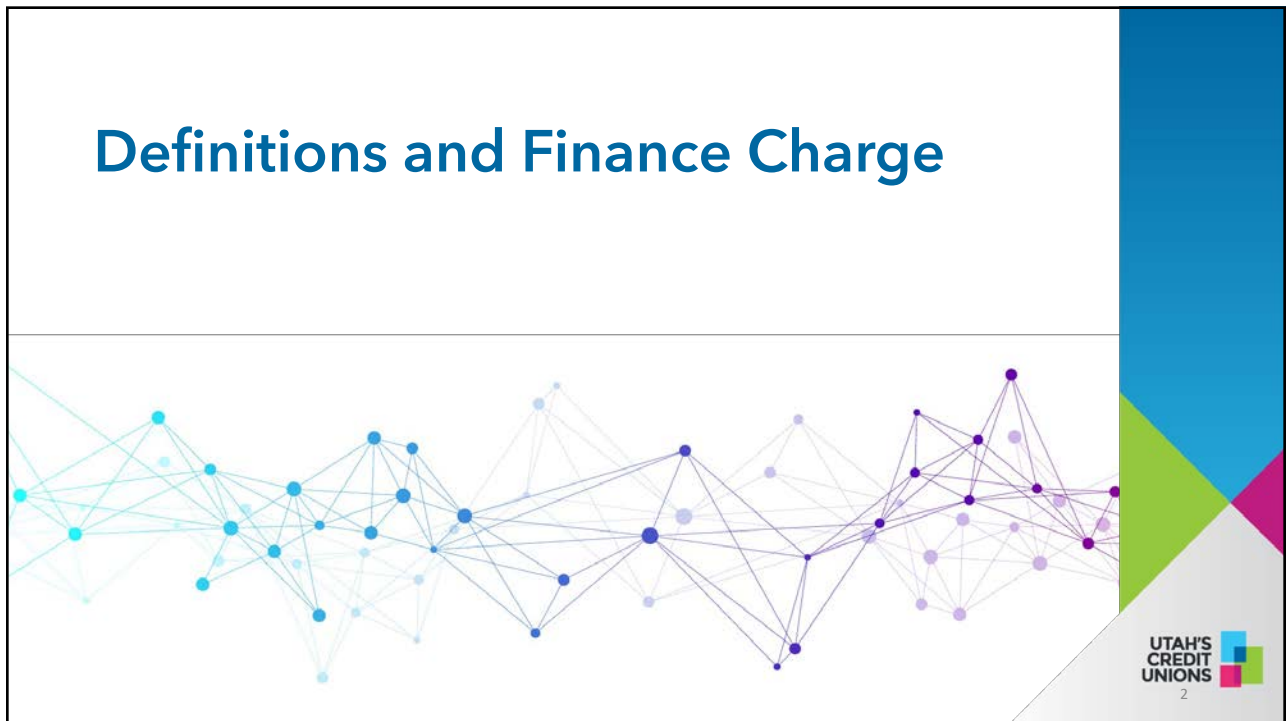




1



2

# Business Day

<b>Definition 1</b> ①	A day on which the creditor's offices are open to the public for carrying out substantially all of its business functions.	Applies to: <ul style="list-style-type: none"> <li>• Providing the LE after application (3 days)</li> <li>• Providing a revised LE after a change in circumstances (3 days)</li> <li>• Expiration of the LE after delivery (10 days)</li> </ul>
<b>Definition 2</b> ②	All calendar days except Sundays and the legal public holidays.	Applies to: <ul style="list-style-type: none"> <li>• Delivery of the LE prior to closing (7 days)</li> <li>• Delivery of revised LE prior to closing (4 days)</li> <li>• Providing the CD prior to closing (3 days)</li> <li>• To ensure receipt of the CD after mailing (3 days)</li> <li>• Providing the Escrow Closing notice prior to cancellation of the escrow account (3 days or 30 days)</li> <li>• To ensure receipt of the Escrow closing notice after mailing (3 days)</li> <li>• Rescission waiting period (3 days)</li> </ul>

3

# Application

An application that triggers the obligation to provide a loan estimate consists of the submission of the following six pieces of information:

1. The consumer's name
2. The consumer's income
3. The consumer's social security number to obtain a credit report
4. The property address
5. An estimate of the value of the property
6. The mortgage loan amount sought.

4

## Finance Charge

The cost of consumer credit as a dollar amount:

- Includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.
- Does not include any charge of a type payable in a comparable cash transaction.

5

## Prepaid Finance Charge

Any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

6

## Third Party Charges

The finance charge includes fees and amounts charged by someone other than the creditor, (with some exceptions), if the creditor:

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

7

## Closing Agents Charges

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

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

8

# Mortgage Broker Fees

Fees charged by a mortgage broker are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

9

# Examples of Finance Charges

- Interest
- Service, transaction and activity charges
- Points, loan fees, assumption fees, finder's fees, and similar charges
- Discounts for inducing payment by means other than credit
- Appraisal, investigation, and credit report fees (exceptions apply)
- Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss
- Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges
- Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction (exceptions apply)
- Premiums or other charges for insurance against loss of or damage to property written in connection with a credit transaction (exceptions apply)
- Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction (exceptions apply)

10

## Exclusions

Charges excluded from the finance charge include:

- Application fees charged to all applicants for credit, whether or not credit is actually extended.
- Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.
- Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis.
- **Seller's points (or any other seller paid fees).**

11

## Real-Estate Related Fees

The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

- Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.
- Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.
- Notary and credit-report fees.
- **Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing,** including fees related to pest-infestation or flood-hazard determinations.
- Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

12

## Property Insurance Premiums

Premiums for insurance against loss of or damage to property may be excluded from the finance charge if the following conditions are met:

- The insurance coverage may be obtained from a person of the consumer's choice and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)
- If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage must be disclosed.

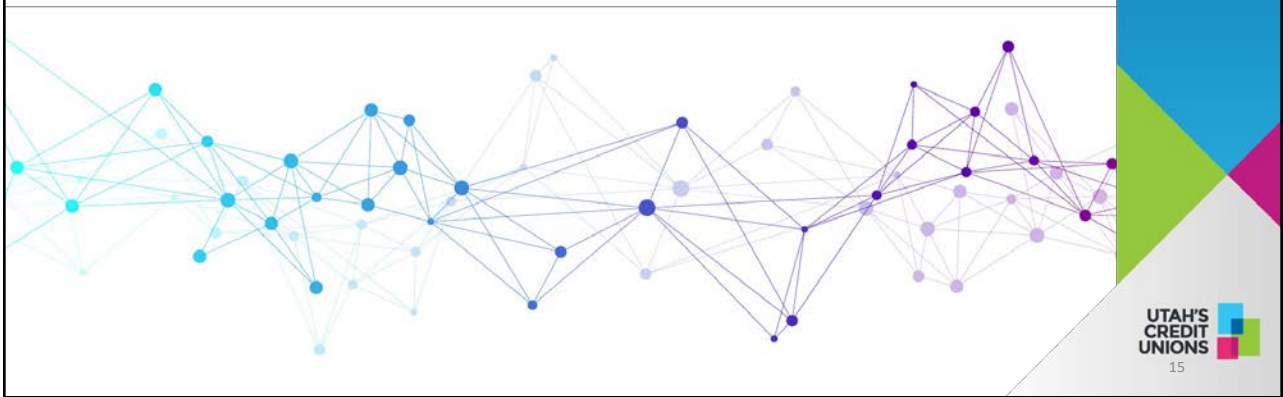
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## Security Interest Charges

If itemized and disclosed, taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest may be excluded from the finance charge.

