinancing, default & foreclosure