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**Edmund G. Brown Jr.**  
*Governor*

**Jan Lynn Owen**  
*Commissioner of Business Oversight*

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**DATE: May 3, 2017**

**RELEASE No. 58-FS (Revised)**

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**EVIDENCE OF COMPLIANCE WITH  
FINANCIAL CODE SECTION 50204, SUBDIVISION (o):  
PER DIEM INTEREST**

This release provides information to licensees under the California Residential Mortgage Lending Act ("CRMLA")<sup>1</sup> relating to evidence in loan files acceptable to the Commissioner of Business Oversight ("Commissioner") to show compliance with Financial Code section 50204, subdivision (o) (hereafter section 50204(o)) and Civil Code section 2948.5 (hereafter the per diem statute).

Under the per diem statute, a borrower cannot be required to pay interest for more than one day prior to the disbursement of loan proceeds from an escrow on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property with up to four residential dwelling units, except as provided.<sup>2</sup> Section 50204(o) prohibits licensees from violating the per diem statute, and provides that compliance with the per diem statute may be evidenced by certification executed by the licensee, at no cost to the borrower, pursuant to Code of Civil Procedure section 2015.5, or by other evidence in the loan file that is acceptable to the Commissioner.<sup>3</sup>

In the past, the Commissioner has received requests from CRMLA licensees to identify what other documents, records, information, data or other forms of verification contained in loan files could serve as evidence of a licensee's compliance with the per diem statute. To assist licensees with establishing compliance during a regulatory

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<sup>1</sup> Fin. Code, § 50000 et seq.

<sup>2</sup> Civil Code section 2948.5 sets forth limited circumstances under which interest may commence to accrue on the business day immediately preceding the day of disbursement.

<sup>3</sup> Code of Civil Procedure section 2015.5 provides that a matter may be evidenced by certifying the matter to be true under penalty of perjury. The certification must include the signature of the person certifying the matter and the date and place of execution, as provided. If executed outside of California, the certification must indicate that the certification is under the laws of the State of California. The certification form is set forth in the statute.

examination, the Commissioner issued this release. With the changes resulting from the federal adoption of the TILA-RESPA Integrated Disclosure rule,<sup>4</sup> the Commissioner has again received questions regarding sufficient evidence in loan files. The Commissioner is issuing this revised release to provide updated information on establishing compliance with the per diem statute in light of the changes to federal law. The Commissioner finds that any of the following are acceptable evidence to show compliance with the per diem statute:

- Written or electronic records reflecting communications between the licensee and the settlement agent verifying the disbursement date of loan proceeds and identifying the name of the settlement agent providing the information and the electronic or business address used to contact the settlement agent; or
- Contemporaneous written or electronic records memorializing oral communications between the licensee and the settlement agent verifying the disbursement date of loan proceeds and identifying the name and telephone number of the settlement agent providing the information.

When the Commissioner believes that compliance is uncertain or unclear from a review of the above information provided by the licensee, the Commissioner may request the licensee provide additional information to demonstrate compliance with the per diem statute.<sup>5</sup>

As used in this release, “disbursement date” refers to the date on which the majority of loan proceeds are disbursed to the borrower, to a third party on behalf of the borrower, or to the licensee to satisfy an existing obligation of the borrower; and “settlement agent” refers to the person that disburses funds from an escrow including an escrow agent, a controlled escrow company, a title insurance company, or an underwritten title company.

## FREQUENTLY ASKED QUESTIONS

### **1. Is an American Land Title Association (ALTA) Settlement Statement form acceptable evidence of compliance with the per diem statute?<sup>6</sup>**

The Commissioner will accept the disbursement date on an ALTA Settlement Statement as evidence of the disbursement date if 1) a settlement agent prepares the statement; 2) the statement identifies the date that it was prepared; 3) the preparation date is not before the disbursement date, and 4) the statement

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<sup>4</sup> See Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 78 Fed.Reg. 79730 (Dec. 31, 2013).

<sup>5</sup> See Fin. Code, § 50204, subd. (o).

<sup>6</sup> ALTA has developed standardized ALTA Settlement Statements for use by title insurance and settlement companies. The statements are not intended to replace the Closing Disclosure. ([www.alta.org/trid/](http://www.alta.org/trid/))

identifies the settlement agent who prepared it.

**2. Is the TILA-RESPA Integrated Disclosure, the Closing Disclosure, acceptable evidence of compliance with the per diem statute?**

Since the disbursement date on the Closing Disclosure is an estimated date and may not be accurate, corroborating evidence is necessary to establish the actual disbursement date, regardless of whether a lender or a settlement agent prepares the disclosure. The Commissioner will accept a copy of a settlement agent's disbursement ledger or wire transfer confirmation as corroborating evidence of the disbursement date, where the evidence identifies the disbursement date for a majority of the loan proceeds.

Other acceptable evidence includes written or electronic communication from the settlement agent or contemporaneous written or electronic records memorializing oral communications, as provided in this release. If the settlement agent verifies the accuracy of the disbursement date on the Closing Disclosure or after the actual disbursement date, the Commissioner will accept the settlement agent's verification as evidence of the disbursement date. However, as noted in this release, where the Commissioner believes compliance is uncertain or unclear, the Commissioner may request additional evidence. Alternatively, the licensee may prepare a certification under Code of Civil Procedure section 2015.5.<sup>7</sup>

**3. Will the Commissioner accept a settlement statement prepared by a settlement agent if the statement is not an ALTA form?**

The Commissioner will accept a settlement or closing statement prepared by a settlement agent as evidence of compliance with the per diem statute if the form 1) identifies the settlement agent as the preparer; 2) identifies the date the statement was prepared; and 3) identifies the actual date of disbursement. For all settlement statements, if the date of disbursement is after the date of preparation of the statement, additional evidence is necessary to establish that the disbursement date on the statement constitutes the actual date disbursement occurred.

If the settlement agent verifies the accuracy of the statement's disbursement date on or after the actual disbursement date, the Commissioner will accept the verified statement as evidence of the disbursement date. Where additional evidence is necessary to verify the actual disbursement date for a majority of the loan proceeds, acceptable evidence includes a disbursement ledger, a wire transfer confirmation, or other evidence that corroborates the accuracy of the disbursement date, as described in this release. (For a Closing Disclosure, see the discussion in FAQ No. 2.)

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<sup>7</sup> Fin. Code, § 50204, subd. (o); see also fn. 2.