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Study Guide

KNOWLEDGE POINTS

205

CHAPTERS

17

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CHAPTER 1

TRID Overview and Coverage

1.1 Purpose of the TILA-RESPA Integrated Disclosure Rule

For over 30 years, federal law required separate disclosure forms under TILA and RESPA that were overlapping and confusing. The Dodd-Frank Act directed the CFPB to integrate these mortgage disclosures into two combined forms: the Loan Estimate and the Closing Disclosure. The CFPB published the final TILA-RESPA Final Rule (commonly called TRID) on December 31, 2013.

- ✓ Under federal law, the CFPB (Bureau of Consumer Financial Protection) integrated TILA and RESPA disclosures under authority of the Dodd-Frank Act, Section 1032(f)
- ✓ The Good Faith Estimate (GFE) and initial Truth-in-Lending disclosure were combined into the Loan Estimate
- ✓ The HUD-1 and final Truth-in-Lending disclosure were combined into the Closing Disclosure
- ✓ The integrated rule is administered and enforced by the CFPB

1.2 Loan Estimate and Closing Disclosure Timing

The two TRID forms have distinct delivery timelines. The Loan Estimate helps consumers understand key features, costs, and risks of the loan and must be delivered early in the process. The Closing Disclosure helps consumers understand all final costs of the transaction and must be delivered before consummation.

- ✓ Under federal law (TILA/RESPA, CFPB), the Loan Estimate must be provided no later than the third business day after the consumer submits a loan application
- ✓ Under federal law, the Closing Disclosure must be provided to the consumer at least three business days before consummation of the loan
- ✓ Consummation is when the consumer becomes contractually obligated on the loan, which is not necessarily the same as closing or settlement

1.3 Transactions Covered by the TILA-RESPA Rule

TRID applies to most closed-end consumer mortgage loans. Certain loan types are specifically excluded from coverage, and the exam frequently tests which loans fall outside the rule.

- ✓ Under federal law (CFPB), TRID applies to most closed-end consumer credit transactions secured by real property
- ✓ TRID does NOT apply to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile home or a dwelling not attached to real property
- ✓ The 2017 amendments extended coverage to closed-end loans secured by cooperative units regardless of whether state law classifies them as real property
- ✓ The rule generally does not apply to loans made by persons who are not 'creditors' under TILA

1.4 Pre-Loan Estimate Activity Restrictions

Under federal law (Regulation Z § 1026.19(e)(2)), the TRID Rule restricts certain creditor activity before the consumer receives the Loan Estimate and indicates intent to proceed. These consumer protections are frequently tested.

- ✓ A creditor may not impose fees on a consumer (other than a bona fide credit report fee) before the consumer receives the Loan Estimate and indicates intent to proceed
- ✓ A creditor may not require submission of documents verifying information before providing the Loan Estimate
- ✓ A consumer may indicate intent to proceed in any manner the consumer chooses, unless the creditor requires a particular manner of communication

1.5 Two Federal Disclosure Forms Replaced Under TRID

For more than 30 years, federal law required two separate disclosure forms under two federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). Because these forms overlapped and used inconsistent language, the Dodd-Frank Act directed the Consumer Financial Protection Bureau (CFPB) to integrate them. The result is the TILA-RESPA Integrated Disclosure (TRID) rule, which created two new forms: the Loan Estimate and the Closing Disclosure.

- ✓ Under federal law, TRID integrates disclosures previously required separately by TILA and RESPA
- ✓ The CFPB (a federal agency) issued the TRID rule under authority of the Dodd-Frank Act
- ✓ TRID replaced the older GFE, initial TIL, and HUD-1 disclosures with the Loan Estimate and Closing Disclosure

1.6 Loans Covered and Exempt Under TRID

The Loan Estimate and Closing Disclosure must be used for most closed-end consumer mortgages. Certain loans remain exempt and continue to use the older TILA/RESPA forms: home equity lines of credit (HELOCs), reverse mortgages, and mortgages secured by a mobile home or by a dwelling not attached to real property (land). The rule also does not apply to creditors making five or fewer mortgages per year.

- ✓ Under federal law, TRID applies to most closed-end consumer mortgage loans
- ✓ HELOCs, reverse mortgages, and mortgages on a mobile home/dwelling not attached to land are exempt from TRID
- ✓ The rule does not apply to persons who make five or fewer mortgages per year (not 'creditors')

1.7 Record Retention Requirements

Under federal law, creditors must retain evidence of compliance with the TILA-RESPA Rule for specified periods. The Closing Disclosure has its own retention requirement, and obligations continue even when loans are transferred or sold.

- ✓ Under federal law (Regulation Z, § 1026.25), creditors must retain records evidencing compliance with the disclosure requirements
- ✓ The Closing Disclosure and related documents must be retained for five years after consummation
- ✓ Record retention obligations survive the transfer or sale of the loan

1.8 TRID Effective Date and Application Trigger

Under federal law, the TRID Rule generally took effect October 3, 2015. The Integrated Disclosures must be provided for applications received on or after that date; earlier applications use the older GFE, HUD-1, and TIL forms.

- ✓ The Integrated Disclosures apply to applications received on or after October 3, 2015
- ✓ For applications received before October 3, 2015, creditors must use the GFE, HUD-1, and Truth-in-Lending forms
- ✓ A creditor cannot use the Integrated Disclosures for applications received before October 3, 2015

1.9 Loans Subject to TILA But Not RESPA

Under federal law, certain loans that are subject to TILA but not RESPA are still covered by TRID's integrated disclosure requirements. This distinguishes coverage from the older RESPA-only rules.

- ✓ Construction-only loans are subject to the TRID integrated disclosure requirements
- ✓ Loans secured by vacant land or by 25 or more acres are subject to the TRID requirements
- ✓ TRID generally does not apply to loans made by a person or entity not considered a creditor under Regulation Z

1.10 Revised Loan Estimate After Changed Circumstances

When a changed circumstance occurs after the Loan Estimate has been provided, the creditor may issue a revised Loan Estimate. Under federal law (Regulation Z § 1026.19(e)(4)), the creditor must deliver or mail the revised Loan Estimate within three business days of receiving information sufficient to establish the changed circumstance, and the consumer must receive it no later than four business days before consummation. A revised Loan Estimate may not be provided on or after the date the Closing Disclosure is provided.

- ✓ A revised Loan Estimate must be delivered or mailed within 3 business days of learning of the changed circumstance
- ✓ The consumer must receive the revised Loan Estimate no later than 4 business days before consummation
- ✓ A revised Loan Estimate cannot be issued on or after the date the Closing Disclosure is provided

CHAPTER 2

Loan Estimate: Delivery and Content

2.1 General Requirements for the Loan Estimate

Under federal law (Regulation Z § § 1026.19(e) and 1026.37), the creditor must provide the consumer a good-faith Loan Estimate for most closed-end transactions secured by real property (except reverse mortgages). It replaces the GFE and initial TIL.

- ✓ The Loan Estimate must generally be provided within three business days of receiving the consumer's application
- ✓ The Loan Estimate must contain a good-faith estimate of credit costs and transaction terms, based on the best information reasonably available if exact information is unknown
- ✓ Either the creditor or a mortgage broker who receives the application may provide the Loan Estimate

2.2 General Timing for Loan Estimate Delivery

Under federal law (TILA/RESPA, enforced by the CFPB under the TRID rule), the creditor must deliver or place in the mail the Loan Estimate no later than the third business day after receiving the consumer's application. It must also be delivered or mailed no later than the seventh business day before consummation of the transaction.

- ✓ Loan Estimate must be delivered or mailed within 3 business days of application
- ✓ Loan Estimate must be delivered or mailed no later than 7 business days before consummation
- ✓ The 7-business-day waiting period applies to the initial Loan Estimate but not to revised Loan Estimates

2.3 Definition of an Application (Six Pieces)

Under federal law (TILA/RESPA), the obligation to provide a Loan Estimate is triggered when the consumer submits the six pieces of information constituting an 'application': (1) consumer's name, (2) income, (3) Social Security number for a credit report, (4) property address, (5) estimate of property value, and (6) mortgage loan amount sought.

- ✓ An application consists of six pieces: name, income, SSN, property address, estimated property value, and loan amount sought
- ✓ The CFPB removed the old 'catch-all' seventh element from RESPA's prior definition
- ✓ Information is not 'submitted' merely because it exists in the creditor's files or system

2.4 How Consumer Indicates Intent to Proceed

Under federal law (TILA/RESPA, CFPB), a consumer indicates intent to proceed by communicating in any manner (oral, written, email, or signing a form) after the Loan Estimate is delivered, unless the creditor requires a specific manner. Silence is never an indication of intent to proceed, and the creditor must document the communication.

- ✓ Intent to proceed can be communicated in any manner after delivery of the Loan Estimate, unless a specific manner is required
- ✓ A consumer's silence is not indicative of intent to proceed
- ✓ The creditor must document the intent-to-proceed communication for record retention under § 1026.25

2.5 Delivery of Special Information Booklet

Under federal law (RESPA Section 5, 12 U.S.C. 2604, and Regulation Z § 1026.19(g), enforced by the CFPB), creditors must provide the special information booklet ('Your Home Loan Toolkit: A Step-by-Step Guide') to consumers who apply for a consumer credit transaction secured by real property or a cooperative unit. The booklet helps consumers understand real estate transactions and settlement costs. It must be delivered or placed in the mail no later than three business days after the creditor receives the consumer's loan application.

- ✓ Special information booklet must be delivered or mailed within 3 business days of receiving the loan application (§ 1026.19(g)(1)(i))
- ✓ Required for consumer credit transactions secured by real property or a cooperative unit
- ✓ The current booklet is 'Your Home Loan Toolkit: A Step-by-Step Guide,' which replaced HUD's Settlement Cost Booklet

2.6 Loan Terms Table Required Disclosures

The Loan Terms table on page 1 discloses the Loan Amount, the initial Interest Rate, the initial Monthly Principal & Interest amount, any adjustments to these amounts after consummation, whether the loan includes a Prepayment Penalty, and whether the loan includes a Balloon Payment. Under 'Can this amount increase after closing?', the creditor discloses Yes or No for each item, with details if Yes.

- ✓ The Loan Terms table discloses Loan Amount, Interest Rate, and Monthly Principal & Interest
- ✓ It also discloses whether the loan has a Prepayment Penalty or a Balloon Payment
- ✓ Each item shows whether the amount can increase after closing (Yes/No)

2.7 Prepayment Penalty and Balloon Payment Definitions

A Prepayment Penalty is a charge imposed for paying all or part of the loan's principal before it is due; it does not include a waived third-party charge the creditor imposes if the consumer prepays the entire principal within 36 months of closing. A Balloon Payment is a payment that is more than two times a regular periodic payment. When either feature is present, the disclosure states 'Yes' and gives the maximum amount and the relevant date/period.

- ✓ A Prepayment Penalty is a charge for paying off principal early (before it is due)
- ✓ A Balloon Payment is a payment more than two times a regular periodic payment
- ✓ If present, the disclosure states the maximum amount and the applicable date or period

2.8 Projected Payments Table Contents

The Loan Estimate's Projected Payments table shows estimates of the periodic payments the consumer will make over the life of the loan. Under federal law (TILA/RESPA, implemented by the CFPB under Regulation Z), creditors must disclose specific periodic payment components so borrowers can understand how payments may change.

- ✓ The Projected Payments table must disclose Principal & Interest, Mortgage Insurance, Estimated Escrow, and the Estimated Total Monthly Payment
- ✓ Estimated Taxes, Insurance & Assessments must be shown even if NOT paid with escrow funds
- ✓ The table indicates whether taxes, insurance, and assessments will be paid from the consumer's escrow account (§ 1026.37(c)(2))

2.9 Four Main Categories on Loan Estimate Page 2

Under federal law (TILA/RESPA, CFPB), page 2 of the Loan Estimate discloses up to four categories: a good-faith itemization of Loan Costs and Other Costs, a Calculating Cash to Close table, an Adjustable Payment (AP) Table, and an Adjustable Interest Rate (AIR) Table.

- ✓ Loan Costs are paid to the creditor and third-party providers the creditor requires during loan origination (§ 1026.37(f))
- ✓ Other Costs include taxes, government recording fees, and other real estate closing payments (§ 1026.37(g))
- ✓ The AP Table applies to adjustable monthly payment loans; the AIR Table applies to adjustable interest rate loans
- ✓ Loan Costs and Other Costs amounts are rounded to the nearest whole dollar

2.10 Loan Costs Three Subheadings

Loan Costs on the Loan Estimate are disclosed under three subtotaled subheadings, and their sum is the Total Loan Costs. This organization helps borrowers see which fees are shoppable.

- ✓ The three subheadings are Origination Charges, Services You Cannot Shop For, and Services You Can Shop For
- ✓ Total Loan Costs = sum of the three subtotals (§ 1026.37(f)(4))
- ✓ Items must be disclosed using terminology that clearly describes the service and, for services, in alphabetical order

2.11 Total Closing Costs Components on Loan Estimate

On the Loan Estimate, Total Closing Costs is the sum of Total Loan Costs, Total Other Costs, and Lender Credits. Under federal law (TILA/RESPA, CFPB), this figure summarizes what the borrower will pay in connection with the loan.

- ✓ Total Closing Costs = Total Loan Costs + Total Other Costs + Lender Credits (§ 1026.37(g)(6))
- ✓ Lender Credits are disclosed as a negative number because they reduce the borrower's costs

2.12 Calculating Cash to Close Table Structure

Under federal law (TILA/RESPA, CFPB), the Loan Estimate's Calculating Cash to Close table shows how the Estimated Cash to Close is derived. Estimated Cash to Close is the sum of the seven other amounts disclosed in the table: Total Closing Costs, Closing Costs Financed, Down Payment/Funds from Borrower, Deposit, Funds for Borrower, Seller Credits, and Adjustments and Other Credits.

- ✓ Total Closing Costs in this table is disclosed as a positive number and equals the Other Costs table total (§ 1026.37(h)(1)(i))
- ✓ Estimated Cash to Close is the sum of the seven other amounts in the table (§ 1026.37(h)(1)(viii))

2.13 Comparisons Table: In 5 Years, APR, and TIP

Under federal law (TILA/RESPA, CFPB), the Loan Estimate page 3 Comparisons table helps consumers compare loans. It discloses In 5 Years (total paid and principal paid through the 60th month), the Annual Percentage Rate (APR), and the Total Interest Percentage (TIP). The APR expresses costs over the loan term as a rate and is NOT the interest rate.

- ✓ APR expresses costs over the loan term as a rate and is not the same as the interest rate (§ 1026.37(l)(2))
- ✓ TIP is the total interest paid over the loan term expressed as a percentage of the loan amount (§ 1026.37(l)(3))

2.14 Signing the Loan Estimate is Not Acceptance

Under federal law (TILA/RESPA, CFPB), the consumer is not required to sign the Loan Estimate. A creditor may add a signature line to confirm receipt only, using the exact model-form language. Signing merely confirms receipt and does not obligate the consumer to accept the loan.

- ✓ The consumer is not required to sign the Loan Estimate (§ 1026.37(n)(1))
- ✓ If no Confirm Receipt table is used, a Loan Acceptance statement must appear stating the consumer need not accept the loan because they received the form or signed an application (§ 1026.37(n)(2))

2.15 Use of the Bureau's Loan Estimate Form

Under federal law, the CFPB provides standard and model Loan Estimate forms. Whether use is mandatory depends on whether the loan is a federally related mortgage loan.

- ✓ For federally related mortgage loans (most mortgages), the Loan Estimate is a standard form that creditors must use with all elements (font sizes, bolding, shading, underscoring)
- ✓ For loans not federally related, the form is a model form that need not be used exactly but disclosures must be substantially similar in content and format
- ✓ Use of an appropriate Loan Estimate sample form provides a safe harbor if properly completed with accurate content

2.16 Loan Estimate Content: Loan Costs vs Other Costs

Under federal law (Regulation Z § 1026.37(f) and (g)), page 2 of the Loan Estimate itemizes charges in two general categories. Understanding the distinction is testable.

