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TILA-RESPA INTEGRATED DISCLOSURES TRID

Presented by: BKD, LLP



OVERVIEW

- Key terms & features of the new forms
 - Will also consolidate other required disclosures
- Understanding timing & re-disclosure requirements
- Effective date: October 3, 2015





COVERED LOANS

- Coverage scope in §1026.19(e)(1)
- Loan must have all of the following:
 - Closed-end credit
 - Consumer credit transaction
 - Coverage trigger for Reg Z
 - Secured by real property





COVERED LOANS

- TRID will now cover:
 - Temporary loans
 - Construction only
 - As well as construction to perm
 - Raw land loans
 - Large acreages with a dwelling
 - Bridge loans



TRID spelled backwards is DIRT...if real property would be the collateral & it's a closed end consumer loans transaction—covered by TRID





EXEMPT LOANS

- TRID does not apply to:
 - HELOCs
 - Current open end rules apply
 - Reverse mortgages
 - Current ETIL/GFE, FTIL/HUD still apply
 - Mortgage secured by a mobile home or by a dwelling not attached to real property
- If a transaction is not covered by TRID, the TRID disclosures should not be used





APPLICATION §1026.2(A)(3)(II)—NEW DEFINITION

- An application consists of the submission of six pieces of information:
 - Consumer’s name
 - Consumer’s income
 - Consumer’s social security number
 - To obtain a credit report
 - Property address
 - Estimate of property value
 - Loan amount requested
- What has changed?
 - CFPB omits the 7th item that exists under RESPA “and any other information deemed necessary by the loan originator”





APPLICATION DISCLOSURES

- Due within three business days of receiving an application
 - Loan Estimate
 - Consolidates:
 - Current GFE
 - Early TIL
 - Appraisal Notice (Reg B – ECOA)
 - Reminder—WATCH DENIALS
 - Servicing Disclosure (Reg X – RESPA)





APPLICATION DISCLOSURES

■ Provider List

- If a lender permits borrowers to shop for services, the lender must provide a written list of settlement service providers on a separate sheet of paper at the time the loan estimate is provided
 - At least one available provider
 - Statement that the consumer may choose a different provider
 - Sufficient information for the consumer to contact the provider
 - The lender may include a statement on the written list that the listing of a settlement service provider does not constitute an endorsement of that service provider





APPLICATION DISCLOSURES

- In addition to the loan estimate, the consumer will also receive:
 - Your Home Loan Toolkit: A Step-by-Step Guide
 - Affiliated Business Arrangement Disclosure
 - Variable Rate Program Disclosure
 - Due at application
 - ARM secured by borrower's principal dwelling with tem over one year
 - Consumer Handbook on ARMs
 - Due at application
 - ARM secured by borrower's principal dwelling with tem over one year
 - List of Homeownership Counseling Organizations
 - Due at application/within three business days of application





APPLICATION DISCLOSURES—TIMING/LIMITATIONS

- Must be provided within three business days
- Loan closing must not occur until at least seven business days
 - **Business Days:** (§1026.2(a)(6) A business day is a day on which the creditor's offices are open to the public for carrying on substantially all its business functions





APPLICATION DISCLOSURES—TIMING/LIMITATIONS

- Fee limitations: Creditors cannot charge a fee (other than for a credit report) until the consumer has received the loan estimate **&** indicated their intent to proceed
 - The creditor must document for record retention 1026.25
 - Silence/no response is **NOT** intent nor compliance
 - Creditors **CANNOT** require consumers to submit verifying information regarding the application prior to providing the loan estimate



APPLICATION DISCLOSURES—TIMING/LIMITATIONS

- Waiving of timing requirements (§1026.19(e)(1)(v))
 - The consumer may waive the seven day waiting period (loan estimate) & the three day waiting period (closing disclosure), however:
 - The consumer must **receive** the LE or CD
 - Provide a written, dated statement
 - Describe the financial emergency
 - Same as RTC rules
 - All liable parties must sign the statement
 - **Use of pre-printed forms are prohibited**



THE LOAN ESTIMATE IN GENERAL

- Tolerance limits
 - 0% has been expanded
- Rounding requirements for dollar amounts
- Rounding requirements for percentage amounts
- The forms are **standard mandated forms**, **NOT** model forms
- If application is denied within three business days, an LE is not required

Tolerance for Loan Estimates

0% Tolerance Fields

Fees paid to the creditor
Fees paid to affiliates (creditor/broker) – some exceptions apply
Transfer taxes
Fee paid to mortgage brokers
Fees paid to unaffiliated third parties where the consumer was not allowed to shop for a provider (required items chosen by the creditor)
Notes: <ul style="list-style-type: none"> a. When comparing estimates to actual charges for any tolerance calculations, use unrounded numbers b. Fees paid to an affiliate would not be subjected to the 0% tolerance threshold if the creditor was not requiring the service but the consumer opted for the service & for hazard insurance premiums where the agency is an affiliate of the creditor