14

# High Cost Mortgages



15

# APOR

<https://ffiec.cfpb.gov/tools/rate-spread>

DATE	10	15	20	30
7/15/24	6.43	6.29	6.51	6.9
7/22/24	6.41	6.16	6.4	6.76
7/29/24	6.41	6.23	6.38	6.8
8/5/24	6.34	6.07	6.36	6.69
8/12/24	6.25	5.76	6.11	6.43
8/19/24	6.2	5.84	6.04	6.45

16



## Summary

When you originate a high-cost mortgage, you must:

- Give additional disclosures
- Avoid certain loan terms
- Ensure the consumer receives additional protections, including homeownership counseling

17

## Coverage

Applies to consumer credit transactions secured by a consumer's principal dwelling, including:

- Purchase-money mortgages
- Refinances
- Closed-end home equity loans
- Open-end credit plans (i.e., HELOCs)

18

# Exempt Transactions

- Reverse mortgages
- Constructions loans

19

# Triggers

A loan can be a HCM if it exceeds certain allowable limits on APR, points and fees or pre-payment penalties.

## **APR Test**

A transaction is a high-cost mortgage if its APR (measured as of the date the interest rate for the transaction is set) exceeds the Average Prime Offer Rate (APOR) for a comparable transaction on that date by more than:

- 6.5 percentage points for first-lien transactions, generally
- 8.5 percentage points for first-lien transactions that are for less than \$50,000 and secured by personal property (e.g., RVs, houseboats, and manufactured homes titled as personal property)
- 8.5 percentage points for junior-lien transactions

20

# Triggers

## Points and Fees Test

See Points and Fees Handout

## Pre-Payment Penalty Test

A transaction is a high-cost mortgage if you charge a prepayment penalty:

- More than 36 months after consummation or account opening, or
- In an amount more than 2 percent of the amount prepaid

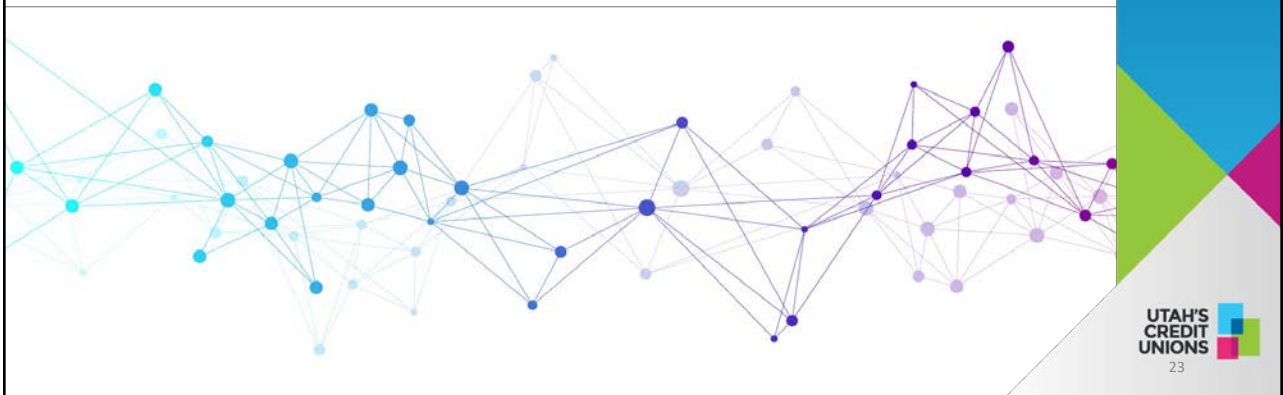
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# Rules for HCMs

- Pre-closing disclosure at least three days prior to consummation
- No balloon payments (in general)
- No pre-payment penalties
- No due on demand features
- No recommending default on an existing loan to be refinanced by a high-cost mortgage
- No charging fees to modify, defer, renew, extend or amend
- Late fees are restricted to 4 percent of the past due payment, and pyramiding of late fees is prohibited.
- No fees for generation of payoff
- No financing points and fees
- No structuring loans to avoid HOEPA coverage
- ATR for HELOCs
- Proof of Homeownership counseling

22

# High Cost Mortgages



23

## Definition

A higher-priced mortgage loan (HPML) is a closed-end consumer credit transaction secured by the consumer's principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set:

- By 1.5 or more percentage points for loans secured by a first lien (standard)
- By 2.5 or more percentage points for loans secured by a first lien (jumbo)
- By 3.5 or more percentage points for loans secured by a subordinate

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24

24

## Effects

- QMs will only have a “rebuttable presumption of compliance”
- Full appraisals required for non-QM loans, additional appraisal required for “flipping” transactions
- Restrictions on pre-payment penalties
- Escrow accounts for taxes and insurance are **REQUIRED** for the first five years on first lien loans (exceptions for certain small creditors operating in rural and underserved areas)

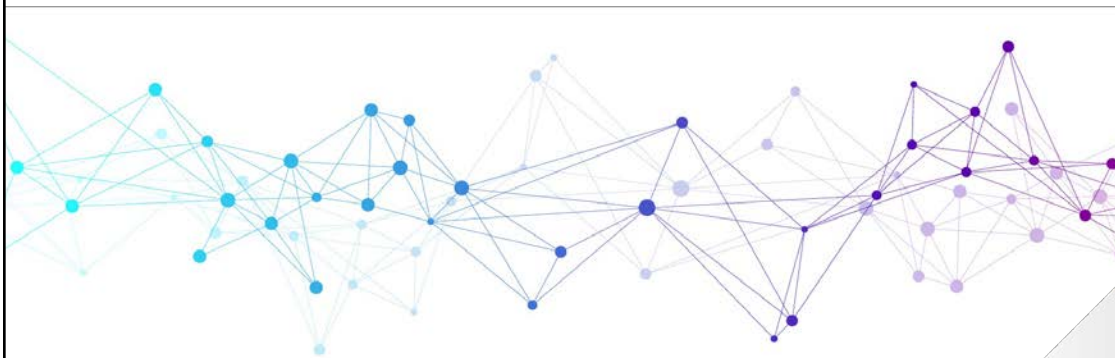
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## Operating in Rural and Underserved Areas

- A creditor operates in a rural or underserved area if the creditor originated at least one covered transaction secured by a first lien on a property located in an underserved or rural area during the preceding calendar year.
- For loans applications received between January 1 and April 1, the creditor operates in a rural or underserved area if the creditor originated at least one covered transaction on a property located in an underserved or rural area during the preceding two calendar years.
- Use the CFPB’s rural and underserved area tool to determine if a loan was made in a rural or underserved area:  
<http://www.consumerfinance.gov/rural-or-underserved-tool/>

26

## Rescission



27

## Applicable Transactions

The right of rescission (ROR) is applicable to any open-end credit plan or closed-end loan in which the credit union will retain or acquire a security interest (usually in the form of a mortgage) in a member's principal dwelling.

28

## Procedure

The ROR encompasses three distinct steps:

1. Provide rescission notice.
2. Delay performance (funding) during the ROR period (three business days).
3. After the rescission period expires, fund the loan or give the member access to the line of credit.