- ✓ Loan Costs are paid by the consumer to the creditor and third-party providers of services the creditor requires, generally during loan origination
- ✓ Other Costs include taxes, governmental recording fees, and certain other payments involved in the real estate closing process
- ✓ The designation 'N/A' may not be used on the Loan Estimate; inapplicable disclosures are omitted or left blank

2.17 Waiver of Seven-Business-Day Waiting Period

Under federal law (TILA/RESPA), a consumer may modify or waive the seven-business-day waiting period if there is a bona fide personal financial emergency (e.g., imminent foreclosure sale). The consumer must provide a dated, written statement describing the emergency and signed by all consumers primarily liable. The creditor may not provide a pre-printed waiver form.

- ✓ Waiver requires a bona fide personal financial emergency
- ✓ Consumer must provide a dated written statement describing the emergency, signed by all consumers primarily liable
- ✓ Creditor may NOT provide a pre-printed waiver form

2.18 Mortgage Broker May Deliver Loan Estimate

Under federal law (TILA/RESPA), a mortgage broker who receives a consumer's application may provide the Loan Estimate on the creditor's behalf, satisfying the creditor's obligation. However, the creditor remains legally responsible for any errors or defects, and record retention requirements apply.

- ✓ A mortgage broker may provide the Loan Estimate on the creditor's behalf
- ✓ The creditor is legally responsible for any errors or defects even if the broker delivers
- ✓ Broker must comply with the 3-year record retention requirement

2.19 Presumed Receipt and Delivery Methods

Under federal law (TILA/RESPA), if the Loan Estimate is not delivered in person, the consumer is considered to have received it three business days after it is delivered or placed in the mail. The Loan Estimate may be delivered in person, by mail, or by electronic delivery (subject to E-SIGN Act consent requirements).

- ✓ Consumer is presumed to receive the Loan Estimate 3 business days after mailing if not delivered in person
- ✓ Delivery may be in person, by mail, or electronically
- ✓ Electronic delivery must comply with E-SIGN Act consumer consent provisions

2.20 No Verifying Documents Required Before Loan Estimate

Under federal law (TILA/RESPA), a creditor may not condition providing the Loan Estimate on the consumer submitting documents verifying information. The creditor may ask for information orally but cannot require supporting documentation (e.g., purchase agreement, bank statements) before issuing the Loan Estimate.

- ✓ Creditor may not require verifying documents before providing the Loan Estimate
- ✓ Creditor cannot represent that it will not provide a Loan Estimate without verifying documentation
- ✓ An online system may not reject applications that contain the six elements just because preferred additional info is missing

2.21 Pre-Approval / Pre-Qualification and Withdrawal

Under federal law (TILA/RESPA), if a consumer provides only five of the six pieces (e.g., no property address), no Loan Estimate is required and a pre-approval may be issued. Once all six are provided, a Loan Estimate is required. If the consumer withdraws or the application cannot be approved within 3 business days, no Loan Estimate is required — but one is required if the transaction later consummates on the original terms.

- ✓ Providing only 5 of 6 pieces does not trigger the Loan Estimate obligation
- ✓ All six pieces trigger the Loan Estimate even for pre-approval/pre-qualification requests
- ✓ If the consumer withdraws within 3 business days, no Loan Estimate is required, but it must be provided if consummated on original terms

2.22 Definition of Business Day for Loan Estimate

Under federal law (TILA/RESPA), for delivering the Loan Estimate, a 'business day' is any day the creditor's offices are open to the public for carrying out substantially all of its business functions. A different, more precise definition (all calendar days except Sundays and federal holidays) applies for counting days for Closing Disclosure receipt.

- ✓ For Loan Estimate delivery, business day = day creditor's offices are open for substantially all business functions
- ✓ For the Closing Disclosure, business day = all calendar days except Sundays and legal federal holidays
- ✓ The two business-day definitions must not be confused

2.23 Written Estimates Before the Loan Estimate

Under federal law (TILA/RESPA, CFPB), creditors may give consumers estimates before the Loan Estimate, but any written estimate of consumer-specific terms/costs must display a required disclaimer at the top of the first page: 'Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.' It must be at least 12-point font and cannot resemble the Loan Estimate or Closing Disclosure.

- ✓ A written pre-Loan-Estimate estimate must state the required disclaimer at the top of the first page
- ✓ The disclaimer must be no smaller than 12-point font
- ✓ The estimate may not have headings, content, or format substantially similar to the Loan Estimate or Closing Disclosure (model form H-26)

2.24 Exceptions to Booklet Requirement

Under federal law (Regulation Z, CFPB), the special information booklet is not required in certain transactions. For a HELOC subject to § 1026.40, the creditor or mortgage broker may instead provide the 'When Your Home is On the Line' brochure. The booklet is not required for transactions that are not for the purpose of purchasing a one-to-four family residential property, such as refinancings, closed-end subordinate-lien loans, or reverse mortgages.

- ✓ For HELOCs subject to § 1026.40, the 'When Your Home is On the Line' brochure may be provided instead (§ 1026.19(g)(1)(ii))
- ✓ Not required for refinancing, closed-end subordinate-lien loans, or reverse mortgages (§ 1026.19(g)(1)(iii))
- ✓ Booklet requirement applies to purchases of one-to-four family residential property

2.25 Multiple Applicants and Mortgage Brokers

Under federal law (Regulation Z, CFPB), when two or more persons apply together for a loan, the creditor may provide a single copy of the special information booklet to just one of them. If the consumer uses a mortgage broker, the mortgage broker must provide the booklet and the creditor need not do so.

- ✓ Only one booklet must be provided when multiple persons apply jointly (Comment 19(g)(1)-2)
- ✓ When a mortgage broker is used, the broker must provide the booklet and the creditor is relieved of the duty (§ 1026.19(g)(1)(i))

2.26 Website Posting Does Not Satisfy Delivery

Under federal law (Regulation Z, CFPB), making the special information booklet available on a creditor's website does NOT satisfy the delivery requirement. The creditor must actually deliver or place the booklet in the mail no later than three business days after receiving the consumer's application.

- ✓ Posting the booklet on a website does not satisfy the TILA-RESPA Rule's delivery requirement
- ✓ Actual delivery or mailing within 3 business days is required

2.27 Sale Price vs. Appraised or Estimated Value

For a purchase money mortgage, the creditor discloses the Sale Price of the property. If personal property is included in the sale price, that full price is used without reduction for the value of the personal property. For a transaction without a seller (such as a refinance or new construction), the creditor instead discloses the Appraised Value or Estimated Value of the property.

- ✓ Purchase transactions disclose the Sale Price of the property
- ✓ Transactions without a seller disclose the Appraised Value or Estimated Value
- ✓ Property must include the zip code; if no address is available, a description of the location is used

2.28 Four Loan Purpose Categories

The Loan Estimate discloses the consumer's intended use of the loan using one of four purposes: Purchase (financing the property's acquisition), Refinance (refinancing an existing obligation secured by the property, even if the creditor is not the original holder/servicer), Construction (financing initial construction of a dwelling on the property), or Home Equity Loan (any other purpose).

- ✓ Under federal law, loan Purpose is disclosed as Purchase, Refinance, Construction, or Home Equity Loan
- ✓ Refinance applies even if the creditor is not the holder or servicer of the original obligation
- ✓ Home Equity Loan is the catch-all category disclosed for any other purpose

2.29 Loan Type: Conventional, FHA, VA, or Other

The Loan Estimate discloses the Loan Type as one of the following: Conventional if the loan is not guaranteed or insured by a federal or state government agency; FHA if insured by the Federal Housing Administration; VA if guaranteed by the U.S. Department of Veterans Affairs; or Other (with a brief description) if insured or guaranteed by another federal or state agency.

- ✓ Conventional means the loan is not government insured or guaranteed
- ✓ FHA means insured by the Federal Housing Administration; VA means guaranteed by the Dept. of Veterans Affairs
- ✓ 'Other' with a brief description is used for loans backed by other federal or state agencies

2.30 Rate Lock and Expiration Disclosures

The Loan Estimate indicates whether the interest rate is locked (Yes or No). If the rate is locked at delivery, the date and time (including time zone) when the lock period ends must be disclosed. On every Loan Estimate, the date and time (including time zone) at which the estimated closing costs expire must be disclosed.

- ✓ The Loan Estimate discloses whether the interest rate is locked (Yes/No)
- ✓ If locked, the date and time (with time zone) the lock expires must be disclosed
- ✓ Every Loan Estimate must disclose the date and time the estimated closing costs expire

2.31 Fully-Indexed Rate for Unknown Initial Rate

If the initial interest rate is not known at consummation (as with an adjustable-rate loan), the creditor discloses the fully-indexed rate — the interest rate calculated using the index value and margin at the time of consummation. The initial principal and interest payment is calculated using that same fully-indexed rate.

- ✓ When the initial rate is not known, the fully-indexed rate (index + margin at consummation) is disclosed
- ✓ The initial principal & interest payment is calculated using the fully-indexed rate
- ✓ This applies to adjustable-rate loans where the initial rate isn't yet fixed

2.32 Subsequent Payments and Triggering Events

When certain triggering events may occur during the life of the loan, additional columns must be added to show payment amounts after the event. This alerts borrowers to future payment changes on adjustable-rate, interest-only, negative amortization, and balloon loans.

- ✓ Triggering events include a change in Principal & Interest (e.g., adjustable-rate loans), a scheduled balloon payment, and automatic termination of mortgage insurance
- ✓ The Projected Payments table may contain a maximum of four columns
- ✓ A balloon payment scheduled as a final payment always requires its own column with the heading 'Final Payment'

2.33 Estimated Total Monthly Payment Calculation

For each column, the Estimated Total Monthly Payment is disclosed as the sum of Principal & Interest, Mortgage Insurance, and Estimated Escrow. This gives the borrower the full monthly housing payment estimate.

- ✓ Estimated Total Monthly Payment = Principal & Interest + Mortgage Insurance + Estimated Escrow (§ 1026.37(c)(2)(iv))
- ✓ If mortgage insurance is not required, disclose '0'; if no escrow account will be established, disclose '0' for Estimated Escrow

2.34 Costs at Closing Table on Loan Estimate

Page 1 of the Loan Estimate summarizes the Estimated Closing Costs and the Estimated Cash to Close. Estimated Closing Costs are the Total Closing Costs from page 2, itemized to show total Loan Costs, total Other Costs, and Lender Credits.

- ✓ Estimated Closing Costs include Total Loan Costs plus Total Other Costs minus Lender Credits (§ 1026.37(d)(1)(i))
- ✓ Estimated Cash to Close on page 1 matches the amount from the Calculating Cash to Close table on page 2 (§ 1026.37(d)(1)(ii))
- ✓ For transactions without a seller, an Alternative Costs at Closing table with 'From/To Borrower' checkboxes may be used

2.35 Origination Charges and Points

Origination Charges are items the consumer pays to each creditor and loan originator for originating and extending credit. Points paid to reduce the interest rate are shown as both a percentage of the loan amount and a dollar amount.

- ✓ Points are disclosed as a percentage of the loan amount and a dollar amount; if no points are charged, leave both blank (§ 1026.37(f)(1)(i))
- ✓ Compensation paid indirectly to a loan originator through the interest rate is NOT disclosed as an Origination Charge
- ✓ Up to 13 items may be itemized; excess items over 12 are shown as 'Additional Charges'

2.36 Shoppable vs. Non-Shoppable Services

Services You Cannot Shop For are provided by third parties chosen by the creditor; Services You Can Shop For allow the consumer to select the provider. A creditor permits shopping when the consumer may select the provider subject to reasonable requirements.

- ✓ Services You Cannot Shop For (e.g., appraisal, credit report, flood determination, lender's title insurance) — disclose no more than 13, excess shown as 'Additional Charges' with no addendum permitted
- ✓ Services You Can Shop For (e.g., pest inspection, survey, title closing agent) — disclose no more than 14, and an addendum to the Loan Estimate MAY be used for additional items
- ✓ Title-related items must begin with 'Title -'; lender's title insurance premium is disclosed without any simultaneous-purchase discount

2.37 Other Costs Four Subheadings

Other Costs are disclosed under four subtotaled subheadings, summing to Total Other Costs. These costs are largely established by government action or borrower obligations independent of the creditor.

- ✓ The four subheadings are Taxes and Other Government Fees, Prepaids, Initial Escrow Payment at Closing, and Other
- ✓ Total Other Costs = sum of the four subtotals (§ 1026.37(g)(5))
- ✓ No addendum may be used for Other Costs; excess items are shown as 'Additional Charges' on the last line of the subheading

2.38 Transfer Taxes vs. Recording Fees

Under Taxes and Other Government Fees, Recording Fees and Other Taxes are disclosed first and Transfer Taxes second. The distinction matters because they are calculated differently.

- ✓ Recording Fees and Other Taxes are government fees to record/index documents and do NOT depend on sale price or loan amount
- ✓ Transfer Taxes are based on the Loan Amount or Sale Price of the Property; the name used under state/local law is not determinative
- ✓ Only Transfer Taxes paid by the consumer are disclosed on the Loan Estimate; taxes paid by the seller are not shown

2.39 Lender Credits and No-Cost Loans

Under federal law (TILA/RESPA, CFPB), Lender Credits are payments from the creditor to the consumer that do not pay for a particular fee and are shown as a negative number. In 'no cost' loans, the credit or rebate offsetting closing costs is disclosed as Lender Credits, and must be sufficient to cover items the creditor represented would not be paid by the consumer.

- ✓ Lender Credits are disclosed as a negative number (Comment 37(g)(6)(ii)-1)
- ✓ In 'no cost' loans, the creditor's credit or rebate must be disclosed as Lender Credits and be sufficient to cover represented non-charged items (Comment 37(g)(6)(ii)-2)

2.40 Adjustable Interest Rate (AIR) Table Disclosure

Under federal law (TILA/RESPA, CFPB), the AIR Table is disclosed only when the loan's interest rate may increase after consummation; it is not shown if the rate will not increase. It discloses Index + Margin, Initial Interest Rate, Minimum/Maximum Interest Rate, Change Frequency, and Limits on Interest Rate Changes.

- ✓ The AIR Table is disclosed only when the interest rate may increase after consummation (§ 1026.37(j))
- ✓ The margin is disclosed as a percentage (e.g., adding 4.25 to LIBOR is shown as 4.25%) (Comment 37(j)(1)-1)

2.41 Calculating the Total Interest Percentage (TIP)

Under federal law (TILA/RESPA, CFPB), the TIP equals the total interest paid over the loan term divided by the loan amount, expressed as a percentage. Example: a \$100,000 loan with \$50,000 total interest has a TIP of 50%.

- ✓ $TIP = (\text{total interest over loan term} \div \text{loan amount}) \times 100$
- ✓ In 5 Years discloses amounts paid through the end of the 60th month after the first payment due date (§ 1026.37(l)(1))

2.42 Other Considerations Table Contents

Under federal law (TILA/RESPA, CFPB), the Loan Estimate's Other Considerations table discloses Appraisal, Assumption (whether a later purchaser may assume the loan), optional Homeowner's Insurance statement, Late Payment charges, Refinance nature, Servicing intent, and (for refinances) Liability After Foreclosure protections.

- ✓ The table discloses Appraisal, Assumption, Homeowner's Insurance, Late Payment, Refinance, and Servicing information (§ 1026.37(m))
- ✓ A statement about state-law Liability After Foreclosure protections is included for refinance transactions (§ 1026.37(m))

2.43 Loan Estimate Structure and Fixed Line Format

Under federal law, the Loan Estimate is a three-page form with a prescribed number of lines. Creditors cannot alter the line structure.

- ✓ A creditor cannot change the number of lines for costs; excess charges are aggregated and described as 'additional charges'
- ✓ Page 1 shows general information, Loan Terms, Projected Payments, and Costs at Closing; page 3 shows Contact Information, Comparisons, and Other Considerations
- ✓ Services disclosed as 'additional charges' in the 'services you can shop for' section may be itemized on an addendum

2.44 Withdrawn or Denied Applications

Under federal law (Regulation Z § 1026.19(g)(1)(i), CFPB), if the creditor denies the consumer's application or the consumer withdraws the application before the end of the three-business-day period, the creditor need not provide the special information booklet.

- ✓ No booklet required if the application is denied or withdrawn within the 3-business-day period
- ✓ Applies to both creditor denial and consumer withdrawal (Comment 19(g)(1)(i)-3)

CHAPTER 3

Good Faith, Tolerances and Revised Loan Estimates

3.1 Good Faith Standard for Loan Estimate

Under federal law (TILA/RESPA), figures on the Loan Estimate must be made in good faith using the best information reasonably available. Good faith is measured by comparing the estimated charge on the Loan Estimate with the actual charge on the Closing Disclosure. Generally, if the amount charged exceeds the estimate, it is not in good faith — regardless of a later-discovered error.