10% Tolerance Fields (aggregated total)

Fees paid to unaffiliated third parties where consumer was allowed to shop for a provider and chose a provider identified on the Providers list or did not select provider ultimately chosen
Fees paid to unaffiliated third parties where consumer was allowed to shop for provider, but a Provider List was not provided
Recording Fees
Notes: <ul style="list-style-type: none"> a. When calculated aggregate totals for tolerance, do NOT include estimates for services NOT performed (i.e. an appraisal was ordered but during UW it was determined it was not needed; in this case the estimated appraisal fee on the LE will be used in the calculation for determining tolerance violations) b. Use unrounded numbers

No tolerance specified (“Unlimited Category”)

Fees paid to unaffiliated third parties where consumer was allowed to shop for a provider and chose a provider NOT identified on the Providers list
Fees paid to third parties NOT required by the creditor (even if party is affiliate)
Prepaid interest (daily interest)
Property insurance premiums (hazard insurance premiums)(even if provider is affiliate)
Amount placed into escrow
Notes: <ul style="list-style-type: none"> a. Amounts in this category must be based on information “reasonably available to the creditor at the time disclosures provided” b. Items not required by the creditor but chosen by the consumer are required to be estimated if consumer notifies creditor of intent to pursue them c. Good faith would be violated if creditor has reasonable information at the time the disclosure is provided but did not disclose the item d. Use unrounded numbers

THE LOAN ESTIMATE

- Review blank Form H-24
 - Two variations of page 1
 - Four variations of page 2
 - Four variations of page 3
- Specific headings & subheadings
- Specific terminology
- Rounding requirements
- Blank fields versus \$0
- Add certain tables only when applicable





THE LOAN ESTIMATE

- Loan term—If whole number of years, disclose in years
 - If less than two years, disclose in months
 - If greater than two years, disclose in years & months
- Purpose—only use one of the following:
 - Purchase
 - Proceeds will purchase property in which security interest is taken
 - Refinance
 - Cash or no cash out, debt consolidations
 - Construction
 - Not for renovations
 - Home equity
 - All other purposes



THE LOAN ESTIMATE

- Product
 - Disclose feature (balloon payment) before product description
- Loan type
 - Conventional
 - FHA
 - VA
 - Other
- Rate Lock

Rate Lock Status Implications

Rate Lock Status 12 CFR 1026.37(a)(13)	Action Required	Information Disclosed
No Rate Lock	Issue Loan Estimate within 3 business days of application	Rate lock indicates "NO"
Rate Lock Prior to issuing Original LE	Issue Loan Estimate within 3 business days of application	Rate lock indicates "YES" and includes date, time and time zone of the rate lock expiration from the written agreement
Rate Lock after issuing Original LE	Issue Revised Loan Estimate within 3 business days of the consumer and creditor entering into a rate lock agreement	Rate lock indicates "YES" and includes date, time and time zone of the rate lock expiration from the written agreement
Rate Lock Expires	None- unless the expiration of the rate lock increases other disclosed fees	If Revised, Rate Lock indicates "NO"
Rate re-locked or extended	Issue Revised Loan Estimate within 3 business days of the consumer and creditor entering into a revised or extended rate lock agreement	Rate lock indicates "YES" and includes date, time and time zone of the new rate lock expiration from the written agreement

*****Since the creditor is bound by the Loan Estimate for 10 days, the duration between the Date Issued and Expiration of Closing Costs should be at least 10 days.*****



THE LOAN ESTIMATE

- Projected payments
 - LE limits to four schedules
 - Balloon payment must be disclosed as the fourth (& final) schedule
 - Events may need to be consolidated into a single column to ensure the balloon payment is the final column
 - Other changes to periodic principal & interest payments
 - Automatic termination of mortgage insurance





THE LOAN ESTIMATE

- Closing cost detail
 - Loan costs
 - Origination charges
 - Services you cannot shop for
 - Services you can shop for
 - Other costs
 - Taxes & other government fees
 - Prepays
 - Initial escrow payment at closing
 - Other
 - All items **specifically described** must stay in that order
 - Other items must be listed in alphabetical order under the applicable subheading



THE LOAN ESTIMATE

- Contact information
 - Name, NMLS id/License #, email & phone number
- Comparisons
- Other considerations
 - Appraisal
 - Assumption
 - Homeowners insurance
 - Late payment
 - Loan acceptance
 - Liability after foreclosure—refinance only
 - Refinance statement
 - Servicing