29

## Notice

- Each person who is entitled to rescind a transaction must receive notice of that right.
- The person who is entitled to rescind is the member whose principal residence is or will be subject to the security interest.
- Where a property is owned by more than one person, each owner must receive the notice.
- If the borrower is not the owner of the residence, and a non-borrower pledges his or her principal residence as collateral security for the line of credit, then notice must be given to the non-borrower.
- Each person entitled to rescind must get two copies of the notice.
- Model notices are available.

30

## Rescission Time Period

A member's right to rescind begins on the day of the occurrence that gave rise to the right (for example, when a credit plan is opened or a loan is consummated), and it expires at midnight on the third business day<sup>9</sup> after the later of:

- The occurrence
- Delivery of the notice(s) of right of rescission
- Delivery of all material disclosures (Final HELOC disclosure or Closing Disclosure)

31

## Member's Procedure for Rescission

- A member exercises his or her right of rescission by notifying the credit union of this decision in writing.
- Notification is deemed given when mailed or filed for telegraphic transmission.
- If another means for delivery is used, the notice is deemed given when delivered to the credit union's designated place of business.

32



## Credit Union's Procedure for Rescission

- When a member exercises his or her right within the three-business-day period, the credit union's security interest in the property automatically becomes void, and the member is not liable to the credit union for any amount, including any finance charge.
- The credit union must take back any money it has provided to anyone and take any steps necessary to reflect termination of the security interest.

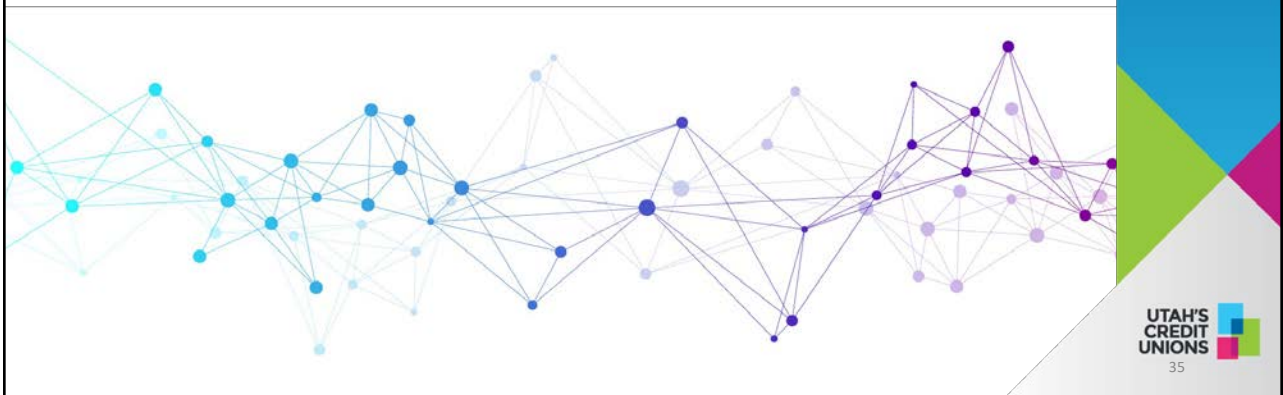
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## Waiver of the Right of Rescission

- Members are permitted to waive the right of rescission when there is a bona fide personal emergency.
- The member must provide a dated written statement, signed by everyone who has the right to rescind, describing the emergency and specifically waiving the right to rescind.
- This statement cannot be provided on a preprinted form.

34

## Early Variable Rate Disclosures



35

## Early Variable Rate Disclosures

Early Variable Rate Disclosures (Early ARM Disclosures) are required if the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year.

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36

36

## Timing

- Early ARM disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier.
- Disclosures may be delivered or placed in the mail not later than three business days following receipt of a consumer's application when the application reaches the creditor by telephone, or through an intermediary agent or broker.

37

## Electronic Disclosures

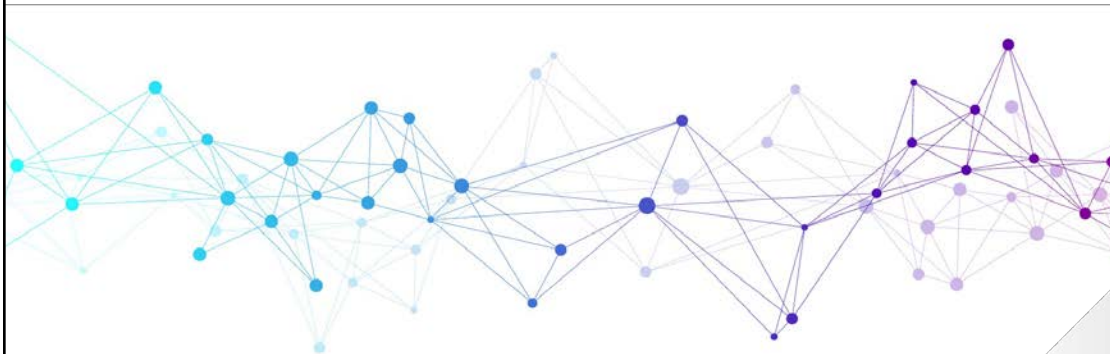
If an application that is accessed by the consumer in electronic form, provide the early ARM disclosure in electronic form on or with the application.

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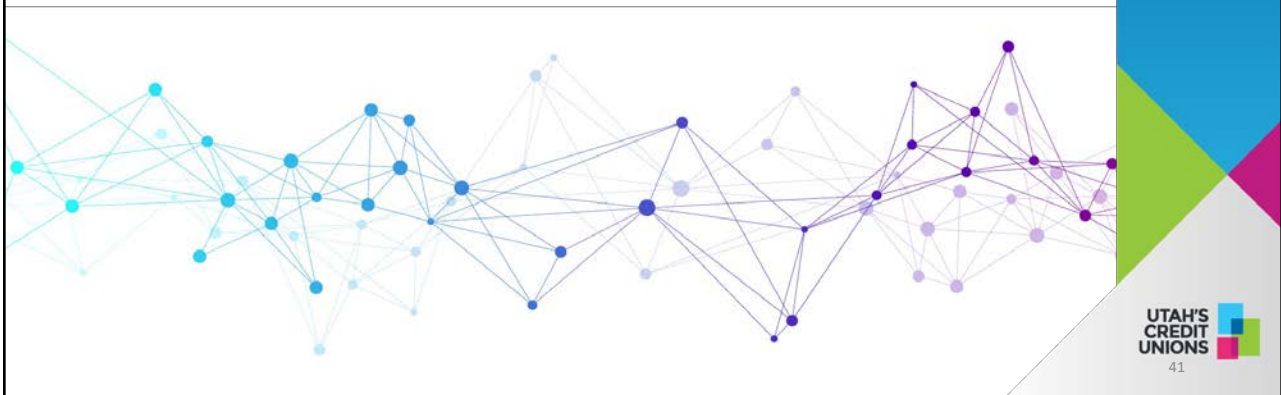
# Content of Disclosures

- CHARM Booklet
- Loan Program Disclosure

# TILA/RESPA Integrated Disclosures



# TILA/RESPA Integrated Disclosures



41

## History


- Early and account opening disclosures for closed-end consumer real estate loans changed significantly in October 2015.
- Disclosures required under the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) were combined into integrated disclosures.
- The new disclosures “live” in Reg Z
- The disclosures are called “TILA-RESPA Integrated Disclosures” or “TRID.”