- ✓ Good faith is determined by comparing the Loan Estimate figure to the actual charge on the Closing Disclosure
- ✓ Charging more than the estimate is generally not in good faith, even due to a technical error or miscalculation
- ✓ Charging the consumer less than disclosed is always in good faith, without regard to tolerances

3.2 Charges With No Tolerance Limitation

Under federal law (TILA/RESPA), certain charges may increase without any tolerance limit if the original estimate was based on the best information reasonably available: prepaid interest, property insurance premiums, amounts placed into escrow/impound/reserve accounts, services the consumer shops for where the consumer chooses a provider NOT on the creditor's written list, and property taxes / other third-party charges for services not required by the creditor.

- ✓ No-tolerance charges: prepaid interest, property insurance premiums, and escrow/impound/reserve amounts
- ✓ Charges for services where the consumer shopped and chose a provider NOT on the creditor's list have no tolerance limit
- ✓ Property taxes and third-party charges for non-required services have no tolerance limit if based on best info reasonably available

3.3 Ten Percent Cumulative Tolerance

Under federal law (TILA/RESPA), recording fees and charges for third-party services (not paid to the creditor/affiliate, and where the consumer shopped and chose a provider from the creditor's written list) are grouped and subject to a 10% cumulative tolerance. The total of these charges may not exceed the total disclosed on the Loan Estimate by more than 10%, even if an individual charge rises more than 10%.

- ✓ Recording fees and qualifying third-party service charges are subject to a 10% cumulative tolerance
- ✓ The aggregate (sum) of these charges may not exceed the estimated sum by more than 10%
- ✓ An individual charge may rise more than 10% as long as the category total stays within 10%

3.4 Charges Subject to Zero Tolerance

Under federal law (TILA/RESPA), zero-tolerance charges (which cannot exceed the Loan Estimate absent a changed circumstance) include: fees paid to the creditor, mortgage broker, or their affiliate not otherwise exempt; fees to an unaffiliated third party when the creditor did NOT permit shopping; and transfer taxes.

- ✓ Zero-tolerance charges include fees paid to the creditor, broker, or affiliate, and transfer taxes
- ✓ Fees to an unaffiliated third party where the consumer was NOT allowed to shop are zero tolerance
- ✓ Zero-tolerance charges may only increase with a valid changed circumstance or triggering event

3.5 Curing Tolerance Violations After Closing

Under federal law (TILA/RESPA, CFPB TRID Rule), if the amounts a consumer pays at closing exceed the amounts disclosed on the Loan Estimate by more than the applicable tolerance threshold, the creditor must provide a corrected Closing Disclosure and cure the violation by refunding the excess to the consumer no later than 60 calendar days after consummation. The refund does not have to be a cash refund.

- ✓ Creditor must provide a corrected Closing Disclosure and a cure no later than 60 calendar days after consummation
- ✓ Zero-tolerance charges: any amount charged beyond the disclosed amount must be reimbursed to the consumer
- ✓ 10% cumulative tolerance charges: the amount the total sum exceeds the disclosed sum by more than 10% must be reimbursed
- ✓ Cures may be provided by direct refund, principal reduction, or lender credits (specific or general)

3.6 Six Triggering Events That Reset Tolerances

Under federal law (TILA/RESPA, CFPB), creditors may use a revised Loan Estimate to reset tolerances only in six specific circumstances: (1) changed circumstances causing an estimated charge to increase beyond permitted limits; (2) changed circumstances affecting creditworthiness or property value making the consumer ineligible; (3) consumer-requested changes to credit terms or settlement that increase a charge; (4) rate lock after the LE was provided; (5) consumer indicating intent to proceed more than 10 business days after the LE was provided; and (6) new construction loans where settlement is delayed more than 60 days (if the LE clearly stated this).

- ✓ Only six specific triggering events permit resetting tolerances with a revised Loan Estimate
- ✓ Informational revisions cannot be used for good faith unless a resetting circumstance is also present
- ✓ Good faith may be based on increased charges only to the extent actually justified by the reason for the revision
- ✓ Creditors must retain records demonstrating compliance with § 1026.19(e)

3.7 Consumer's Right to Shop and Written List

Under federal law (TILA/RESPA), if the consumer is permitted to shop for a settlement service, the creditor must provide a written list of service providers (separate from the Loan Estimate) within 3 business days of application. It must identify at least one provider per service and state the consumer may choose a different provider.

- ✓ A written list of service providers must be provided within 3 business days of application when the consumer may shop
- ✓ The list must identify at least one available provider per service and state the consumer may choose another
- ✓ A consumer is not considered able to shop if the creditor limits choices to its own selected list

3.8 Tolerance When Written List Not Provided

Under federal law (TILA/RESPA), if the creditor fails to provide the written list but the consumer was permitted to shop, the charges are subject to the 10% cumulative tolerance — unless paid to the creditor or an affiliate, in which case they fall under zero tolerance. Errors/omissions preventing shopping push charges to zero tolerance.

- ✓ Failure to provide the written list (when shopping was allowed) keeps charges at 10% tolerance, unless paid to creditor/affiliate
- ✓ Charges paid to creditor or affiliate move to zero tolerance
- ✓ If an error or omission prevents shopping, the charge becomes subject to zero tolerance

3.9 Lender Credits and Good Faith

Under federal law (TILA/RESPA), lender credits (general or specific) may always increase but may only decrease with an accompanying changed circumstance. Good faith compares the total lender credits actually provided at closing to the amount disclosed on the Loan Estimate; providing less than disclosed is a zero-tolerance violation.

- ✓ Lender credits may always increase but may only decrease with a changed circumstance/triggering event
- ✓ Providing less lender credit than disclosed is a zero-tolerance violation
- ✓ General credits are generalized payments; specific credits are attributed to a particular fee

3.10 When a Loan Estimate May Be Revised

Under federal law (TILA/RESPA, CFPB), a creditor generally may revise a Loan Estimate any time before providing the Closing Disclosure, either to reset tolerances for good-faith purposes or to update information. The consumer must receive the revised Loan Estimate no later than four business days prior to consummation. All revised disclosures must be based on the best information reasonably available.

- ✓ A creditor may revise a Loan Estimate at any time before the Closing Disclosure is provided
- ✓ The consumer must receive the revised Loan Estimate no later than four business days prior to consummation
- ✓ All revised disclosures must be based on the best information reasonably available
- ✓ Creditors are generally bound by the amounts in the original Loan Estimate and may only reset tolerances in specific circumstances

3.11 Definition of a Changed Circumstance

Under federal law (TILA/RESPA, CFPB), a 'changed circumstance' for resetting tolerances is: an extraordinary event beyond the control of any party or other unexpected event specific to the consumer/transaction; information specific to the consumer/transaction that the creditor relied on that was inaccurate or changed; or new information specific to the consumer/transaction the creditor did not rely on when providing the disclosures.

- ✓ Includes extraordinary events beyond any party's control (e.g., natural disaster)
- ✓ Includes inaccurate or changed information the creditor relied upon
- ✓ Includes new information the creditor did not previously rely on
- ✓ Creditors are presumed to have collected the six application items and cannot later claim receiving them is a changed circumstance

3.12 Changed Circumstances Affecting Settlement Charges

Under federal law (TILA/RESPA, CFPB), a changed circumstance affects settlement charges when it causes an estimated charge to increase beyond the applicable tolerance, or for 10% cumulative tolerance charges, causes the sum to increase by more than 10%. Examples include natural disasters damaging the property, a title insurer going out of business, or new information such as a boundary dispute.

- ✓ Must cause an increase beyond the applicable tolerance to qualify
- ✓ For 10% cumulative charges, the sum must increase by more than 10%
- ✓ Examples: natural disaster, title insurer failure, boundary claim by a neighbor

3.13 Consumer-Requested Revisions and Good Faith

Under federal law (TILA/RESPA, CFPB), a creditor may use a revised Loan Estimate to reset tolerances when a consumer requests changes to credit terms or settlement that increase an estimated charge. However, redisclosure that reflects decreases or increases within tolerance does not reset tolerances; the creditor must continue measuring against the original Loan Estimate.

- ✓ Consumer-requested changes that increase a charge allow resetting of tolerances
- ✓ Redisclosure alone does not reset tolerances if the change is within tolerance
- ✓ Creditors must continue to measure tolerances against the original Loan Estimate in those cases

3.14 Revised Loan Estimate After Rate Lock

Under federal law (TILA/RESPA, CFPB), if the interest rate was not locked when the Loan Estimate was provided, locking the rate may change the rate, points, lender credits, and other rate-dependent charges. The creditor must provide a revised Loan Estimate no later than three business days after the rate is locked. This requirement applies only once — no new revised LE is needed for later rate-lock extensions if no other charges change.

- ✓ Revised Loan Estimate required no later than three business days after the rate is locked
- ✓ Must reflect revised rate, points, lender credits, other rate-dependent charges, and rate expiration date
- ✓ The revised LE requirement applies only once, not for subsequent rate-lock extensions

3.15 Loan Estimate Expiration After 10 Business Days

Under federal law (TILA/RESPA, CFPB), if the consumer indicates intent to proceed more than 10 business days after the Loan Estimate was delivered or mailed, the creditor may issue a revised Loan Estimate with no justification other than the lapse of 10 business days. If the creditor voluntarily extends the expiration date, that extended date controls.

- ✓ 10 business days is the standard expiration period for a Loan Estimate
- ✓ No other justification is needed to revise charges after 10 business days lapse
- ✓ A voluntarily extended expiration date (oral or written) becomes the controlling expiration date

3.16 Two Definitions of Business Day

Under federal law (TILA/RESPA, CFPB), two different definitions of 'business day' apply. For providing a revised Loan Estimate within three business days of a triggering event, the general (standard) definition applies. For the four-business-day period before consummation, the precise definition applies: all calendar days except Sundays and specified federal legal public holidays.

- ✓ General/standard business-day definition applies to the three-business-day redisclosure window
- ✓ Precise definition (all calendar days except Sundays and federal holidays) applies to the four-business-day pre-consummation period

3.17 Closing Disclosure Can Reset Tolerances

Under federal law (TILA/RESPA, CFPB), like a revised Loan Estimate, a creditor may use a Closing Disclosure or corrected Closing Disclosure to reset tolerances when a changed circumstance or other triggering event occurs.

- ✓ A Closing Disclosure or corrected Closing Disclosure may reset tolerances
- ✓ Resetting requires a changed circumstance or other triggering event

3.18 Total of Payments Accuracy Tolerance

Under federal law (TILA-RESPA, CFPB), the Total of Payments disclosed on the Closing Disclosure is considered accurate if understated by no more than \$100, or if it is greater than the amount required to be disclosed. Separate rescission tolerances apply in certain refinance/foreclosure contexts.

- ✓ Total of Payments is accurate if understated by no more than \$100 (§ 1026.38(o)(1))
- ✓ Total of Payments is accurate if it is greater than the amount required to be disclosed
- ✓ Regulation Z's finance charge tolerance also extends to the Total of Payments when the error stems from a finance charge misdisclosure

CHAPTER 4

Closing Disclosure: Delivery and Content

4.1 Closing Disclosure General Requirements

Under federal law (TILA/RESPA, CFPB), for loans requiring a Loan Estimate that proceed to closing, the creditor must provide a Closing Disclosure reflecting the actual terms and costs of the transaction. It integrates and replaces the HUD-1 and final TIL disclosure. The consumer must receive it no later than three business days before consummation. If actual terms change before consummation, a corrected disclosure is required, which may trigger a new three-business-day waiting period.

- ✓ The Closing Disclosure replaces the HUD-1 and final TIL disclosure
- ✓ Consumer must receive it no later than three business days before consummation
- ✓ It must contain the actual terms and costs of the transaction in writing per § 1026.38
- ✓ A corrected disclosure may trigger an additional three-business-day waiting period

4.2 Consummation Is Distinct From Closing

Under federal law (TILA/RESPA, CFPB), consummation is a legally distinct event from closing or settlement, though they often occur together. Consummation occurs when the consumer becomes contractually obligated to the creditor on the loan — not when obligated to a seller. When this occurs depends on applicable state law, and delivery of the Closing Disclosure must occur at least three business days before consummation.

- ✓ Consummation occurs when the consumer becomes contractually obligated to the creditor on the loan
- ✓ Consummation is legally distinct from closing/settlement even if they occur at the same time
- ✓ When consummation occurs is determined by applicable state law
- ✓ The Closing Disclosure must be delivered at least three business days before consummation

4.3 Three-Business-Day Delivery Requirement

Under federal law (TILA-RESPA, CFPB), the creditor is responsible for ensuring the consumer receives the Closing Disclosure no later than three business days before consummation. The creditor is responsible for the content, delivery, and timing of the disclosure.

- ✓ Consumer must receive the Closing Disclosure at least three business days before consummation (§ 1026.19(f)(1)(ii)(A))
- ✓ The creditor is legally responsible for ensuring compliance with content, delivery, and timing requirements (§ § 1026.19(f) and 1026.38)
- ✓ A creditor providing estimated terms must act in good faith and with due diligence

4.4 Receipt Timing Rules and Mailbox Rule

Under federal law (TILA-RESPA, CFPB), if delivered in person, the Closing Disclosure is received the day it is provided. If mailed or delivered electronically, the consumer is presumed to receive it three business days after it is sent, unless the creditor has evidence of earlier receipt.

- ✓ In-person delivery = received the same day (§ 1026.19(f)(1)(iii))
- ✓ Mailed or electronic delivery = presumed received three business days after sending
- ✓ Creditor may rely on evidence of earlier actual receipt

4.5 Consummation and Business Day Definition

Under federal law (TILA-RESPA, CFPB), consumers must receive the Closing Disclosure at least three business days before consummation, which is when the consumer becomes contractually obligated (not necessarily the closing/settlement date). For the Closing Disclosure, business day means all calendar days except Sundays and federal legal holidays.

- ✓ Consummation = when the consumer becomes contractually obligated on the credit transaction (§ 1026.2(a)(13))
- ✓ Business day (Closing Disclosure) = all calendar days except Sundays and federal legal holidays (§ 1026.2(a)(6))
- ✓ For timeshare transactions, the Closing Disclosure must be received no later than consummation

4.6 Waiver for Bona Fide Financial Emergency

Under federal law (TILA-RESPA, CFPB), a consumer may waive or modify the three-business-day waiting period only for a bona fide personal financial emergency, after receiving the Closing Disclosure, by giving the creditor a dated, signed written statement describing the emergency. Creditors cannot provide a pre-printed waiver form.

- ✓ Waiver allowed only for a bona fide personal financial emergency (§ 1026.19(f)(1)(iv))
- ✓ Consumer must first receive the Closing Disclosure and provide a dated written statement signed by all primarily liable consumers
- ✓ Creditor is prohibited from providing a pre-printed waiver form

4.7 Purpose of the Closing Disclosure

Under federal law (TILA/RESPA, implemented by the CFPB's TRID rule under Regulation Z), the Closing Disclosure is a statement of final loan terms and closing costs. It is a five-page form given to the borrower and it must be compared against the earlier Loan Estimate. Its content parallels the Loan Estimate but is updated to reflect the actual terms of the legal obligation at consummation.

- ✓ The Closing Disclosure is a federally required form under TILA/RESPA (TRID) enforced by the CFPB.
- ✓ It is a statement of final loan terms and closing costs and should be compared with the Loan Estimate.
- ✓ Amounts and terms are updated to reflect the legal obligation at consummation.

4.8 Loan Terms Table

Under federal law (§ 1026.38(b)), the Loan Terms table discloses the Loan Amount, Interest Rate, and Monthly Principal & Interest, and answers whether these amounts can increase after closing. It also discloses whether the loan has a Prepayment Penalty or Balloon Payment. It mirrors the Loan Estimate's Loan Terms table, updated to the final legal obligation.

- ✓ Loan Terms table shows Loan Amount, Interest Rate, and Monthly Principal & Interest.
- ✓ It discloses whether these amounts can increase after closing.
- ✓ It discloses whether the loan has a Prepayment Penalty or Balloon Payment.