42

# Comparison


<b>Old Disclosures</b>	<b>New Disclosures</b>
<ul style="list-style-type: none"> <li>• Early Disclosures:               <ul style="list-style-type: none"> <li>• Early TIL Statement (Reg Z)</li> <li>• Good Faith Estimate (RESPA)</li> </ul> </li> <li>• Final Disclosures               <ul style="list-style-type: none"> <li>• Final TIL Statement (Reg Z)</li> <li>• HUD-1 Settlement Statement (RESPA)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Early Disclosure               <ul style="list-style-type: none"> <li>• Loan Estimate</li> </ul> </li> <li>• Final Disclosure               <ul style="list-style-type: none"> <li>• Closing Disclosure</li> </ul> </li> </ul>



43

# Comparison

<b>Old Disclosures</b>	<b>New Disclosures</b>
<ul style="list-style-type: none"> <li>• TIL disclosures applied to all consumer purpose, closed end real estate loans</li> <li>• RESPA disclosures did not apply to lot loans some temporary financing (construction loans)</li> </ul>	<ul style="list-style-type: none"> <li>• The integrated disclosures apply to all closed end real estate secured loans, including lot loans and construction loans</li> </ul>



44

## Use of "old disclosures"

- RESPA only applies to "Federally Related Mortgage Loans" which are (basically):
  - Secured by real property
  - Made to lenders that are either regulated by or whose deposits or accounts are insured by any agency of the Federal Government.
- Loans subject to TRID (closed-end consumer credit transaction secured by real property, except reverse mortgages) are exempt from the Good Faith Estimate/HUD-1 disclosures under RESPA.
- If you make reverse mortgage transactions, you will provide the "old" RESPA good faith estimate and HUD-1

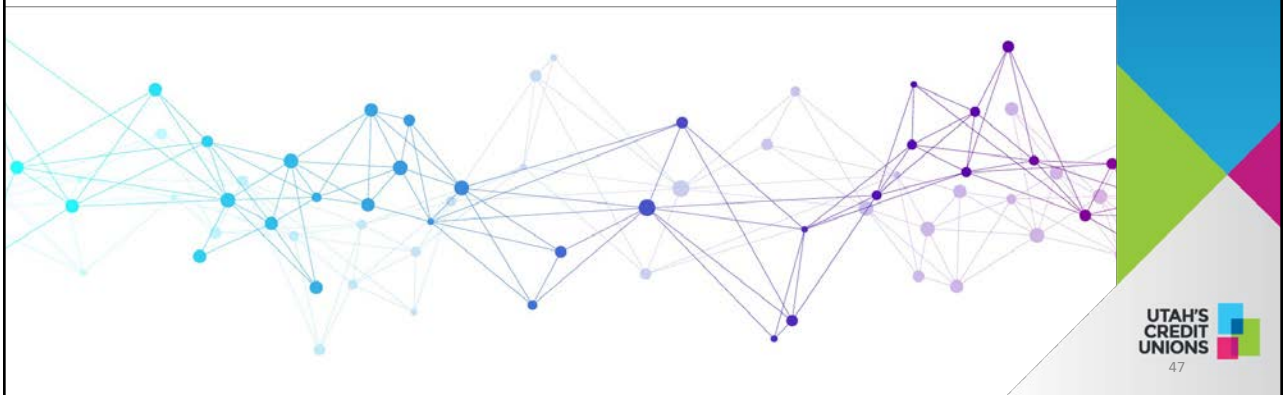
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## Use of "old disclosures"

- The old TILA disclosures are required "for a closed-end transaction secured by real property **or a dwelling**, other than transactions subject to TRID."
- If you make loans on RVs or mobile homes (without land) you will have loans where use of the "old" TILA mortgage disclosures
- Reverse mortgage transactions also require the "old" TILA mortgage disclosures including the early TIL disclosure

46

# Loan Estimate



47

# Coverage

The TILA-RESPA Integrated Disclosures must be used to disclose most closed-end consumer credit transactions secured by real property, including:

- First liens
- Subordinate liens
- Construction-permanent loans
- Construction-only loans
- Loans secured by vacant land

The rule does not apply to:

- HELOCs
- Reverse mortgages
- Mortgages secured by a mobile home or by a dwelling that is not attached to real property

48



## General Requirements

- The Loan Estimate must contain a good faith estimate of credit costs and transaction terms.
- Make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer.
- Use of the model form is required.

## Delivery

- Deliver or place in the mail no later than the third business day after receiving the consumer's application.
- Deliver or place in the mail no later than the seventh business day before consummation of the transaction.



# Counting

- Triggering Action occurs, next day is “day 1”
- Last counted day: Triggered action must occur on or is permitted to occur on the last day

EXAMPLE 1: Provide Loan Estimate	EXAMPLE 2: Earliest Close
Application received on Monday June 1: <ul style="list-style-type: none"> <li>• Tuesday June 2 is day 1</li> <li>• Wednesday June 3 is day 2</li> <li>• Thursday June 4 is day 3. LE must be delivered by end of day</li> </ul>	Loan Estimate is provided on Thursday, June 4: <ul style="list-style-type: none"> <li>• Friday June 5 is day 1</li> <li>• Saturday June 6 is day 2</li> <li>• Monday June 8 is day 3</li> <li>• Tuesday June 9 is day 4</li> <li>• Wednesday June 10 is day 5</li> <li>• Thursday June 11 is day 6</li> <li>• Friday June 12 is day 7 and the earliest day closing can occur</li> </ul>

51

# Waiver

The consumer may modify or waive the seven-business-day waiting period if the consumer has a bona-fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. The waiver must:

- Be written and dated
- Be prepared by the consumer (don't use pre-printed forms)
- Describe the emergency and specifically waive the waiting period
- Be signed by all consumers primarily liable on the legal obligation

*Example: The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency.*

52

## Permissible Fees Prior to Loan Estimate Delivery

- You may not impose any fee on a consumer in connection with the consumer's application for a mortgage transaction until the consumer has received the Loan Estimate and
- Has indicated intent to proceed with the transaction (except for a reasonable fee for obtaining a consumer's credit report)

53

## Intent to Proceed

- A consumer can indicate an intent to proceed with the transaction in any manner after the Loan Estimate has been delivered.
- The creditor can require a certain method.
- A consumer's silence is not indicative of intent to proceed.
- The creditor must document this communication to satisfy record retention requirements.

54

## Other Cost Estimates

Creditors are permitted to provide other types of cost estimates prior to providing the Loan Estimate. However, such cost estimates MUST:

- State “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan.”
- Must be in font size no smaller than 12-point font.
- May not have headings, content, and format substantially similar to the Loan Estimate or the Closing Disclosure.

55

## Accuracy Requirements

Whether or not a Loan Estimate was made in good faith is determined by calculating the difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer in the Closing Disclosure.

- Generally, if the charge paid by or imposed on the consumer exceeds the amount originally disclosed on the Loan Estimate it is not in good faith, regardless of whether the creditor later discovers a technical error, miscalculation, or underestimation of a charge.
- A Loan Estimate is considered to be in good faith if the creditor charges the consumer less than the amount disclosed on the Loan Estimate, without regard to any tolerance limitations.

56

# Tolerance Levels

Tolerance	Description	Subject Costs
100%	You are permitted to charge consumers more than the amount disclosed on the Loan Estimate without any tolerance limitation based on the best information reasonably available to the creditor at the time the disclosure was provided.	<ul style="list-style-type: none"> <li>• Prepaid interest</li> <li>• Property insurance premiums</li> <li>• Amounts placed into an escrow</li> <li>• Services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third-party service provider not on the creditor's written list of service providers.</li> <li>• Charges paid to third-party service providers for services not required by the creditor (for example, an HOA fees)</li> </ul>
10%	Charges for third-party services and recording fees paid by or imposed on the consumer are grouped together and subject to a 10% cumulative tolerance.	<ul style="list-style-type: none"> <li>• Recording fees</li> <li>• Charges for third-party services where:                             <ul style="list-style-type: none"> <li>○ The charge is not paid to the creditor or the creditor's affiliate</li> <li>○ The consumer is permitted by the creditor to shop for the third-party service, and the consumer selects a third-party service provider on the creditor's written list of service providers.</li> </ul> </li> </ul>
0%	Creditors are not permitted to charge consumers more than the amount disclosed on the Loan Estimate under any circumstances other than changed circumstances that permit a revised Loan Estimate	<ul style="list-style-type: none"> <li>• Fees paid to the creditor, mortgage broker, or an affiliate of either</li> <li>• Fees paid to an unaffiliated third party if the creditor did not permit the consumer to shop for a third party service provider for a settlement</li> <li>• Transfer taxes</li> </ul>



57

57

# Tolerance Levels

**\*\*Note:** The creditor should compare the sum of the charges actually paid by or imposed on the consumer with the sum of the estimated charges on the Loan Estimate that are actually performed. If a service is not performed, the estimate for that charge should be removed from the total amount of estimated charges.\*\*



58

58

## Shopping and the Written List of Providers

- If the consumer is permitted to shop for a settlement service, the creditor must provide the consumer with a written list of services for which the consumer can shop.
- This written list of providers is separate from the Loan Estimate, but must be provided within the same time frame.
- The list must:
  - Identify at least one available settlement service provider for each service; and
  - State that the consumer may choose a different provider of that service.
- You may also provide a list of providers those services for which the consumer is not permitted to shop, as long as those services are clearly and conspicuously distinguished
- A model form is available

59

## Exceeded Tolerance Thresholds

- If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, the creditor must refund the excess to the consumer no later than 60 calendar days after consummation.
- For charges subject to zero tolerance, any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer.
- For charges subject to a 10% cumulative tolerance, to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10%, the difference must be refunded to the consumer.

60

## Revisions and Corrections to the Loan Estimate



Creditors generally are bound by the Loan Estimate and may not issue revisions to Loan Estimates because they later discover technical errors, miscalculations, or underestimations of charges.

61

## Revisions and Corrections to the Loan Estimate

Creditors are permitted to provide to the consumer revised Loan Estimates only in certain specific circumstances:

- Changed circumstances cause estimated settlement charges to increase more than is permitted
- Changed circumstances affect the consumer's creditworthiness or the value of the property securing the loan and cause a consumer to be ineligible for an estimated charge previously disclosed to the consumer
- Revisions to the credit terms or the settlement are requested by the consumer
- The interest rate was not locked when the Loan Estimate was provided, and locking the rate causes the points or lender credits disclosed on the Loan Estimate to change
- The consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate was originally provided

62

## Revisions and Corrections to the Loan Estimate

A valid changed circumstance is:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction
- Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided
- New information specific to the consumer or transaction that the creditor did not rely on when providing the Loan Estimate.

63

## Revisions and Corrections to the Loan Estimate

Timing for revisions to the Loan Estimate:

- A creditor must deliver or place in the mail the revised Loan Estimate to the consumer no later than three business days<sup>1</sup> after receiving the information sufficient to establish a changed circumstance.
- The creditor may not provide a revised Loan Estimate on or after the date it provides the Closing Disclosure.
- The creditor must ensure that the consumer receives the revised Loan Estimate no later than four business days<sup>2</sup> prior to consummation (the “plus 3 business days<sup>2</sup>” rule applies when mailing)
- You can rely on evidence that the consumer received the revised Loan Estimate earlier

64



# Loan Estimate Content

- See handout

65

# Lender Credits

For purposes of the TRID Rule, lender credits include:

1. Payments, such as credits, rebates, and reimbursements, that a creditor provides to a consumer to offset closing costs the consumer will pay as part of the mortgage loan transaction; and
2. Premiums in the form of cash that a creditor provides to a consumer in exchange for specific acts, such as for accepting a specific interest rate, or as an incentive, such as to attract consumers away from competing creditors

66

## Lender Credits

For purposes of the TRID Rule, a lender credit can be either a specific lender credit or a non-specific (general) lender credit.

- A specific lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of a specific closing cost the consumer will pay.
- A general lender credit includes a credit, rebate, reimbursement, or similar payment from a creditor to the consumer that offsets all or part of the closing costs but without specifying the particular closing cost or costs that are being offset.

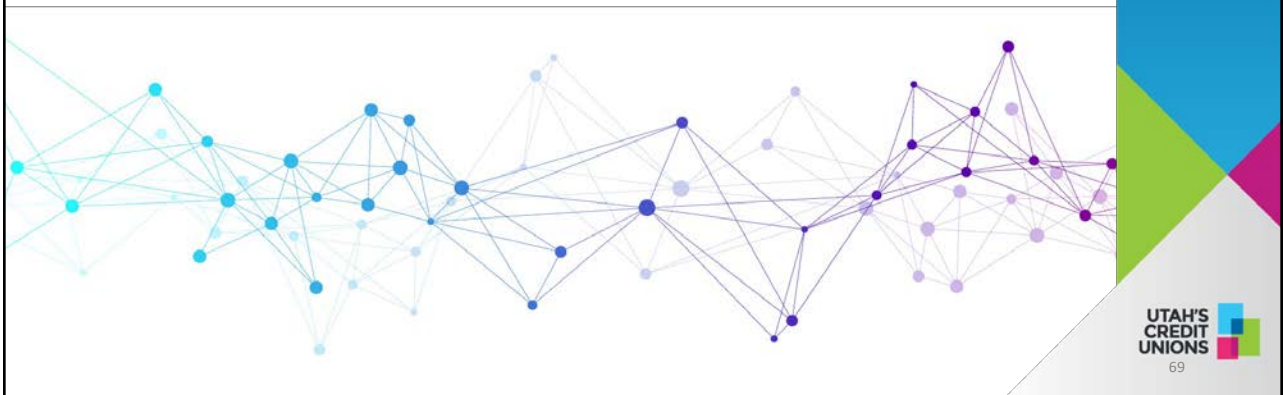
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## Lender Credits

- A creditor is NOT required to disclose a closing cost and a related lender credit on the loan estimate if the credit incurs a cost, but will not charge the consumer for that cost (creditor will “absorb” the cost)
- A creditor may disclose costs they will cover and disclose the related lender credit, but lender credits are a zero tolerance item, so be careful.
- “Absorbed” lender credits ARE required to be disclosed on the closing disclosure in the “Paid by Others” column.