4.9 Calculating Cash to Close Table

Under federal law (§ 1026.38(i)), page 3's Calculating Cash to Close table lets the borrower compare the Loan Estimate amount, the Final amount, and answer 'Did this change?' for nine items including Total Closing Costs, Closing Costs Paid Before Closing, Down Payment/Funds from Borrower, Deposit, Funds for Borrower, Seller Credits, Adjustments and Other Credits, and Cash to Close. If an item changed, the CD must direct the consumer to where the change is found.

- ✓ The table has three columns: Loan Estimate, Final, and 'Did this change?'.
- ✓ Loan Estimate column amounts are rounded to the nearest dollar to match the LE.
- ✓ If Total Closing Costs increase exceeds legal limits, the excess dollar amount must be disclosed and the consumer directed to the Lender Credit.

4.10 Loan Calculations Table on Page 5

Under federal law (CFPB Regulation Z § 1026.38(o)), page 5 of the Closing Disclosure discloses five key loan figures. The APR and TIP are updated from the Loan Estimate to reflect terms at consummation.

- ✓ Discloses Total of Payments, Finance Charge, Amount Financed, APR, and Total Interest Percentage (TIP)
- ✓ APR is total costs over the loan term expressed as a rate — not the interest rate
- ✓ TIP is the total interest paid over the loan term as a percentage of the loan amount
- ✓ APR and TIP must be updated to reflect the legal obligation at consummation

4.11 Standard vs. Model Closing Disclosure Form

Under federal law (TILA/RESPA, CFPB), for federally related mortgage loans subject to RESPA (most mortgages), the Closing Disclosure blank form is a standard form that creditors must use, including all elements like font sizes, bolding, shading, and underscoring. For other covered transactions that are not federally related mortgage loans, the form is a model form that need not be used verbatim, but disclosures must contain the same information in a substantially similar format. Using an appropriate sample form provides a safe harbor if completed accurately.

- ✓ Federally related mortgage loans must use the standard Closing Disclosure form with all formatting elements
- ✓ Non-federally-related covered loans may use a model form with substantially similar content and format
- ✓ Proper use of an appropriate sample form provides a safe harbor

4.12 Closing Disclosure Page 1 Contents

Under federal law (TILA/RESPA, CFPB), page 1 of the Closing Disclosure contains general information, the Loan Terms table (loan amount, interest rate, monthly principal & interest, prepayment penalty, balloon payment), the Projected Payments table, and the Costs at Closing table (closing costs and cash to close).

- ✓ Page 1 discloses general info, Loan Terms, Projected Payments, and Costs at Closing
- ✓ Loan Terms table shows loan amount, interest rate, P&I, prepayment penalty, and balloon payment
- ✓ Costs at Closing shows closing costs and cash to close

4.13 Page 3 Closing Disclosure Content

Under federal law (TILA-RESPA, CFPB), page 3 of the Closing Disclosure contains the Calculating Cash to Close table and the Summaries of Transactions tables, which show what changed from the Loan Estimate and summarize the borrower's and seller's sides of the transaction (amounts due from borrower, amounts paid, and cash to close).

- ✓ Page 3 discloses the Calculating Cash to Close table (§ 1026.38(ii))
- ✓ Page 3 discloses the Summaries of Transactions tables for both borrower and seller (§ 1026.38(j) and (k))
- ✓ The Calculating Cash to Close table compares the Loan Estimate to the Final figures and explains changes

4.14 Permitted Delivery Methods

Under federal law (TILA-RESPA, CFPB), the Closing Disclosure may be delivered in person, by mail, or by electronic methods including email (subject to E-SIGN Act consumer consent requirements). Regardless of method, the consumer must actually receive it at least three business days before consummation.

- ✓ May be provided in person, by mail, or electronically including email (§ 1026.38(t)(3)(iii))
- ✓ Electronic delivery must comply with the E-SIGN Act (15 U.S.C. 7001 et seq.)
- ✓ Consumer must receive it at least three business days prior to consummation (§ 1026.19(f)(1)(ii)(A))

4.15 Settlement Agent Delivery on Creditor's Behalf

Under federal law (TILA-RESPA, CFPB), creditors may contract with settlement agents to provide the Closing Disclosure to the consumer, and may divide responsibility for completing it. However, the creditor remains legally responsible for any errors or defects.

- ✓ Creditors may use settlement agents to provide the Closing Disclosure (§ 1026.19(f)(1)(v))
- ✓ Creditor remains legally responsible for errors or defects even when a settlement agent delivers

4.16 Seller's Closing Disclosure Responsibility

Under federal law (TILA-RESPA, CFPB), the settlement agent is required to provide the seller with a Closing Disclosure reflecting the actual terms of the seller's transaction. This may be a copy of the consumer's Closing Disclosure or a separate seller-only disclosure.

- ✓ Settlement agent must provide the seller a Closing Disclosure reflecting the seller's actual terms (§ 1026.19(f)(4)(i))
- ✓ Seller may receive either a copy of the buyer's disclosure or a separate seller-only version
- ✓ Seller-paid real estate commissions must be disclosed and cannot be omitted

4.17 Delivery With Multiple Consumers

Under federal law (TILA-RESPA, CFPB), in rescindable transactions the Closing Disclosure must be given separately to each consumer with the right to rescind. In non-rescindable transactions, it may be given to any consumer with primary liability.

- ✓ Rescindable transactions: each consumer with the right to rescind must receive the Closing Disclosure (§ 1026.23)
- ✓ Non-rescindable transactions: disclosure may go to any consumer primarily liable (§ 1026.17(d))

4.18 Seller Disclosure Delivery Timing

Under federal law (TILA-RESPA, CFPB), the settlement agent must provide the seller its copy of the Closing Disclosure no later than the day of consummation.

- ✓ Seller must receive the Closing Disclosure no later than the day of consummation (§ 1026.19(f)(4)(ii))
- ✓ The seller's three-day advance requirement does NOT apply to the seller's copy

4.19 Seller Credits on Loan Estimate and Closing Disclosure

Under federal law (TILA/RESPA, CFPB), general seller credits appear in the Calculating Cash to Close table; specific seller credits (offsetting a particular fee) may be reflected in that fee's total or in the Cash to Close table. On the Closing Disclosure, specific credits appear in the Seller-Paid column and general credits in the Calculating Cash to Close and Summary of Transactions tables. A material difference in credits between the two forms requires a statement directing the consumer to the details.

- ✓ General seller credits are disclosed in the Calculating Cash to Close table; specific seller credits may offset the specific fee or appear in Cash to Close
- ✓ On the Closing Disclosure, specific seller credits go in the Seller-Paid column; general credits go in Cash to Close and Summary of Transactions
- ✓ A non-rounding difference between seller credits on the LE and CD requires a statement telling the consumer to see the details
- ✓ Omitting a seller-covered charge from the Loan Estimate can cause a good-faith tolerance violation if the charge later increases (e.g., appraisals have a zero tolerance)

4.20 Loan Information Section Contents

Under federal law (§ 1026.38(a)(5)), the Loan Information subheading on page 1 of the Closing Disclosure discloses the Loan Term, Purpose, Product, Loan Type, the creditor's loan identification number (Loan ID #), and, if required by the creditor, the mortgage insurance case number (MIC #). These items use the same definitions as on the Loan Estimate but are updated to reflect the terms at consummation.

- ✓ Loan Information discloses Loan Term, Purpose, Product, Loan Type, Loan ID #, and MIC # (if required).
- ✓ Loan Type options include Conventional, FHA, and VA.
- ✓ These items are defined the same as on the Loan Estimate but updated at consummation.

4.21 Loan Costs and Other Costs Structure

Under federal law (§ 1026.38(f)-(h)), page 2 details Closing Cost Details split into Loan Costs and Other Costs, with columns for Borrower-Paid (At Closing / Before Closing), Seller-Paid (At Closing / Before Closing), and Paid by Others. Loan Costs include Origination Charges, Services Borrower Did Not Shop For, and Services Borrower Did Shop For. Required items such as Points cannot be deleted even if not needed.

- ✓ Page 2 columns are Borrower-Paid, Seller-Paid, and Paid by Others, each with At Closing / Before Closing.
- ✓ Required items like Points in Origination Charges cannot be deleted even when unused.
- ✓ Loan Costs and Other Costs tables may be split onto pages 2a and 2b when needed.

4.22 Prepays and Initial Escrow Payment

Under federal law (§ 1026.38(g)), Other Costs include Taxes and Government Fees, Prepays, Initial Escrow Payment at Closing, and Other. Prepays are items paid in advance of the first scheduled payment: Homeowner's Insurance Premium, Mortgage Insurance Premium, Prepaid Interest, Property Taxes, and up to three additional items. The Initial Escrow Payment section's last item is the Aggregate Adjustment, calculated under Regulation X.

- ✓ Prepays include homeowner's insurance, mortgage insurance, prepaid interest, and property taxes (plus up to 3 more).
- ✓ Each prepaid item must show the applicable time period and total amount.
- ✓ The last item in Initial Escrow Payment at Closing is the Aggregate Adjustment, calculated under Regulation X.

4.23 Summaries of Transactions and Deposit

Under federal law (§ 1026.38(j),(k)), the Summaries of Transactions table shows amounts due from/ paid to the borrower and seller, resembling the old HUD-1. The Deposit is the amount paid into a trust account under the sale contract; if applied to a closing cost it is deducted from the deposit shown, but no deduction is made for real estate commissions on page 2. Seller Credits are general credits from the seller to the consumer.

- ✓ Summaries of Transactions discloses borrower and seller amounts, similar to the former HUD-1.
- ✓ Deposit = earnest money paid into a trust account under the contract of sale.
- ✓ No deduction from the Deposit is made for real estate commissions disclosed on page 2.

4.24 Calculating Borrower Cash to Close

On the Closing Disclosure's Summaries of Transactions, the borrower's Cash to Close is calculated by combining the total amounts due from the borrower with amounts already paid. Under federal law (TILA/RESPA, implemented by the CFPB under Regulation Z), the disclosure shows whether the borrower must bring cash to closing or receive cash back.

- ✓ Total Due from Borrower at Closing is disclosed as a positive number
- ✓ Total Paid Already by or on Behalf of the Borrower is disclosed as a negative number
- ✓ The sum is disclosed as 'Cash to Close From Borrower' when positive and 'Cash to Close To Borrower' when negative; either way shown as a positive number

4.25 Due to Seller at Closing

The amount Due to Seller at Closing is the total the seller receives, based principally on the sale price plus adjustments and prepaid items. This is a federal Closing Disclosure requirement under CFPB Regulation Z § 1026.38(k)(1).

- ✓ Due to Seller includes the Sale Price of the Property
- ✓ Includes Sale Price of any Personal Property Included in Sale
- ✓ Includes Adjustments and Adjustments for Items Paid by Seller in Advance (prepaid items owed by buyer)
- ✓ Manufactured homes are NOT considered personal property for the Closing Disclosure

4.26 Due from Seller at Closing

The amount Due from Seller at Closing reduces the seller's proceeds and includes seller-paid costs, credits, and payoffs. Under federal law (CFPB Regulation Z § 1026.38(k)(2)), these amounts are subtracted from what is due to the seller.

- ✓ Includes Excess Deposit, Closing Costs Paid at Closing by Seller, Seller Credit
- ✓ Includes Payoff of First and Second Mortgage Loans and other seller obligations
- ✓ Includes Adjustments for Items Unpaid by Seller (e.g., taxes paid in arrears owed to buyer)

4.27 Calculating Seller Cash to Close

Under federal law (CFPB Regulation Z § 1026.38(k)(3)), the seller's cash to close nets the Total Due to Seller against the Total Due from Seller, showing whether the seller receives or must pay funds at closing.

- ✓ Total Due to Seller at Closing shown as positive; Total Due from Seller shown as negative
- ✓ A positive sum is disclosed as 'Cash to Seller'; a negative sum as 'Cash from Seller'
- ✓ The sum is always disclosed as a positive number

4.28 Loan Disclosures on Closing Disclosure Page 4

Page 4 of the Closing Disclosure, under 'Additional Information About This Loan,' contains a Loan Disclosures table informing the borrower of key loan features. Required under federal Regulation Z § 1026.38(l).

- ✓ Discloses whether the loan is assumable by a future purchaser
- ✓ Discloses Demand Feature, Late Payment terms, and Negative Amortization possibility
- ✓ Discloses lender's Partial Payments policy and that the borrower is granting a Security Interest in the property
- ✓ States the borrower may lose the property for failure to make payments

4.29 Escrow Account Disclosures

Under federal law (CFPB Regulation Z § 1026.38(l)(7)), the Closing Disclosure must disclose whether an escrow (impound) account is established and the amounts involved. If no escrow is established, estimated property costs and any waiver fee are disclosed.

- ✓ When escrow is established: disclose Escrowed and Non-Escrowed Property Costs over Year 1, Initial Escrow Payment, and Monthly Escrow Payment
- ✓ When no escrow: disclose Estimated Property Costs over Year 1 and any Escrow Waiver Fee
- ✓ Property Costs include property taxes, homeowner's insurance, HOA/condo/cooperative charges, ground rent, and leasehold payments
- ✓ The Initial Escrow Payment equals the subtotal of Initial Payment at Closing shown on page 2

4.30 Other Disclosures Table

Under federal law (CFPB Regulation Z § 1026.38(p)), the Other Disclosures table informs the borrower about appraisal rights, contract details, liability after foreclosure, refinancing, and tax deductibility of interest.

- ✓ Discloses the borrower's right to receive a copy of any Appraisal
- ✓ Discloses whether state law protects the borrower from Liability after Foreclosure
- ✓ Discloses statements on Refinance ability and Tax Deductions of loan interest

4.31 Appraisal Disclosure Requirement

Under federal law (Regulation Z § 1026.37(m)(1)), the appraisal statement must be provided for Higher-Priced Mortgage Loans and loans covered by the Equal Credit Opportunity Act, telling the borrower a copy of the appraisal must be provided at no additional cost at least 3 days before closing.

- ✓ Required for Higher-Priced Mortgage Loans (defined at 12 CFR 1026.35) and ECOA-covered loans
- ✓ Lender must provide the appraisal copy at no additional cost at least 3 days before closing

4.32 Closing Disclosure Page 2 Cost Details

Under federal law (TILA/RESPA, CFPB), page 2 of the Closing Disclosure discloses the Loan Costs and Other Costs tables under the heading 'Closing Cost Details.' Loan Costs include origination charges, services the borrower did not shop for, and services the borrower did shop for. Other Costs include taxes/government fees, prepaids, initial escrow payments, and other items.

- ✓ Page 2 shows Loan Costs and Other Costs under 'Closing Cost Details'
- ✓ Loan Costs are divided into origination charges, services not shopped for, and services shopped for
- ✓ Other Costs include government fees, prepaids, and initial escrow payments

4.33 Alternative Payoffs and Payments Table

Under federal law (TILA-RESPA, CFPB), for transactions without a seller and for simultaneous subordinate-lien loans where the first-lien Closing Disclosure covers the entire seller transaction, a Payoffs and Payments table may be substituted for the Summaries of Transactions table.

- ✓ No-seller transactions may use an alternative Payoffs and Payments table (§ 1026.38(e)(4) and (t)(5)(vii) (B))
- ✓ Principal reductions (e.g., to cure tolerance violations) are disclosed in the Summaries of Transactions or the alternative Payoffs and Payments table

4.34 Other Costs and Lender Credits

Under federal law (§ 1026.38(g)(4), (h)), 'Other' items include costs not required on the Loan Estimate such as real estate brokerage fees, HOA/condo fees paid at consummation, home warranties, and inspection fees. Total Closing Costs (Borrower-Paid) is all consumer closing costs reduced by Lender Credits. General lender credits (regardless of source) are shown as Lender Credits; any offset to resolve an excess charge is also included.

- ✓ Other costs include real estate brokerage fees, HOA/condo fees, home warranties, and inspection fees.
- ✓ Total Closing Costs (Borrower-Paid) = consumer closing costs minus Lender Credits.
- ✓ An earnest money deposit does not affect real estate commission amounts on the CD.