68

## Closing Disclosure



69

## General Requirements

- The Closing Disclosure generally must contain the actual terms and costs of the transaction
- The Closing Disclosure must be in writing
- Use of the model form is required

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70

70

## Delivery

- The creditor is generally required to ensure that the consumer receives the Closing Disclosure no later than three business days<sup>⓪</sup> before consummation of the loan.
- If the closing disclosure is mailed or delivered electronically, the consumer is considered to have received the Closing Disclosure three business days<sup>⓪</sup> after it is delivered or placed in the mail.
- If you have evidence that the consumer received the Closing Disclosure earlier than three business days<sup>⓪</sup> after it is mailed or delivered, you may rely on that evidence and consider it to be received on that date.

71

## Waiver of Waiting Period

- A loan may not be consummated less than three business days<sup>⓪</sup> after the Closing Disclosure is received by the consumer. If a settlement is scheduled during the waiting period, the creditor generally must postpone settlement, unless a settlement within the waiting period is necessary to meet a bona fide personal financial emergency.
- The consumer may modify or waive the three-business-day<sup>⓪</sup> waiting period if the consumer has a bona-fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. The waiver must:
  - Be written and dated
  - Be prepared by the consumer (don't use pre-printed forms)
  - Describe the emergency and specifically waive the waiting period
  - Be signed by all consumers primarily liable on the legal obligation

72

## Use of Estimates

- You may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available at the time the disclosure is made.
- You must act in good faith and use due diligence in obtaining the information.
- Provide corrected disclosures containing the actual terms of the transaction at or before consummation.

73

## Revisions

- Creditors must redisclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate.
- There are three categories of changes that require a corrected Closing Disclosure containing all changed terms.

74

# Revisions

Changes before consummation that require a new 3 day waiting period	<ul style="list-style-type: none"> <li>The APR become inaccurate</li> <li>The loan product changes</li> <li>A pre-payment penalty is added</li> </ul>
Changes before consummation that do not require a new 3 day waiting period	Any other changes (consumer can request to see these changes 1 business day prior to consummation.)
Post-consummation changes within 30 days of settlement	Provide a corrected Closing Disclosure if an event in connection with the settlement causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed.

75

## Valid Change in Circumstance After the Closing Disclosure has Been Provided

- Typically, lenders can re-set closing cost tolerances in response to a valid change in circumstance by providing a revised Loan Estimate within three business days of the change.
- A revised loan estimate cannot be provided after the Closing Disclosure has been provided.
- If a valid change in circumstance occurs after the Closing Disclosure has been provided, but prior to closing, closing cost tolerances can be re-set by providing an updated Closing Disclosure to the borrower.
- Like providing a revised Loan Estimate, in order to use the Closing Disclosure to reset tolerances, the Closing Disclosure must be provided within three business days of receiving information sufficient to establish that a changed circumstance or another triggering event has occurred.

76

## Revising Clerical Errors and Refunding Tolerance Violations

Creditors also must provide a revised Closing Disclosure to correct non-numerical clerical errors and document refunds for tolerance violations no later than 60 calendar days after consummation.

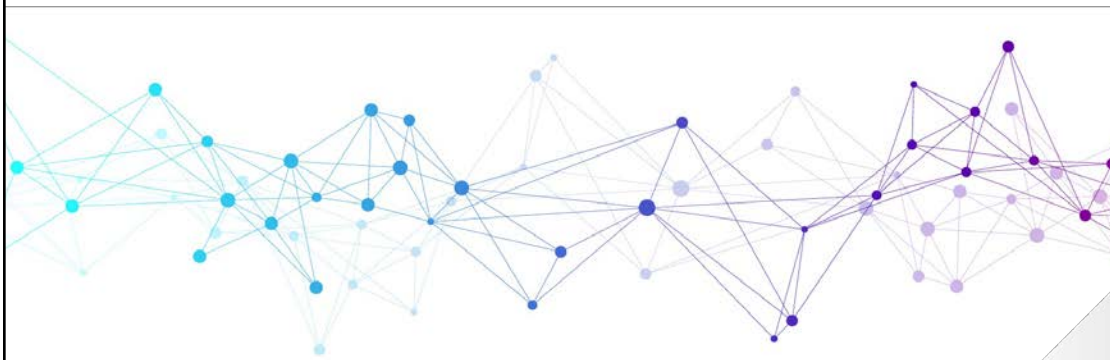
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## Rescindable Transactions

- In rescindable transactions, the Closing Disclosure must be given separately to each consumer who has the right to rescind.
- In transactions that are not rescindable, the Closing Disclosure may be provided to any consumer with primary liability on the obligation.

78

# Construction Loans



# Construction Loans

For construction loans, the timing for delivering or placing the Loan Estimate in the mail depends on when the creditor receives the application for the construction phase, the permanent phase, or both phases.





## Appendix D

- [Appendix D](#) to Regulation Z provides instruction for estimating construction loan interest.
- Appendix D pre-dates TRID by many years.
- Instructions for estimating interest on construction only loans and construction-permanent financing are included.

81

## Options for Disclosures

- A creditor may choose whether to disclose a construction-permanent loan as one transaction or as two separate transactions.
- If the creditor chooses to disclose the loan as one transaction, a single set of disclosures (Loan Estimate and Closing Disclosure) covers both phases of the transaction.
- If the creditor chooses to disclose the loan as two separate transactions, the construction phase has its own Loan Estimate and Closing Disclosure, while the permanent phase has its own Loan Estimate and Closing Disclosure.

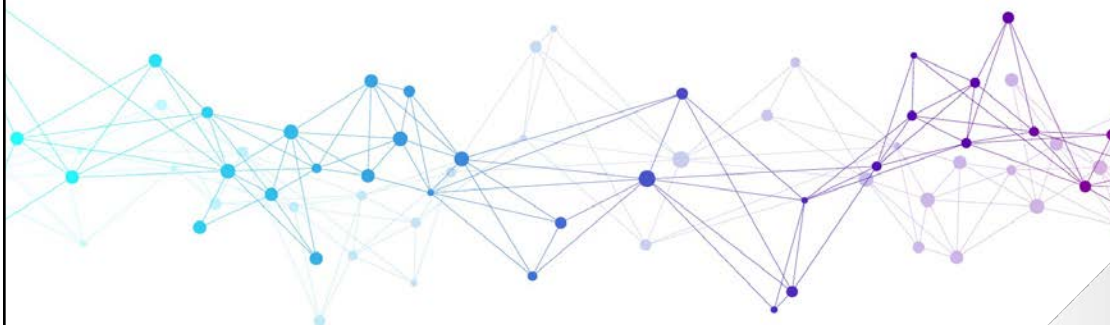
82

## Options for Disclosures

- A creditor can choose to disclose the construction-permanent loan as two separate transactions, but have only one promissory note/one closing.
- Similarly, the TILA-RESPA Rule permits a creditor to disclose a construction-permanent loan as a single transaction even if there are separate closings for the construction phase and permanent phase of the loan.