CHAPTER 5

Corrected Closing Disclosures

5.1 Three Changes Triggering a New Three-Day Wait

Under federal law (TILA-RESPA, CFPB), only three changes before consummation trigger a new three-business-day waiting period: the disclosed APR becomes inaccurate, the loan product changes, or a prepayment penalty is added. All other changes require a corrected disclosure at or before consummation but no new waiting period.

- ✓ New three-day waiting period required if the disclosed APR becomes inaccurate (§ 1026.19(f)(2)(ii)(A))
- ✓ New three-day waiting period required if the loan product changes (§ 1026.19(f)(2)(ii)(B))
- ✓ New three-day waiting period required if a prepayment penalty is added (§ 1026.19(f)(2)(ii)(C))
- ✓ All other changes require a corrected disclosure at or before consummation, no new waiting period (§ 1026.19(f)(2)(i))

5.2 Rate Lock After Initial Closing Disclosure

Under federal law (TILA/RESPA, CFPB), if the interest rate is locked after the creditor provides the Closing Disclosure and the charges or terms become inaccurate as a result, the creditor must provide a corrected Closing Disclosure at or before consummation. If the rate lock makes the previously disclosed APR inaccurate, a new three-business-day waiting period is triggered.

- ✓ A corrected Closing Disclosure is required if a rate lock makes charges or terms inaccurate
- ✓ If charges/terms do not become inaccurate from the rate lock, no corrected Closing Disclosure is required
- ✓ If the rate lock makes the APR inaccurate, the corrected disclosure must be provided at least three business days before consummation
- ✓ Corrected disclosures must be updated based on the best information reasonably available

5.3 Three Categories of Required Corrections

Under federal law (TILA-RESPA, CFPB), a corrected Closing Disclosure with all changed terms is required when changes make the disclosure inaccurate. There are three categories: changes before consummation requiring a new waiting period, changes before consummation not requiring one, and changes after consummation.

- ✓ Corrections required in three categories under § 1026.19(f)(2): before-consummation with new waiting period, before-consummation without, and after-consummation
- ✓ A corrected Closing Disclosure must contain all changed terms
- ✓ A corrected Closing Disclosure may be used to reset tolerances when a changed circumstance or triggering event occurs

5.4 APR Inaccuracy and Overstated APR

Under federal law (TILA-RESPA, CFPB), whether an APR change triggers a new waiting period depends on APR accuracy under § 1026.22(a). Even an overstated APR can be considered inaccurate under Regulation Z, potentially requiring a new waiting period.

- ✓ APR accuracy is determined under § 1026.22(a), with special mortgage rules in § 1026.22(a)(4)
- ✓ An overstated APR may still be inaccurate and trigger a new three-day waiting period

5.5 Consumer Right to Inspect Closing Disclosure

Under federal law (TILA/RESPA, CFPB), for changes other than the APR, loan product, or addition of a prepayment penalty, the creditor is not required to provide the corrected Closing Disclosure until the day of consummation. However, the consumer has the right to inspect the Closing Disclosure during the business day before consummation, and that inspected disclosure must reflect any cost or term adjustments known to the creditor at that time.

- ✓ For non-APR/product/prepayment-penalty changes, the corrected Closing Disclosure need only be provided by the day of consummation
- ✓ Consumer has the right to inspect the Closing Disclosure during the business day before consummation
- ✓ The inspected Closing Disclosure must reflect adjustments known to the creditor when inspected
- ✓ Creditors may arrange for settlement agents to permit consumers to inspect the Closing Disclosure

5.6 Post-Consummation Corrected Closing Disclosure

Under federal law (TILA/RESPA, CFPB), creditors must provide a corrected Closing Disclosure if a settlement-related event occurs during the 30-calendar-day period after consummation that makes the disclosure inaccurate and changes an amount paid by the consumer. The corrected disclosure must be delivered or mailed no later than 30 calendar days after the creditor receives sufficient information.

- ✓ A corrected Closing Disclosure is required for settlement events within 30 calendar days after consummation that change amounts paid by the consumer
- ✓ Must deliver or mail the corrected disclosure within 30 calendar days of receiving sufficient information
- ✓ Per-diem interest changes alone do not trigger a corrected Closing Disclosure
- ✓ An example requiring correction is a recording fee that differs from what was disclosed; unrelated events like tax increases do not require correction

5.7 Clerical Errors and 60-Day Correction Window

Under federal law (TILA/RESPA, CFPB), creditors must provide a corrected Closing Disclosure to fix non-numerical clerical errors and document cures for tolerance violations no later than 60 calendar days after consummation. An error is clerical only if it does not affect a numerical disclosure or the timing/delivery requirements.

- ✓ Non-numerical clerical errors must be corrected within 60 calendar days after consummation
- ✓ An error is clerical only if it does not affect a numerical disclosure or timing/delivery requirements
- ✓ Naming an incorrect settlement service provider is clerical; a wrong property address (affecting delivery) is NOT clerical

5.8 Settlement Agent Corrected Disclosure for Seller

Under federal law (TILA/RESPA, CFPB), settlement agents must provide a corrected Closing Disclosure if a settlement-related event within 30 days after consummation makes the disclosure inaccurate and changes an amount actually paid by the seller. It must be delivered or mailed within 30 calendar days of receiving sufficient information.

- ✓ Settlement agents must correct the Closing Disclosure for seller-paid amount changes from events within 30 days after consummation
- ✓ The corrected disclosure must be delivered or mailed within 30 calendar days of receiving sufficient information

CHAPTER 6

Special Transactions and Post-Consummation Disclosures

6.1 Coverage of Construction Loans

Under federal law (TILA/RESPA, CFPB), construction loans that are closed-end consumer credit transactions secured by real property or a cooperative unit are subject to the TILA-RESPA Rule. Open-end (HELOC), business-purpose, or non-consumer construction loans are not covered.

- ✓ Closed-end consumer construction loans secured by real property or a cooperative unit are covered by the TILA-RESPA Rule
- ✓ Open-end, business-purpose, or non-consumer construction loans are NOT covered

6.2 One vs. Two Transaction Disclosure Options

Under federal law (TILA/RESPA, CFPB), a creditor may disclose a construction-permanent loan as one transaction (single Loan Estimate and Closing Disclosure covering both phases) or as two separate transactions (separate LE and CD for each phase). This choice is independent of whether there are one or two closings.

- ✓ A construction-permanent loan may be disclosed as one transaction or as two separate transactions
- ✓ Disclosing as two transactions does not require two separate closings, notes, or contracts
- ✓ A single transaction may be disclosed even if there are separate construction and permanent closings
- ✓ Appendix D provides methods to estimate interest for multiple-advance construction loans

6.3 Loan Estimate Timing in Construction Loans

Under federal law (TILA/RESPA, CFPB), for two-transaction disclosures, the creditor must provide a Loan Estimate within three business days of the application for each phase. If both applications come at once, the LE(s) are due within three business days of that application. Using separate disclosures for the permanent phase allows a revised LE any time prior to 60 days before consummation.

- ✓ A Loan Estimate must be delivered or mailed within three business days of receipt of the application for each phase
- ✓ If both phases are applied for together, the LE(s) are due within three business days of the combined application
- ✓ Separate permanent-phase disclosures allow a revised Loan Estimate up to 60 days before consummation

6.4 Additional TILA-RESPA Disclosures

Under federal law (TILA-RESPA Rule, CFPB), besides the Loan Estimate and Closing Disclosure, the rule also affects certain post-consummation disclosures provided by creditors and servicers, including the Escrow Closing Notice (§ 1026.20(e)) and the Partial Payment Policy Disclosure (§ 1026.39(a) and (d)). Other Regulation Z notices, such as interest rate adjustment notices under § 1026.20, may still be required.

- ✓ The TILA-RESPA Rule includes the Escrow Closing Notice (§ 1026.20(e)) and Partial Payment Policy Disclosure (§ 1026.39)
- ✓ Interest rate adjustment notices under § 1026.20 may still be required in addition to the integrated disclosures

6.5 Escrow Closing Notice Timing and Scope

Under federal law (Regulation Z § 1026.20(e), CFPB), for loans subject to the requirement, the creditor or servicer must provide the Escrow Closing Notice no later than three business days before the consumer's escrow account is canceled. It must be provided before cancelling an escrow account established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except reverse mortgages. A dwelling includes a mobile home or cooperative unit.

- ✓ Escrow Closing Notice must be provided at least 3 business days before the escrow account is canceled (§ 1026.20(e)(5))
- ✓ Applies to closed-end transactions secured by a first lien on real property or a dwelling, excluding reverse mortgages
- ✓ A dwelling includes a mobile home or cooperative unit (§ 1026.2(a)(19))

6.6 Required Content of the Escrow Closing Notice

Under federal law (TILA, Regulation Z § 1026.20(e), enforced by the CFPB), creditors and servicers must provide an Escrow Closing Notice when a consumer's escrow (impound/trust) account is being cancelled. The notice must contain specific mandatory disclosures so the consumer understands the consequences of losing the escrow account, especially that they must now pay property taxes and homeowner's insurance directly.

- ✓ The notice must disclose the date the escrow account will close, that it may also be called an impound or trust account, and the reason for closing
- ✓ It must warn that without escrow the consumer must pay all property costs (taxes, homeowner's insurance) directly, possibly in one or two large payments a year
- ✓ It must include a 'Cost to you' table itemizing any 'Escrow Closing Fee' charged
- ✓ It must state consequences of failing to pay property costs and provide a phone number for more information

6.7 Timing of Escrow Closing Notice Delivery

Under federal law (Regulation Z § 1026.20(e)(5), CFPB), the timing for delivering the Escrow Closing Notice depends on whether the consumer requested the cancellation or it was cancelled for another reason. The mailbox rule applies to determine receipt.

- ✓ If the consumer requests cancellation, the consumer must receive the notice no later than 3 business days before the account is closed
- ✓ If cancelled for any other reason, the consumer must receive the notice no later than 30 business days before the account is closed
- ✓ Under the mailbox rule, if not delivered in person, the consumer is deemed to receive the notice 3 business days after it is mailed or delivered
- ✓ Business day means all calendar days except Sundays and specified federal legal public holidays (the 'specific' business day definition used for the Closing Disclosure)

6.8 Value Disclosure for Construction Loans

Under federal law (TILA/RESPA, CFPB), whether the creditor discloses sale price or value depends on if the transaction involves a seller and whether the sale price is known. With a seller, disclose the contract sale price; without a seller (e.g., consumer already owns the land), disclose the appraised value if an appraisal exists, or the estimated value if not.

- ✓ In seller transactions, disclose the contract sale price; if unknown on the LE, disclose estimated/appraised value
- ✓ In transactions without a seller, disclose the appraised value if an appraisal exists, otherwise the estimated value
- ✓ On the Closing Disclosure, disclose the value used to approve the credit transaction, including improvements if used in approval
- ✓ Absent its own estimate, the creditor may use a consumer-provided estimate at application

6.9 Format Requirements for Escrow Closing Notice

Under federal law (Regulation Z § 1026.20(e)(4), CFPB), the Escrow Closing Notice must meet specific formatting standards to ensure it is clear and conspicuous to the consumer, modeled on form H-29 in Appendix H to Regulation Z.

- ✓ Disclosures must be clear and conspicuous, in a reasonably understandable form and readily noticeable
- ✓ Must be written in at least 10-point font
- ✓ Must be grouped together on the front side of a one-page document, separate from other materials, substantially similar to model form H-29

CHAPTER 7

Home Mortgage Interest Deduction: Rules and Limits

7.1 Home Mortgage Interest Deduction Debt Limits

Under federal law (Internal Revenue Code, administered by the IRS), taxpayers can deduct home mortgage interest on a limited amount of qualifying debt. The current limit is the first \$750,000 (\$375,000 if married filing separately) of indebtedness. A higher limit of \$1 million (\$500,000 if married filing separately) applies to acquisition debt incurred before December 16, 2017.

- ✓ Current acquisition debt deduction limit is \$750,000 (\$375,000 if married filing separately)
- ✓ Debt incurred before December 16, 2017 uses the higher \$1 million (\$500,000 MFS) limit
- ✓ The dollar limits apply to combined mortgages on the main home and second home

7.2 Home Equity Loan Interest Restriction

Under federal law, interest on a home equity loan or line of credit is deductible only if the loan proceeds are used to buy, build, or substantially improve the home that secures the loan. If the proceeds are used for other purposes (e.g., paying off a car or personal expenses), the interest is NOT deductible regardless of when the debt was incurred.

- ✓ Home equity loan interest is deductible only if proceeds buy, build, or substantially improve the securing home
- ✓ The loan must be secured by the taxpayer's main or second home (qualified residence)
- ✓ This restriction applies no matter when the indebtedness was incurred

7.3 Conditions to Deduct Home Mortgage Interest

Under federal law, home mortgage interest is any interest paid on a loan secured by a main home or second home. To deduct it, the taxpayer must file Form 1040/1040-SR and itemize on Schedule A, and the mortgage must be a secured debt on a qualified home in which the taxpayer has an ownership interest. Both borrower and lender must intend the loan be repaid.

- ✓ Taxpayer must itemize deductions on Schedule A (Form 1040)
- ✓ The mortgage must be a secured debt on a qualified home with ownership interest
- ✓ Both borrower and lender must intend that the loan be repaid

7.4 Three Categories of Fully Deductible Interest

Under federal law, all mortgage interest is fully deductible if the mortgages fit into one of three categories: (1) grandfathered debt taken out on or before October 13, 1987; (2) home acquisition debt after Oct 13, 1987 and before Dec 16, 2017 totaling \$1 million or less (\$500,000 MFS); or (3) home acquisition debt after Dec 15, 2017 totaling \$750,000 or less (\$375,000 MFS).

- ✓ Grandfathered debt (on/before Oct 13, 1987) is fully deductible with no dollar limit
- ✓ Pre-Dec 16, 2017 acquisition debt limit is \$1 million (\$500,000 MFS)
- ✓ Post-Dec 15, 2017 acquisition debt limit is \$750,000 (\$375,000 MFS)

7.5 Home Acquisition Debt Definition and Limits

Under federal law, home acquisition debt is a mortgage taken out after October 13, 1987, to buy, build, or substantially improve a qualified home and secured by that home. The limit is \$1 million (\$500,000 MFS) for debt secured before Dec 16, 2017, and \$750,000 (\$375,000 MFS) for debt secured after Dec 15, 2017. These limits are reduced by grandfathered debt.

- ✓ Home acquisition debt must be used to buy, build, or substantially improve a qualified home
- ✓ Pre-Dec 16, 2017 limit is \$1 million (\$500,000 MFS); post-Dec 15, 2017 limit is \$750,000 (\$375,000 MFS)
- ✓ The acquisition debt limit is reduced (not below zero) by grandfathered debt

7.6 Secured Debt Requirement

Under federal law, mortgage interest is deductible only if the debt is secured. A secured debt is one where the taxpayer signs an instrument (mortgage, deed of trust, or land contract) making the home security for the debt, providing the home can satisfy the debt on default, and that is recorded or perfected under applicable state/local law.

- ✓ The instrument must make the home security for payment of the debt
- ✓ In case of default, the home must be able to satisfy the debt
- ✓ The debt must be recorded or otherwise perfected under state/local law

7.7 Qualified Home Definition

Under federal law, a qualified home is the taxpayer's main home or second home. A home includes a house, condominium, cooperative, mobile home, house trailer, or boat that has sleeping, cooking, and toilet facilities. A taxpayer can have only one main home at a time.

- ✓ A home must have sleeping, cooking, and toilet facilities to qualify
- ✓ A taxpayer can have only one main home at any one time
- ✓ Interest on a home beyond the main/second home is deductible only for business/investment purposes

7.8 Refinanced Home Acquisition Debt

Under federal law, secured debt used to refinance home acquisition debt is treated as home acquisition debt, but only up to the balance of the old mortgage principal just before refinancing. Any additional amount not used to buy, build, or substantially improve the home is not acquisition debt.

- ✓ Refinanced acquisition debt qualifies only up to the old mortgage's remaining principal
- ✓ Extra cash-out not used to improve the home is not home acquisition debt
- ✓ The refinanced debt must remain secured by the qualified home

7.9 Grandfathered Debt

Under federal law, a mortgage taken out before October 14, 1987 (and secured by the home on Oct 13, 1987 and continuously after) is grandfathered debt. All interest on grandfathered debt is fully deductible regardless of how proceeds were used, but the amount of grandfathered debt reduces the home acquisition debt limit.

- ✓ Grandfathered debt was secured by the qualified home on and after October 13, 1987
- ✓ How the proceeds were used doesn't matter for grandfathered debt
- ✓ Grandfathered debt interest is fully deductible but reduces the acquisition debt limit

7.10 Second Home Rental Use Rules

Under federal law, a second home not held out for rent can be treated as a qualified home without personal use. If rented part of the year, the taxpayer must also use it as a home for more than 14 days or more than 10% of the days it is rented at fair rental, whichever is longer, or it is treated as rental property, not a second home.

- ✓ Second home not rented out qualifies without any personal use during the year
- ✓ If rented, must be used more than 14 days OR more than 10% of rental days, whichever is longer
- ✓ Only one second home may be treated as the qualified second home per year

7.11 Mortgage Treated as Used to Buy/Build Home

Under federal law, a mortgage secured by a qualified home may be treated as acquisition debt even if proceeds aren't directly used to buy/build/improve, if the home is bought within 90 days before or after taking out the mortgage, or the mortgage is taken out within 24 months before or 90 days after construction/improvement work.

- ✓ Home bought within 90 days before/after the mortgage can be treated as acquisition debt
- ✓ Mortgage taken within 90 days after completion covers expenses incurred within 24 months before completion
- ✓ Acquisition debt is limited to the home's cost plus substantial improvements

CHAPTER 8

Points

8.1 Points Definition and General Rule

Under federal law, points are charges paid by a borrower to obtain a home mortgage (also called loan origination fees, maximum loan charges, loan discount, or discount points). Because points are prepaid interest, the general rule requires deducting them ratably over the life of the loan rather than in full in the year paid.

- ✓ Points may be called loan origination fees, loan discount, or discount points
- ✓ General rule: points are prepaid interest deducted ratably over the loan's life
- ✓ A borrower is treated as paying any points the seller pays for the borrower's mortgage

8.2 Deducting Points in Full in Year Paid

Under federal law, points may be fully deducted in the year paid if all nine tests are met, including: the loan is secured by the main home, paying points is an established business practice in the area, points don't exceed the area norm, cash method of accounting is used, the loan buys or builds the main home, and points are figured as a percentage of principal and clearly shown on the settlement statement.

- ✓ Loan must be secured by and used to buy or build the taxpayer's main home
- ✓ Paying points must be an established practice and not exceed area norms
- ✓ Points must be figured as a percentage of principal and clearly shown on the settlement statement

8.3 Points on Second Home and Refinancing

Under federal law, points paid on a loan secured by a SECOND home cannot be fully deducted in the year paid — they must be deducted over the life of the loan. Similarly, points paid to refinance a mortgage generally are not fully deductible in the year paid, but the portion related to a substantial improvement of the main home may be fully deducted.

- ✓ Points on a second home must be deducted over the life of the loan, not in the year paid
- ✓ Refinancing points generally are deducted over the life of the loan
- ✓ Points on a loan to substantially improve the main home can be fully deducted if tests 1-6 are met

8.4 Amounts Charged for Services Are Not Points

Under federal law, amounts charged by the lender for specific services are not deductible interest or points. These include appraisal fees, VA funding fees, mortgage insurance premiums, notary fees, and preparation costs for the mortgage note or deed of trust.

- ✓ Service charges (appraisal, notary, VA funding fees) are not deductible as points
- ✓ These amounts cannot be deducted in the year paid or over the loan's life
- ✓ Points must be prepaid interest, not payment for specific services

8.5 Points Paid by the Seller

Under federal law, seller-paid points (including loan placement fees) are treated as if paid by the buyer. The buyer must reduce the home's basis by the seller-paid points and may deduct them. The seller cannot deduct these as interest but treats them as a selling expense reducing amount realized.

- ✓ Buyer treats seller-paid points as if the buyer paid them and reduces home basis by that amount
- ✓ Seller cannot deduct seller-paid points as interest — they are a selling expense
- ✓ Buyer may deduct seller-paid points in year paid if all Deduction Allowed in Year Paid tests are met

CHAPTER 9

FIRPTA: Withholding on Foreign Sellers

9.1 Foreign Persons Subject to Withholding

Under federal law (IRS), withholding on U.S. source income (including dispositions of USRPIs) applies only to foreign persons — not to U.S. persons. A foreign person includes a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, and foreign estate. Determining whether a payee/seller is foreign or U.S. is central to whether withholding is required in a real estate transaction.

- ✓ Withholding applies only if the payee/transferor is a foreign person; U.S. persons are exempt
- ✓ A nonresident alien is an individual who is not a U.S. citizen or resident alien
- ✓ A resident alien (green card test or substantial presence test) is treated as a U.S. person and is not subject to nonresident withholding

9.2 Withholding Agent Liability

Under federal law (IRS), a withholding agent is personally liable for any tax required to be withheld, independent of the foreign person's own tax liability. In real estate, this makes the buyer/transferee (or their agent) responsible for withholding on purchases from foreign sellers. Failure to withhold exposes the agent to the tax, interest, and penalties.

- ✓ A withholding agent is personally liable for the full tax required to be withheld
- ✓ This liability is independent of the foreign person's U.S. tax liability
- ✓ If the withholding agent fails to withhold and the foreign person does not pay, both are liable for tax, interest, and penalties

9.3 Federal Withholding Rates on Real Estate-Related Payments

Under federal law (IRS Publication 515, Chart C), specific statutory withholding rates apply to payments to foreign persons unless reduced by tax treaty. Real estate exam candidates should know the FIRPTA-related rates and the general default rate. The general rate on U.S. source income not effectively connected with a U.S. trade or business is 30%.

- ✓ Dispositions of a USRPI are withheld at 15% (21% for certain entity distributions)
- ✓ Dispositions of partnership interests under section 1446(f) are withheld at 10%
- ✓ The default withholding rate on all other U.S. source income subject to withholding is 30%
- ✓ Rents (real property income) are FDAP income subject to 30% withholding unless treated as ECI or reduced by treaty

9.4 FIRPTA Withholding on Disposition of USRPI

Under federal law (FIRPTA, section 1445, enforced by the IRS), the disposition of a U.S. real property interest (USRPI) by a foreign person (the transferor) is subject to income tax withholding. The transferee (buyer) is responsible for finding out whether the seller is a foreign person, and if the transferor is foreign and the buyer fails to withhold, the buyer may be held personally liable for the tax.

- ✓ FIRPTA applies to dispositions of USRPIs by foreign persons under IRC section 1445
- ✓ The transferee/buyer must determine if the transferor is a foreign person
- ✓ If the seller is foreign and the buyer fails to withhold, the buyer can be held liable for the tax
- ✓ A foreign person is a nonresident alien individual or foreign corporation/partnership/trust/estate that has not elected domestic treatment

9.5 FIRPTA Withholding Rate and Amount Realized

Under federal law, the transferee must deduct and withhold tax on the total amount realized by the foreign person on the disposition. The general FIRPTA rate of withholding is 15%. The amount realized is the sum of cash paid (principal only), the fair market value of other property transferred, and any liability assumed by the transferee or to which the property is subject.

- ✓ The general FIRPTA withholding rate is 15% of the amount realized
- ✓ Amount realized = cash paid + FMV of other property + liabilities assumed
- ✓ If jointly owned by U.S. and foreign persons, the amount realized is allocated based on each transferor's capital contribution

9.6 FIRPTA Residence Exception and Reduced Rates

Under federal law (FIRPTA, IRC section 1445), the general withholding rate on the amount realized is 15%. A lower rate applies only when the transferee acquires the property for use as a residence: if the amount realized is \$300,000 or less, no withholding is required; if it is more than \$300,000 but not more than \$1,000,000, the rate is reduced to 10%; above \$1,000,000 the full 15% applies. To use the residence exception the transferee must be an individual with definite plans to reside at the property for at least 50% of the days it is in use during each of the first two 12-month periods after the transfer.

- ✓ General FIRPTA withholding rate is 15% of the amount realized
- ✓ Residence purchase, amount realized \$300,000 or less: no withholding
- ✓ Residence purchase, amount realized over \$300,000 up to \$1,000,000: reduced 10% rate
- ✓ Amount realized over \$1,000,000, or property not acquired as a residence: 15%
- ✓ Residence exception requires an individual transferee with definite plans to reside there at least 50% of the days in use during each of the first two 12-month periods

9.7 Real Property Rental Income as Effectively Connected Income

Under federal law (IRS Publication 515), FDAP income may or may not be effectively connected with a U.S. trade or business. A foreign person may elect to treat rental income from U.S. real property as effectively connected income (ECI), which changes the withholding treatment. This matters when a foreign owner rents out U.S. real estate.

- ✓ Effectively connected income (ECI) includes rents from real property if the foreign owner chooses to treat that income as effectively connected with a U.S. trade or business
- ✓ Rents electively treated as ECI are generally exempt from the standard 30% chapter 3 withholding if a valid Form W-8ECI is provided

9.8 USRPI Definition

Under federal law, a USRPI is an interest (other than as a creditor) in real property located in the United States or U.S. Virgin Islands, including interests in mines, wells, or natural deposits and certain associated personal property. It also includes an interest in a domestic corporation unless it is established the corporation was never a U.S. real property holding corporation (USRPHC) during the applicable period.

- ✓ A USRPI includes an interest, other than as a creditor, in U.S. real property
- ✓ A USRPI includes an interest in a domestic corporation unless it was never a USRPHC during the applicable period
- ✓ Certain personal property associated with real property use (such as farming machinery) can be a USRPI

CHAPTER 10

FIRPTA: Exceptions, Certificates and Reporting

10.1 Exceptions to FIRPTA Withholding

Under federal law, a transferee does not have to withhold under FIRPTA in several situations, most importantly when the transferor provides a certification of non-foreign status. This certification, signed under penalties of perjury, must state the transferor is not a foreign person and include the transferor's name, U.S. TIN, and home/office address. A certificate of non-foreign status includes a Form W-9. Other key exceptions include the \$300,000 residence exception, publicly traded stock, a zero amount realized, IRS-issued withholding certificates, and acquisition by a government entity.

- ✓ No withholding if the transferor certifies non-foreign status under penalties of perjury with name, U.S. TIN, and address (includes Form W-9)
- ✓ No withholding if the amount realized on the USRPI transfer is zero
- ✓ No withholding if the buyer receives an IRS withholding certificate excusing withholding
- ✓ The certification is not effective if the transferee has actual knowledge it is false
- ✓ The transferor may give the certification to a qualified substitute (e.g., the closing agent or transferee's agent)

10.2 Liability of Agent or Qualified Substitute

Under federal law, if an agent or qualified substitute receives a non-foreign status certification and has actual knowledge that it is false (or that a corporation is foreign), the agent must notify the transferee or the agent will be held liable for the tax. The agent's liability is limited to the compensation received from the transaction.

- ✓ An agent with actual knowledge a certification is false must notify the transferee or be held liable for the tax
- ✓ The agent's or qualified substitute's liability is limited to the compensation earned from the transaction
- ✓ Certain clerical acts (recording, typing, transmitting documents) do not make a person an agent

10.3 FIRPTA Reporting Using Forms 8288 and 8288-A

Under federal law, transferees must use Forms 8288 and 8288-A to report and pay over any tax withheld on the acquisition of a USRPI. Form 8288 must generally be filed by the 20th day after the date of transfer. The U.S. TIN of both the transferor and transferee must be included. The IRS stamps Copy B of Form 8288-A and forwards it to the transferor so the transferor can claim credit on a U.S. tax return.

- ✓ Transferees report and pay FIRPTA withholding using Forms 8288 and 8288-A
- ✓ Form 8288 must generally be filed by the 20th day after the date of transfer
- ✓ The U.S. TIN of both transferor and transferee must be on the forms
- ✓ The stamped Copy B of Form 8288-A will not be issued if the transferor's TIN is missing
- ✓ Form 1099-S is generally used by the closing agent to report the sale

10.4 FIRPTA Withholding Certificates

Under federal law, the amount withheld from a USRPI disposition can be reduced or eliminated by a withholding certificate issued by the IRS. The transferee, the transferee's agent, or the transferor may request one. The IRS generally acts within 90 days of receiving a complete application including all parties' TINs. A transferor who applies must notify the transferee in writing on or before the day of transfer.

- ✓ A withholding certificate from the IRS can adjust (reduce) the FIRPTA amount to be withheld
- ✓ The transferee, transferee's agent, or transferor may request a withholding certificate
- ✓ The IRS generally acts on the request within 90 days of a complete application including all TINs
- ✓ A transferor applying must notify the transferee in writing on or before the day of transfer
- ✓ Certificates may be issued for reduced withholding, exemption of gain, or an agreement for payment of tax with security

10.5 Nonrecognition and Treaty Notice Exception

Under federal law, no withholding is required if the transferor gives written notice that no gain or loss recognition is required because of a nonrecognition provision in the Internal Revenue Code or a U.S. tax treaty. A copy of the notice must be filed by the 20th day after the transfer date with the Ogden Service Center.

- ✓ A nonrecognition notice must be provided in writing by the transferor to avoid withholding
- ✓ A copy of the notice must be filed within 20 days after transfer with the IRS (Ogden Service Center)
- ✓ This exception does not apply if only a portion of the gain is not recognized

CHAPTER 11

Home Sale Gain Exclusion: Eligibility

11.1 Section 121 Home Sale Gain Exclusion Amounts

Under federal law (IRC Section 121, IRS Publication 523), a taxpayer who sells a main home may exclude up to \$250,000 of capital gain from income. Married couples filing jointly may exclude up to \$500,000. The exclusion applies only to a principal residence, and the taxpayer avoids paying capital gains tax on the excluded amount.

- ✓ Single taxpayers may exclude up to \$250,000 of gain from the sale of a main home
- ✓ Married couples filing jointly may exclude up to \$500,000 of gain
- ✓ The exclusion applies only to the taxpayer's principal residence (main home)

11.2 Ownership and Use (Residence) Requirements

Under federal law (IRC Section 121), to qualify for the maximum exclusion the taxpayer must pass the Eligibility Test. The ownership test requires owning the home at least 24 months (2 years) out of the 5 years before the sale. The residence test requires using the home as a main home for at least 24 months (730 days) of the previous 5 years; those months need not be consecutive. For married couples filing jointly, only one spouse must meet ownership, but each spouse must individually meet the residence requirement to get the full \$500,000 exclusion.

- ✓ Ownership test: owned the home at least 2 of the last 5 years before sale
- ✓ Residence test: lived in the home as a main home at least 2 years (730 days) of the last 5 years
- ✓ The 24 months of residence do not need to be consecutive
- ✓ Married filing jointly: only one spouse must meet ownership, but both must meet residence for full \$500,000

11.3 Look-Back Requirement — Once Every 2 Years

Under federal law (IRC Section 121), a taxpayer may claim the exclusion only once during any 2-year period. The look-back requirement is met if the taxpayer did not sell another home for which an exclusion was taken during the 2-year period before the current sale.

- ✓ The exclusion can be claimed only once in any 2-year period
- ✓ Look-back is satisfied if no other home was sold with an exclusion in the prior 2 years

11.4 Definition of a Main Home

Under federal law (IRS Pub. 523), the exclusion applies only to the sale of a principal residence. An individual has only one main home at a time. If a taxpayer owns or lives in more than one home, a 'facts and circumstances' test determines the main home, with the most important factor being where the taxpayer spends the most time. Many housing types qualify, including single-family homes, condominiums, cooperative apartments, mobile homes, and houseboats.

- ✓ An individual can have only one main home at a time
- ✓ Where the taxpayer spends the most time is the most important factor in the facts-and-circumstances test
- ✓ Condos, co-ops, mobile homes, and houseboats can all qualify as a main home

11.5 Determining the Home's Date of Sale

Under federal law, the date of sale determines eligibility. If Form 1099-S was received, the date of sale appears in box 1. If no Form 1099-S was received, the date of sale is the earlier of the date title transferred or the date the economic burdens and benefits of ownership shifted to the buyer.

- ✓ If Form 1099-S is received, the date of sale is shown in box 1
- ✓ Without Form 1099-S, the date of sale is the earlier of title transfer or the shift of economic burdens/benefits of ownership

11.6 Automatic Disqualifications from the Exclusion

Under federal law, the exclusion does not apply if the taxpayer acquired the property through a like-kind (Section 1031) exchange within the past 5 years, or if the taxpayer is subject to expatriate tax. If either applies, the sale is not eligible for the exclusion.