83

## Record Retention



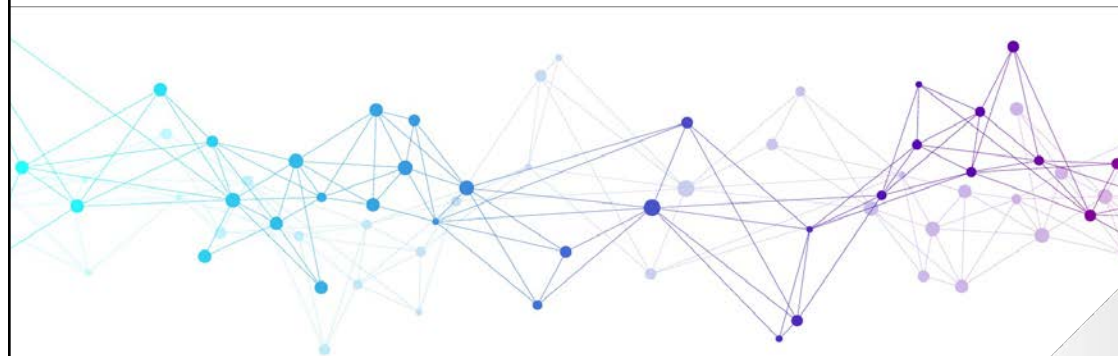
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## Record Retention

- The creditor must retain copies of the Closing Disclosure (and all documents related to the Closing Disclosure) for five years after consummation.
- For all other evidence of compliance with the Integrated Disclosure provisions of Regulation Z (including the Loan Estimate) creditors must maintain records for three years after consummation of the transaction.

85

## Ability to Repay



86

# Introduction



- Part of Reg Z, [12 CFR § 1026.43](#)
- Requires creditors to make a reasonable, good faith determination of a consumer's ability to repay a residential mortgage loan
- Compliance is Mandatory
- The way you comply is optional

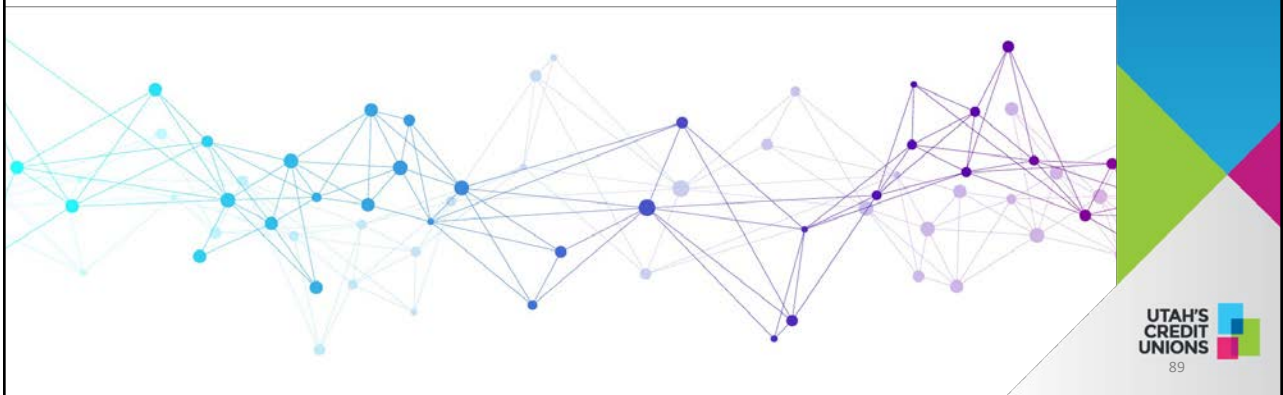
87

# Introduction

- Provides certain protections from liability for residential mortgage loans that meet certain "low risk" requirements ("qualified mortgages" or "QMs.")
- The rule also establishes different categories of QMs
- Applies to almost all closed-end consumer credit transactions secured by a dwelling. These are also known as "covered transactions." (Does not apply to HELOCs, construction loans or lot loans)

88

## Basic Ability to Repay Requirements



89

## Basic Ability to Repay Requirements

At a bare minimum, a creditor must consider the following on all covered transactions:

1. Current or reasonably expected income or assets
2. Current employment status (if relied upon)
3. Current debts, alimony and child-support obligations
4. Credit history
5. Monthly mortgage payment
6. Monthly payment on any simultaneous loans secured by the same property
7. Monthly payments for property taxes, required insurance, and other costs related to the property (HOA fees, lot rental)
8. Monthly DTI as a ratio of gross monthly income

90

## Verification Using Third Party Documents

All parts of the Debt to Income (D to I) ratio must be verified using third party sources.

- Oral verification of employment from employer OK as long as you make a written record
- Use credit reports to verify debts
- Verify alimony and child support through court orders
- Verify HOA fees from statements

91

## Income Verification

- Only verify income needed to qualify for the loan
- Verify self-employment income through tax returns or profit and loss statements prepared by a third party
- May verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, another record that provides reasonably reliable evidence of the consumer's income, or both.
- A creditor does not meet ATR requirements if it observes an inflow of funds into the consumer's account without confirming that the funds are income.
- For example, a creditor would not meet the ATR requirements where it observes an unidentified \$5,000 deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and not, for example, proceeds from the disbursement of a loan.

92

## Calculating the Debt to Income Ratio

Compare the borrower's income against:

- The loan you are underwriting
- Any simultaneous loans on the same property
- Mortgage-related obligations:
  - Property taxes
  - HOA fees
  - Levies and assessments
  - Ground rent
- Lease payments
- Current debt obligations, alimony and child support
- Other recurrent monthly debts

93

## Calculating the Debt to Income Ratio

Calculating the loan payment on ARMs:

- Use the greater of the fully indexed rate or the introductory rate (do not use a discounted rate to determine the ATR.)
  - \*\*Note – the fully indexed rate does not mean the “maximum rate possible,” It means the rate based on the current margin and index without any discounts applied.
- Always base your calculations on substantially equal monthly payments that would fully amortize the loan.

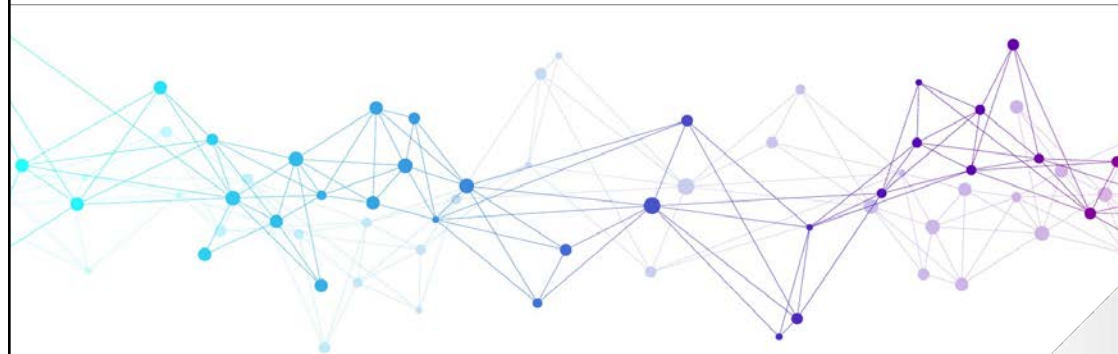
94

# Calculating the Debt to Income Ratio

Calculating the payment on balloon loans:

- For non-higher priced loans: Use the maximum payment scheduled during the first five years after the first regular payment comes due.
- For higher-priced loans: Use the maximum payment in the payment schedule, including any balloon.
- Higher priced loans: For the most part, an APR that, as of the date the interest rate is set, exceeds the APOR by 1.5 percentage points or more for 1st lien loans and 3.5 percentage points or more for subordinate lien loans.

# Qualified Mortgages





# Qualified Mortgages

The QM standard helps protect consumers from unduly risky mortgages. A court will treat a case differently if a consumer files an ATR claim where the loan is a QM as creditors will be presumed to have complied with the ATR requirements if they issue QMs. It also gives creditors more certainty about potential liability.