- ✓ Property acquired via a Section 1031 like-kind exchange in the past 5 years is disqualified
- ✓ Taxpayers subject to expatriate tax cannot use the exclusion

11.7 Surviving Spouse \$500,000 Exclusion

Under federal law, a surviving spouse may claim the \$500,000 exclusion if the home is sold within 2 years of the spouse's death, the survivor has not remarried by the sale date, neither spouse took the exclusion on another home in the 2 years before the sale, and the 2-year ownership and residence tests are met (counting the late spouse's time).

- ✓ Home must be sold within 2 years of the spouse's death
- ✓ The survivor must not have remarried by the date of sale
- ✓ The late spouse's ownership and residence periods count toward the tests

11.8 Partial Exclusion for Work, Health, or Unforeseeable Events

Under federal law (IRC Section 121), a taxpayer who fails the full Eligibility Test may still claim a partial (reduced) exclusion if the main reason for the sale was a change in workplace location, a health issue, or an unforeseeable event. A work-related move qualifies if a new job is at least 50 miles farther from the home than the old work location. Health moves and qualifying unforeseeable events (death, divorce, multiple births, job loss, casualty) also qualify.

- ✓ A partial exclusion is available for a qualifying work, health, or unforeseeable-event move
- ✓ Work-related move: new job must be at least 50 miles farther from the home than the prior job
- ✓ Qualifying unforeseeable events include death, divorce, multiple births from one pregnancy, unemployment, and casualty/destruction

11.9 Calculating the Partial Exclusion Limit

Under federal law, the partial exclusion is figured by taking the shortest of (1) time of residence, (2) time of ownership, or (3) time since the last exclusion was used, then dividing that period by 730 days (or 24 months), and multiplying by \$250,000. For married filing jointly, each spouse computes separately and the results are added.

- ✓ Use the shortest of the residence, ownership, or time-since-last-exclusion periods
- ✓ Divide the shortest period by 730 days (or 24 months), then multiply by \$250,000
- ✓ Married filing jointly computes each spouse separately and adds the two results

11.10 Care-Facility Time Counts Toward Residence

Under federal law, if a taxpayer becomes physically or mentally unable to self-care and used the home as a main home for at least 12 months during the 5 years before sale, time spent in a licensed care facility (such as a nursing home) counts toward the 2-year residence requirement.

- ✓ Only 12 months of actual residence in the 5-year period is required if the taxpayer became unable to care for themselves
- ✓ Time in a state-licensed care facility counts toward the 2-year residence requirement

11.11 Military/Foreign Service Suspension of the 5-Year Test

Under federal law, members of the Uniformed Services, Foreign Service, intelligence community, or Peace Corps on qualified official extended duty may suspend the 5-year test period for up to 10 years. Combined, the suspension and test period cannot exceed 15 years. Qualified extended duty requires a duty station at least 50 miles from the home (or living in government quarters) for a period of more than 90 days or an indefinite period.

- ✓ The 5-year test period may be suspended up to 10 years for qualified extended duty
- ✓ Suspension plus the 5-year test cannot exceed 15 years total
- ✓ Qualified extended duty requires posting at least 50 miles from the home or government quarters

11.12 Vacant Land Sold With the Home

Under federal law, the sale of vacant land adjacent to the home can be treated as part of the home sale if the taxpayer owned and used the land as part of the home, both sales occur within 2 years of each other, and both meet the Eligibility Test or qualify for partial benefits. The two sales are treated as a single transaction, so the exclusion applies only once.

- ✓ Adjacent vacant land qualifies only if owned and used as part of the home
- ✓ The land sale and home sale must occur within 2 years of each other
- ✓ Both sales are treated as one transaction, applying the exclusion only once

CHAPTER 12

Home Sale Gain Exclusion: Computing and Reporting

12.1 Computing Gain or Loss on a Home Sale

Under federal law, gain or loss equals amount realized minus adjusted basis. Amount realized is the selling price minus selling expenses. A positive result is a gain; a negative result is a loss. A loss on a personal residence is not deductible, but no tax is owed on the sale proceeds.

- ✓ Amount realized = selling price – selling expenses
- ✓ Gain or loss = amount realized – adjusted basis
- ✓ A loss on the sale of a personal main home is not deductible

12.2 Adjustments to Basis — Improvements vs. Repairs

Under federal law, basis includes the purchase price plus certain closing costs and the cost of capital improvements that add value, prolong useful life, or adapt the home to new uses. Routine repairs and maintenance (painting, fixing leaks, filling cracks) do not add to basis unless done as part of an extensive remodel. Includible closing costs include legal fees, recording fees, survey fees, transfer/stamp taxes, and owner's title insurance; loan-related charges (points, appraisal, credit report) are not added to basis.

- ✓ Capital improvements that add value or prolong life increase basis
- ✓ Routine repairs and maintenance do not increase basis (unless part of a larger remodel)
- ✓ Includible closing costs: title/legal fees, recording fees, survey fees, transfer/stamp taxes, owner's title insurance
- ✓ Financing charges such as points, appraisal fees, and credit reports are not added to basis

12.3 Basis of Inherited Property (Stepped-Up Basis)

Under federal law (IRC Section 1014), the basis of an inherited home is generally its fair market value on the date of the decedent's death (or the alternate valuation date). For jointly owned property, a surviving spouse's basis becomes the fair market value of the decedent's half plus the survivor's original basis in their half. In community property states, when one spouse dies the full fair market value of the community property becomes the basis of the entire property.

- ✓ Inherited property receives a stepped-up basis equal to fair market value at date of death
- ✓ A surviving joint tenant's new basis = FMV of the decedent's half + original basis of survivor's half
- ✓ In community property states, the full FMV becomes the basis of the entire property on one spouse's death

12.4 Depreciation Recapture Reduces the Exclusion

Under federal law (IRC Section 121 and 1250), gain equal to depreciation claimed (or allowable) for business or rental use after May 6, 1997 cannot be excluded and must be recognized as unrecaptured Section 1250 gain reported on Form 4797. This applies even to a qualifying home sale; the exclusion never covers the depreciation-recapture portion.

- ✓ Depreciation taken (or allowable) after May 6, 1997 cannot be excluded and is unrecaptured Section 1250 gain
- ✓ Depreciation recapture is reported on Form 4797, separate from the excludable gain
- ✓ Even if the taxpayer never claimed depreciation, basis must be reduced by depreciation that was allowable

12.5 Nonqualified Use After 2008 Limits the Exclusion

Under federal law (IRC Section 121(b)(5)), gain allocable to periods of 'nonqualified use' after 2008 — periods when the property was not used as a main home — cannot be excluded. The nonqualified-use gain is allocated by the ratio of nonuse days to total days owned and is taxed as capital gain. Importantly, any period AFTER the last date the home was used as a main home (before sale) is NOT nonqualified use, so renting a former home before selling generally does not create nonqualified use.

- ✓ Gain allocable to nonqualified use after 2008 is not excludable
- ✓ Nonqualified-use gain = total gain $\times$ (nonuse days $\div$ total days owned)
- ✓ Time after the last day of main-home use (before sale) is not counted as nonqualified use
- ✓ Depreciation gain is figured separately and not included in the nonqualified-use allocation

12.6 When a Home Sale Must Be Reported

Under federal law, a home sale must be reported on the tax return (Form 8949 and Schedule D) if the taxpayer has taxable gain that cannot be fully excluded, if a Form 1099-S was received (even with no taxable gain), or if the taxpayer chooses to report rather than exclude the gain. If none of these applies and no separate business calculation was made, the sale need not be reported.

- ✓ Report the sale if there is taxable gain that is not fully excludable
- ✓ Report the sale on Form 8949 if a Form 1099-S was received, even with no taxable gain
- ✓ A taxpayer may elect to report (rather than exclude) gain, and can reverse that choice within 3 years

12.7 Seller Financing Creates Installment Sale

Under federal tax law (IRS Pub. 523, Form 6252), when a seller finances the buyer's purchase of a home by holding a note, mortgage, or other financial agreement, the transaction is generally treated as an installment sale. This allows any nonexcludable gain to be reported over time as payments are received, rather than all in the year of sale.

- ✓ Seller financing (holding a note or mortgage) generally creates an installment sale
- ✓ Nonexcludable gain may be reported on an installment basis as payments are received
- ✓ Any recapturable depreciation gain must be reported entirely in the year of the installment sale, not spread out
- ✓ Use Form 6252 to report installment sale income

12.8 Reporting Nonexcludable Capital Gain

Under federal tax law (IRS), any gain from a home sale that cannot be excluded must be reported on Form 8949 and Schedule D (Form 1040). Whether it is a short-term or long-term transaction depends on how long the home was owned, which affects the applicable capital gains rate.

- ✓ Nonexcludable gain is reported on Form 8949 and Schedule D (Form 1040)
- ✓ Report on Part I (short-term) or Part II (long-term) of Form 8949 depending on ownership period
- ✓ Gain above the excludable amount is taxed at the applicable capital gains rate
- ✓ Received Form 1099-S requires reporting the transaction on Form 8949

12.9 Real Estate Tax Deduction Proration

Under federal tax law, real estate taxes are prorated between buyer and seller based on the number of days each owned the property during the real property tax year. The seller may deduct the portion allocable to their ownership period as an itemized deduction on Schedule A. Transfer taxes, stamp taxes, and similar fees are not deductible but the seller may treat them as selling expenses (or the buyer adds them to basis).

- ✓ Real estate taxes are prorated by days of ownership; date of sale is not counted for the seller
- ✓ $\text{Deduction} = \text{total annual real estate tax} \times (\text{days owned} \div 365 \text{ or } 366)$
- ✓ Transfer taxes and stamp taxes are not deductible; sellers treat them as selling expenses and buyers add them to cost basis
- ✓ If a Form 1099-S is received, start with tax actually paid and subtract the buyer's share shown in box 6

12.10 Transfer of Home Between Spouses or Ex-Spouses

Under federal law, a transfer of a home (or share) to a spouse or ex-spouse as part of a divorce settlement generally results in no recognized gain or loss. The recipient may count the transferring spouse's ownership period toward the ownership test but must meet the residence requirement independently. (Exception: if the spouse is a nonresident alien, gain or loss may result.)

- ✓ Transfers to a spouse/ex-spouse in divorce are generally no-gain, no-loss transactions
- ✓ The recipient can count the other spouse's ownership time but must meet the residence test alone

12.11 Business Use Within vs. Separate From the Living Area

Under federal law (Reg. 1.121-1), if the business/rental portion is within the home's living area (e.g., a home office in a room), no allocation of gain is required and the sale is not reported on Form 4797 (except for depreciation recapture). If the business/rental portion is separate from the living area (e.g., a duplex, a store with an upstairs apartment, or a farm), gain must be allocated, and the business portion is generally not excludable unless the taxpayer also used that portion as a residence for 2 of the last 5 years.

- ✓ Business use within the living area requires no gain allocation between home and business
- ✓ Business use in a separate structure/unit requires allocation and is reported on Form 4797
- ✓ The separate business portion is not excludable unless used as a residence for 2 of the last 5 years

CHAPTER 13

Federal Estate and Gift Tax

13.1 Basic Exclusion Amount Increased for 2026

The Working Families Tax Cuts Bill (WFTC, also known as the One Big Beautiful Bill Act, OBBBA), signed into law July 4, 2025 as Public Law 119-21, amended federal law under IRC § 2010(c)(3) to increase the basic exclusion amount to \$15,000,000 for calendar year 2026. This is the amount an individual can transfer (during life via gifts or at death via estate) free of federal estate and gift tax. This is federal law administered by the IRS, applicable nationwide.

- ✓ Under federal law (IRC § 2010(c)(3), IRS), the basic exclusion amount is \$15,000,000 for 2026
- ✓ The increase was enacted by the Working Families Tax Cuts Bill, Public Law 119-21, signed July 4, 2025

13.2 Federal Estate Tax Basic Exclusion by Year of Death

Federal estate tax uses a basic exclusion amount tied to the decedent's year of death, filed on Form 706 (United States Estate and Generation-Skipping Transfer Tax Return). The exclusion has risen over time: \$13,610,000 (2024), \$13,990,000 (2025), and \$15,000,000 (2026). Estates below this threshold generally owe no federal estate tax. This is a uniform federal rule administered by the IRS.

- ✓ Under federal law (IRS, Form 706), the estate tax exclusion is based on the decedent's year of death
- ✓ 2024 = \$13,610,000; 2025 = \$13,990,000; 2026 = \$15,000,000
- ✓ Form 706 is the federal estate tax return; there is no state variation in the federal exclusion amount

13.3 Portability of Unused Spousal Exclusion

Beginning January 1, 2011, under federal law, the estate of a decedent survived by a spouse may elect to pass any of the decedent's unused basic exclusion amount to the surviving spouse (portability). This election must be made on a timely filed federal estate tax return (Form 706) for the deceased spouse. This lets a surviving spouse effectively combine both exclusions.

- ✓ Under federal law (IRS), a surviving spouse may inherit the deceased spouse's unused exclusion (portability)
- ✓ The portability election must be made on a timely filed Form 706 estate tax return
- ✓ Portability has been available for decedents dying on or after January 1, 2011

13.4 Federal Gift Tax Annual Exclusion Amounts

Under federal law, a donor may give up to the annual exclusion amount per donee each year without incurring federal gift tax or using any of the lifetime basic exclusion. The annual per-donee exclusion is \$18,000 (2024) and \$19,000 (2025 and 2026). This is relevant in real estate when property or partial interests are gifted. Gift tax is reported on Form 709.

- ✓ Under federal law (IRS, Form 709), the annual gift tax exclusion is per donee, per year
- ✓ 2024 = \$18,000; 2025 = \$19,000; 2026 = \$19,000 per donee
- ✓ Gifts within the annual exclusion do not consume the lifetime basic exclusion amount

13.5 Increased Annual Exclusion for Non-Citizen Spouse

Under federal law (IRC § 2503 and 2523(i)(2), administered by the IRS), gifts to a spouse who is not a U.S. citizen receive a larger annual exclusion than the standard per-donee amount because unlimited marital deduction does not apply to non-citizen spouses. For calendar year 2026, the first \$194,000 of gifts to a non-citizen spouse (other than gifts of future interests) is excluded from taxable gifts. This matters when spouses transfer real property interests to a non-citizen spouse.

- ✓ For 2026, the first \$194,000 of gifts to a non-citizen spouse is excluded from taxable gifts
- ✓ This larger exclusion replaces the standard \$19,000 per-donee amount for non-citizen spouses
- ✓ Gifts of future interests do not qualify for this exclusion

CHAPTER 14

Dodd-Frank Act: CFPB and Mortgage Reform

14.1 Creation of the CFPB Under Dodd-Frank

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) created the Bureau of Consumer Financial Protection (CFPB) as a federal supervisor, rulemaker, and enforcer against unfair, deceptive, abusive, or otherwise prohibited practices relating to most consumer financial products and services, including mortgages. Most of the FTC's rulemaking authority over consumer financial products was transferred to the CFPB, while the FTC retained all of its enforcement authority and some rulemaking authority.

- ✓ Title X of Dodd-Frank established the federal CFPB as rulemaker and enforcer for consumer financial products/services
- ✓ The CFPB targets unfair, deceptive, abusive, or otherwise prohibited (UDAAP) practices
- ✓ Most FTC rulemaking authority was transferred to the CFPB; the FTC kept its enforcement authority and some rulemaking authority
- ✓ This is FEDERAL law applied uniformly nationwide — never attribute it to a state statute or agency

14.2 Integration of TILA and RESPA Mortgage Disclosures

Under federal law, Dodd-Frank provides for improved financial disclosures, including the integration of mortgage disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). This integration led to the CFPB's TRID (TILA-RESPA Integrated Disclosure) rule, producing the Loan Estimate and Closing Disclosure forms used in residential mortgage transactions.

- ✓ Dodd-Frank mandated integration of TILA and RESPA mortgage disclosures
- ✓ The integration is implemented through the CFPB's TRID rule (Loan Estimate and Closing Disclosure)
- ✓ These are FEDERAL disclosure requirements applying nationwide

14.3 Mortgage Reform Amendments Under Title XIV

Under federal law, Title XIV of Dodd-Frank amends the Truth in Lending Act (TILA), the Equal Credit Opportunity Act (ECOA), and other consumer financial laws to prevent mortgage-related abuses and improve the availability of responsible, affordable mortgage credit. It addresses compensation-based incentives, inappropriate steering, discrimination, high-cost mortgages, mortgage servicing, minimum federal lending standards, and appraisals.

- ✓ Title XIV amends TILA and ECOA to prevent mortgage-related abuses
- ✓ It prohibits inappropriate steering, discrimination, and abusive, unfair, deceptive, or predatory practices
- ✓ It regulates loan originator compensation-based incentives and high-cost mortgages
- ✓ These are FEDERAL standards applying uniformly nationwide

14.4 Minimum Lending Standards and Ability-to-Repay

Under federal law, Title XIV established minimum federal lending standards for mortgages, forming the basis of the Ability-to-Repay/Qualified Mortgage (ATR/QM) framework. Lenders must make a reasonable, good-faith determination that a borrower has the ability to repay a mortgage loan. Loans meeting Qualified Mortgage criteria receive certain legal protections.

- ✓ Title XIV created minimum federal lending standards underlying the ATR/QM rule
- ✓ Lenders must reasonably determine a borrower's ability to repay before making a mortgage loan
- ✓ Qualified Mortgages that meet defined criteria receive legal protection from liability

14.5 Mortgage Originator Duty of Care and Licensing

Under federal law (Truth in Lending Act, as amended by Dodd-Frank Title XIV, enforced by the CFPB), all mortgage originators owe a duty of care to borrowers. Originators must be properly qualified, registered, and licensed as required, and must comply with federal regulations governing their operations. This establishes a federal standard for mortgage loan originator (MLO) conduct that applies nationwide.

- ✓ Federal law imposes a duty of care on all mortgage originators (15 U.S.C. § 1639, Dodd-Frank § 1402)
- ✓ Mortgage originators must be properly qualified, registered, and licensed as needed
- ✓ Originators must comply with federal regulations monitoring their operations

14.6 Ability-to-Repay (ATR) Requirement

Under federal law (TILA, Dodd-Frank § 1411, CFPB), creditors may not make a home mortgage loan unless they reasonably determine, based on verified information, that the borrower has the ability to repay the loan. The determination must consider the borrower's credit history, current income, expected income, and other relevant factors. This is the core federal Ability-to-Repay (ATR) rule.

- ✓ Creditors must reasonably determine a borrower's ability to repay before making a home mortgage loan (15 U.S.C. § 1639(c), Dodd-Frank § 1411)
- ✓ The determination must be based on credit history, current income, expected income, and other factors
- ✓ Applies to home mortgage loans nationwide as a federal minimum standard

14.7 Qualified Mortgage Presumption of Repayment Ability

Under federal law (Dodd-Frank § 1412, CFPB), certain enumerated categories of mortgages carry a presumption that the borrower has the ability to repay. These qualifying loans form the basis of the Qualified Mortgage (QM) framework, giving lenders a safe harbor or presumption of compliance with the Ability-to-Repay rule.

- ✓ Certain types of mortgages carry a presumption of ability to repay (Dodd-Frank § 1412)
- ✓ These qualifying loans form the federal Qualified Mortgage (QM) category
- ✓ Federal regulators (CFPB) determine which mortgages qualify

14.8 HOEPA High-Cost Mortgage Definition

Under federal law (TILA/HOEPA, 15 U.S.C. § 1602, Dodd-Frank § 1431, CFPB), a mortgage is classified as 'high-cost' based on how far its interest rate exceeds the average prime offer rate (APOR). A first mortgage qualifies if its rate is more than 6.5 percentage points above the APOR; a subordinate (second) mortgage qualifies if its rate is more than 8.5 percentage points above the APOR, along with other enumerated thresholds. High-cost mortgages trigger heightened federal protections under HOEPA.

- ✓ First mortgage is high-cost if the rate exceeds the average prime offer rate by more than 6.5% (Dodd-Frank § 1431)
- ✓ Second/subordinate mortgage is high-cost if the rate exceeds APOR by more than 8.5%
- ✓ Classification triggers additional HOEPA consumer protections under federal law

14.9 HOEPA Prohibition on Balloon Payments and Predatory Terms

Under federal law (HOEPA, 15 U.S.C. § 1639, Dodd-Frank § § 1432–1433, CFPB), high-cost mortgages are subject to strict prohibitions. Balloon payments that rapidly increase so scheduled payments become twice as large as the average of earlier payments are prohibited. Creditors also may not recommend or encourage default on a prior loan, impose large late fees, accelerate debt, finance prepayment fees/penalties/points/fees, or structure a loan to evade these requirements.

- ✓ Balloon payments that grow to twice the average of earlier payments are prohibited on high-cost mortgages (Dodd-Frank § 1432)
- ✓ Creditors may not recommend or encourage default on a prior loan (Dodd-Frank § 1433)
- ✓ Creditors may not finance prepayment fees, penalties, points, or fees, or structure a loan to evade the rules

14.10 FTC Enforcement Role Over Home Appraisals

Under federal law, Title XIV addresses appraisals and provides a new enforcement role for the FTC regarding home appraisals. This supports appraisal independence requirements protecting the integrity of valuations in mortgage transactions.

- ✓ Title XIV gives the FTC a new federal enforcement role over home appraisals
- ✓ The Act addresses appraisals to promote appraisal independence in mortgage lending

14.11 Prohibited Prepayment Penalties

Under federal law (Dodd-Frank § 1414, CFPB), certain types of prepayment penalties are prohibited on covered home mortgage loans. This limits a creditor's ability to charge borrowers for paying off a loan early, protecting consumers from predatory penalty structures.

- ✓ Certain prepayment penalties are prohibited under federal law (Dodd-Frank § 1414)
- ✓ Restrictions apply to covered residential mortgage loans

14.12 Borrower Remedies and Fraud Exception under ATR

Under federal law (15 U.S.C. § 1640, Dodd-Frank § 1413), a creditor's violation of the minimum mortgage standards may be raised by a borrower as a defense to set off or recoup damages. However, if a borrower commits fraud in obtaining the mortgage, the creditor is not held liable (Dodd-Frank § 1417).

- ✓ A violation of federal minimum standards can be used by a borrower as a defense to set off or recoup damages (Dodd-Frank § 1413)
- ✓ A creditor is not liable if the borrower committed fraud in obtaining the mortgage (Dodd-Frank § 1417)

CHAPTER 15

Fair Housing Act: Protected Classes and Prohibited Acts

15.1 Federally Protected Classes Under the Fair Housing Act

The federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968), enforced by HUD's Office of Fair Housing and Equal Opportunity, prohibits discrimination in housing based on seven protected classes. Familial status protection covers households with children under 18 living with a parent or legal custodian, pregnant women, and persons securing custody of minors. Exam candidates must memorize all seven classes.

- ✓ The seven federally protected classes are: race, color, national origin, religion, sex, familial status, and disability
- ✓ Familial status includes children under 18, pregnant women, and persons in the process of securing custody of a minor
- ✓ The Act is federal law enforced by HUD, applying uniformly nationwide

15.2 Housing Covered and Exemptions

Under federal law, the Fair Housing Act covers most housing, but certain narrow exemptions exist. However, the prohibition against discriminatory advertising applies to ALL housing, even otherwise-exempt properties.

- ✓ Exemptions may apply to owner-occupied buildings with no more than four units
- ✓ Single-family housing sold or rented without a broker may be exempt
- ✓ Housing operated by religious organizations and private clubs limiting occupancy to members may be exempt
- ✓ The discriminatory advertising prohibition applies even to otherwise-exempt housing

15.3 Prohibited Acts in Sale and Rental of Housing

Under the federal Fair Housing Act, no one may take specified discriminatory actions based on a protected class in the sale or rental of housing. This includes steering, blockbusting, and denying access to real estate services such as a multiple listing service (MLS).

- ✓ Cannot refuse to rent/sell, refuse to negotiate, or make housing unavailable based on a protected class
- ✓ Cannot set different terms, conditions, or privileges, or provide different services/facilities
- ✓ Cannot falsely deny that housing is available for inspection, sale, or rental
- ✓ Blockbusting (persuading owners to sell for profit by suggesting a protected group is moving in) is prohibited
- ✓ Cannot deny access to or membership in a service like an MLS related to sale/rental of dwellings

15.4 Prohibited Acts in Mortgage Lending

The federal Fair Housing Act prohibits discrimination in mortgage lending based on a protected class, covering the full range of lending activities including appraisal and loan purchasing.

- ✓ Cannot refuse to make a mortgage loan or refuse to provide loan information based on a protected class
- ✓ Cannot impose different terms/conditions such as interest rates, points, or fees
- ✓ Cannot discriminate in appraising property
- ✓ Cannot refuse to purchase a loan or set different terms for purchasing a loan

15.5 Additional Prohibited Acts: Interference and Advertising

Beyond sale, rental, and lending, the federal Fair Housing Act makes it unlawful to intimidate or interfere with fair housing rights, to publish discriminatory statements, and to discriminate in homeowners insurance.

- ✓ Cannot threaten, coerce, intimidate, or interfere with anyone exercising a fair housing right or assisting others
- ✓ Cannot make, print, or publish any statement indicating a discriminatory preference or limitation
- ✓ The advertising prohibition applies even to single-family and owner-occupied housing otherwise exempt
- ✓ Cannot refuse or discriminate in homeowners insurance coverage based on a protected class

15.6 Reasonable Modifications and Accommodations

Under the federal Fair Housing Act, housing providers must permit reasonable modifications and make reasonable accommodations for persons with disabilities. Modifications (physical changes) are at the tenant's expense; accommodations are changes to rules, policies, or services. Disability protection extends to those with a record of, or regarded as having, a disability.

- ✓ A provider cannot refuse to allow reasonable MODIFICATIONS to the dwelling/common areas at the tenant's expense
- ✓ A landlord may require the tenant to restore the property to original condition upon moving (where reasonable)
- ✓ A provider cannot refuse reasonable ACCOMMODATIONS in rules, policies, practices, or services
- ✓ Example: a 'no pets' policy must allow a guide dog; assigned parking must be provided if necessary for access
- ✓ The Act does NOT protect a person who is a direct threat to health/safety of others or who currently uses illegal drugs

15.7 Housing for Older Persons Exemption

Under the federal Fair Housing Act, qualifying senior housing is exempt from familial status discrimination liability and may lawfully refuse families with minor children. Candidates must know the '55 or older' requirements. The exemption does NOT excuse discrimination based on other protected classes.

- ✓ Exempt senior housing may lawfully refuse to rent/sell to families with minor children
- ✓ Qualifies if: a state/federal elderly program, or intended and solely occupied by persons 62+, or operated for persons 55+
- ✓ For the '55 or older' exemption: at least 80% of units must have at least one occupant age 55+
- ✓ Must publish/adhere to policies showing intent to operate as 55+ housing and comply with HUD age-verification rules
- ✓ The exemption does NOT protect against discrimination based on race, color, religion, sex, disability, or national origin

15.8 Accessibility Requirements for New Multifamily Buildings

Under federal law, multifamily buildings with four or more units first occupied after March 13, 1991 must meet specified accessibility design and construction requirements.

- ✓ Applies to buildings of four or more units first occupied after March 13, 1991
- ✓ In buildings with an elevator, all units must meet accessibility requirements (accessible route, controls, reinforced bathroom walls for grab bars, usable kitchens/baths)
- ✓ In buildings without an elevator, requirements apply to ground-floor units only
- ✓ These federal requirements do not replace more stringent state or local accessibility standards

15.9 Sex Discrimination Includes Sexual Orientation and Gender Identity

The federal Fair Housing Act lists seven protected classes: race, color, religion, national origin, sex, familial status, and disability. Since February 11, 2021, HUD's Office of Fair Housing and Equal Opportunity interprets the Act's prohibition on sex discrimination to include discrimination because of sexual orientation and gender identity, applying the Supreme Court's reasoning in *Bostock v. Clayton County* (2020). HUD accepts and investigates complaints alleging such discrimination, and enforces the Act on that basis. Sexual orientation and gender identity are not added as separate words in the statute; the protection comes through the meaning of "sex." Many states and localities also list them expressly as protected classes under their own fair housing laws. Source: HUD FHEO Memorandum, "Implementation of Executive Order 13988 on the Enforcement of the Fair Housing Act," 2021-02-11; *Bostock v. Clayton County*, 590 U.S. 644 (2020).

- ✓ Since 2021-02-11, HUD interprets "sex" under the federal Fair Housing Act to include sexual orientation and gender identity
- ✓ HUD accepts and investigates fair housing complaints based on sexual orientation or gender identity discrimination
- ✓ The statute still lists seven protected classes; the protection flows through the meaning of "sex" (*Bostock* reasoning), not a new listed class
- ✓ Many state and local fair housing laws add sexual orientation and gender identity as express protected classes

CHAPTER 16

Fair Housing Act: Enforcement and Remedies

16.1 Filing a HUD Complaint and Time Limits

Under federal law, a person who believes their fair housing rights were violated may file a complaint with HUD online, by letter, or by phone. Candidates must know the one-year administrative filing deadline.

- ✓ A HUD complaint must be filed within one year after the alleged discrimination occurred or ended
- ✓ Complaints may be filed online, by letter, or by telephone to the nearest HUD office
- ✓ The complaint should identify the complainant, the respondent, the housing involved, the alleged violation, and the dates

16.2 HUD Investigation, Conciliation, and Enforcement

After a complaint is filed, HUD investigates to determine reasonable cause, offers conciliation, and may proceed to an Administrative Law Judge hearing or federal civil trial. Candidates should understand the enforcement pathway and available remedies.

- ✓ HUD must offer both parties the chance to resolve the complaint through a voluntary Conciliation Agreement
- ✓ HUD investigates and issues a Determination of Reasonable Cause and a Charge if discrimination is found
- ✓ Parties have 20 days after the Charge to elect a HUD Administrative Law Judge hearing or a federal civil trial
- ✓ An ALJ may award actual damages, injunctive/equitable relief, attorney's fees, and civil penalties to HUD; a federal court may award punitive damages

16.3 Private Lawsuit Option and Two-Year Deadline

Under the federal Fair Housing Act, an aggrieved person may file a private civil lawsuit in federal court, independent of or in addition to a HUD complaint. Candidates should distinguish the two-year private lawsuit deadline from the one-year HUD complaint deadline.

- ✓ A private civil lawsuit may be filed within two years of the most recent discriminatory act, with or without first filing with HUD
- ✓ Time HUD spends processing a complaint is not counted in the two-year period
- ✓ A private suit is barred if the complainant signed a HUD Conciliation Agreement or a HUD ALJ hearing has begun
- ✓ The Attorney General may sue in federal court for a pattern or practice of housing discrimination

CHAPTER 17

Buyer Representation (NAR Settlement 2024)

17.1 Written Buyer Representation Agreement Before Touring

Under the nationwide practice changes required by the National Association of REALTORS® (NAR) settlement, effective August 17, 2024, an MLS participant working with a buyer must enter into a written buyer representation agreement before touring a home with that buyer, whether in person or virtually. The agreement must state the specific amount or rate of compensation the buyer's broker will receive, expressed in an objective way that is not open-ended, and must disclose that broker commissions are not set by law and are fully negotiable. The buyer's broker may not receive compensation for brokerage services that exceeds the amount agreed to with the buyer. Offers of compensation to buyer brokers may no longer be displayed on an MLS; compensation can still be negotiated off-MLS, and sellers may still offer concessions (such as closing-cost credits) on the MLS as long as they are not conditioned on paying a buyer broker. Source: NAR settlement (Burnett v. NAR), practice changes effective 2024-08-17; nar.realtor/the-facts.

- ✓ Since 2024-08-17, MLS participants must have a signed written buyer representation agreement before touring a home with a buyer (in person or virtual)
- ✓ The written agreement must state the specific compensation amount or rate in an objective, not open-ended way, and disclose that commissions are fully negotiable and not set by law
- ✓ A buyer broker may not receive compensation exceeding the amount agreed to in the buyer agreement
- ✓ Offers of buyer-broker compensation may no longer be displayed on the MLS; they may be negotiated off-MLS
- ✓ Seller concessions may appear on the MLS only if not conditioned on the use of, or payment to, a buyer broker