A Qualified Mortgage (QM) provides a presumption that the credit union has complied with ATR requirements by:

- Limiting certain risky features
- Limiting points and fees
- Meeting certain underwriting criteria

97

# Higher Priced QMs

- QMs that are higher-priced have a presumption that they comply with the ATR requirements, but consumers can rebut that presumption.
- Small Creditor and Balloon-Payment QMs are considered higher-priced if they have an APR that exceeds the APOR by 3.5 percentage points or more for both first-lien and subordinate-lien loans. (This definition DOES NOT carry over into other requirements for higher-priced mortgage loans).

98

## Types of QMs

There are four types of QMs:

- General
- Small Creditor QM (available to all small creditors)
- Small Creditor Balloon-Payment QM (available to small creditors that operate in rural and underserved areas.)
- Seasoned QMs

99

## Operating in Rural and Underserved Areas

- A creditor operates in a rural or underserved area if the creditor originated at least one covered transaction secured by a first lien on a property located in an underserved or rural area during the preceding calendar year.
- For loans applications received between January 1 and April 1, the creditor operates in a rural or underserved area if the creditor originated at least one covered transaction on a property located in an underserved or rural area during the preceding two calendar years.

\*\*Use the CFPB's [rural and underserved area tool](#) to determine if a loan was made in a rural or underserved area:

100

## Requirements that apply to all QMs

Requirements that are common across all types of QMs:

- A prohibition on negative amortization or interest-only payments
- A prohibition on loan terms in excess of 30 years
- Limits on points and fees

101

## General QM

- Loan feature limitations
- Loan term limit
- Points and fees limit
- Underwrite based on fully amortizing schedule using the maximum rate permitted during the first five years after the first periodic payment.
- Other underwriting factors must still be considered and verified
- Price Based Limits - the annual percentage rate does not (APR) exceed the average prime offer rate (APOR) for a comparable transaction by more than certain thresholds as of the date the interest rate is set

102

## General QM

Thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) in 2023:

Lien Position	Loan Amount	APR/APOR Spread
1 <sup>st</sup>	≥ \$130,461	2.25
1 <sup>st</sup>	≥ \$78,277 but < \$130,461	3.50
1 <sup>st</sup>	< \$78,277	6.5
1 <sup>st</sup> (Manufactured home)	< \$130,461	6.5
Subordinate	≥ \$78,277	3.5
Subordinate	< \$78,277	6.5

103

## Verification of income, assets, debt obligations, alimony, and child support

- ATR rules do not prescribe specific methods of underwriting that creditors must use.
- Creditors are required to verify the consumer's current or reasonably expected income or assets using third-party records that provide reasonably reliable evidence of the consumer's income or assets.
- A creditor must maintain written policies and procedures for how it takes into account, pursuant to its underwriting standards, income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination.
- A creditor must also retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination, including how it applied its policies and procedures, in order to meet this requirement.

104

## Safe harbor for compliance with specified external standards

A creditor complies with the requirement to verify current debt obligations, alimony and child support using third-party records if it complies with verification standards in one or more of the following manuals:

- Chapters B3-3 through B3-6 of the Fannie Mae Single Family Selling Guide, published June 3, 2020;
- Sections 5102 through 5500 of the Freddie Mac Single-Family Seller/Servicer Guide, published June 10, 2020;
- Sections II.A.1 and II.A.4-5 of the Federal Housing Administration's Single Family Housing Policy Handbook, issued October 24, 2019;
- Chapter 4 of the U.S. Department of Veterans Affairs' Lenders Handbook, revised February 22, 2019;
- Chapter 4 of the U.S. Department of Agriculture's Field Office Handbook for the Direct Single Family Housing Program, revised March 15, 2019; and
- Chapters 9 through 11 of the U.S. Department of Agriculture's Handbook for the Single Family Guaranteed Loan Program, revised March 19, 2020.

105

## Small Creditor QM

A creditor can make these types of QMs only if it meets BOTH of the following requirements:

- Had assets below \$2.537 billion (to be adjusted annually) at the end of the last calendar year.
- Creditor and affiliates together originated no more than 2000 first-lien, closed-end residential mortgages that are subject to the ATR requirements in the preceding calendar year (not required to count loans originated and kept in portfolio).

106

## Small Creditor QM

Small Creditor QMs have the following features:

- Loan feature limitations
- Loan term limit
- Points and fees limit
- Underwrite based on fully amortizing schedule using the maximum rate permitted during the first five years after the first periodic payment.
- Not subject to a forward commitment
- Keep in portfolio for at least three years
- Consider D to I
- Other underwriting factors must be considered and verified

107

## Small Creditor Balloon QM

- Available to small creditors that operate in rural or underserved areas.
- Loan feature limitations
- Balloon payment feature permitted
- Can exclude the balloon payment from the D to I calculation even if the loan is higher priced
- Loan term limit: No more than 30, no less than 5
- Points and fees limit
- Must not be subject to a forward commitment
- Keep in portfolio for at least three years
- Other underwriting factors must be considered and verified

108

## Seasoned QM

A residential mortgage loan is a Seasoned QM and receives a safe harbor from liability under the ATR/QM Rule if the loan:

- Satisfies certain product restrictions
- Does not exceed a points-and-fees limit
- Satisfies underwriting requirements
- Is held in portfolio until the end of the seasoning period (subject to certain enumerated exceptions)
- Meets certain performance standards at the end of the seasoning period.

109

## Seasoned QM

A loan made by any creditor, regardless of size, is eligible to become a Seasoned QM if at the end of the seasoning period it meets the requirements in the Seasoned QM Final Rule. Loans that satisfy another QM definition at consummation also can be Seasoned QM loans, as long as the requirements for Seasoned QMs are met.

110

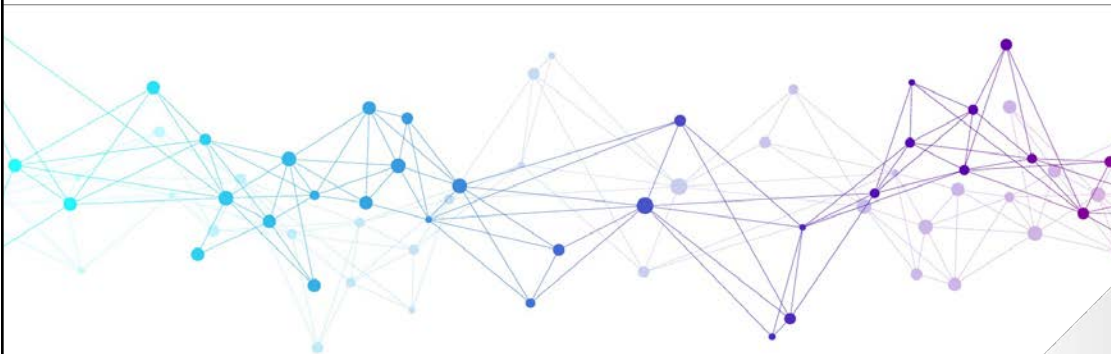
# Agency/GSE QM

- Eligible for purchase, guarantee or insurance by GSEs (FNMA, FHLMC, FHA, VA, etc.)
- Was temporary until October 1, 2022



111

# Recordkeeping



112



# Recordkeeping

Keep records to evidence compliance for three years after consummation.