REVISED LOAN ESTIMATES

- Changed circumstances for a revised LE
 - Occurrence of an extraordinary event beyond control of any interested party
 - Information specific to the consumer or transaction that the creditor relied on to provide the LE becomes inaccurate or changes after the LE is provided
 - New information specific to the consumer, or the transaction, that the creditor did not rely on was discovered





REVISED LOAN ESTIMATES ALLOWED

- *Eligibility* (changed circumstance)—customer is ineligible for an estimated charge previously disclosed because of credit or collateral
- *Consumer requested changes*
- *Interest rate dependent changes*—customer did not lock in the rate prior to the LE, but locks in the rate where interest rate dependent charges change
- *Expiration*—customer does not provide intent to proceed before the 10 business day period
- *Delayed settlement on construction loan*—settlement on the loan occurs more than 60 days after providing the LE



SPECIAL RULES FOR CHANGED CIRCUMSTANCES

- If a changed circumstance is encountered & the creditor fails to redisclose, the original LE will be used to calculate any tolerance violations
- If a changed circumstance is encountered & the creditor provides a new LE, but it was not required (change did not exceed established thresholds) the original LE will be used to calculate any tolerance violations (Comment 19(e)(3)(iv)(A)-1.ii)

Changed Circumstances

Type of Changed Circumstance	Includes	Examples and Comments
(A) A Change that affects settlement charges	<ul style="list-style-type: none"> • Occurrence of an extraordinary event beyond control of any interested party or other unexpected event specific to consumer or transaction • Information specific to consumer or transaction creditor relied on to provide LE becomes inaccurate or changes after disclosure was provided • New information specific to consumer or transaction creditor did NOT rely on to provide LE is discovered 	<ul style="list-style-type: none"> • Consumer error in describing property, appraisal method changes. • Disaster • Discovery of event impacting value of property • One of two applicants loses employment • Verifiable income less than income stated on application.
(B) Consumer is ineligible for an estimated charge previously disclosed because of a change under (A) above	Because of the change, consumer now fails to qualify for the loan terms disclosed	Discovery during underwriting that consumer was delinquent, and does not qualify
(C) Revisions requested by the consumer to the credit terms or settlement resulting in an increase in an estimated fee	Any change requested by the consumer that affects disclosed terms	Consumer grants power of attorney to allow family member to consummate transaction on consumer's behalf. This would require an additional recording fee to record the POA document.
(D) Adding, renewing or extending a rate lock		Revised LE must be issued within 3 business days, even if there is no change in interest-rate dependent charges.
(E) Expiration of the Loan Estimate	Consumer fails to provide Intent to Proceed within 10 business days after receiving the Loan Estimate	
(F) Delayed settlement date on a construction loan	New Construction only. Creditor reasonably believes that settlement will be more than 60 days after Loan Estimate.	Requires special disclosure language on Page 3 of the Loan Estimate. Revised estimate can be provided any time prior to 60 days before consummation.



THE CLOSING DISCLOSURE IN GENERAL

- Must contain ACTUAL costs of the transaction
 - Creditor is **ultimately** responsible for accuracy
- Specific timing requirements
 - Must be received three days prior to consummation
 - Certain changes will require a new waiting period
- Once again—these are **standard mandated forms**, **NOT** model forms



THE CLOSING DISCLOSURE IN GENERAL

- Special rules for record retention
 - Five years—Closing Disclosure & all related documents
 - If loan is sold, must provide the Closing Disclosure as part of the transfer of the loan file





THE CLOSING DISCLOSURE

- Review blank Form H-25
 - Three variations of page 1
 - Four variations of page 4
 - Four variations of page 5
- Specific headings & subheadings
- Specific terminology
- Rounding vs. not rounding
- \$0 vs. blank



THE CLOSING DISCLOSURE

- General information
- Loan terms
- Projected payments
- Costs at closing

Similar look to the Loan Estimate to provide ease of comparison to the consumer



THE CLOSING DISCLOSURE

- For transactions without a seller, alternative tables can be used
- A separate Closing Disclosure can be provided to the consumer & the seller that does not reflect each parties costs



THE CLOSING DISCLOSURE

- Re-disclosing the Closing Disclosure
 - Before closing—new waiting period required
 - APR becomes inaccurate
 - Increase in APR by more than .0125% for regular transactions
 - Increase in APR by more than .25% for irregular transactions
 - Loan product is changing
 - Prepayment penalty is added
 - Any other changes—at or before consummation & make available to the consumer a business day immediately preceding consummation

TRID FINAL THOUGHTS

- For applications received prior to October 3, when closed, these loans should receive the “old” (current) disclosures
 - Regardless of how long after October 3, 2015, the loan is closed, if the application was received before October 3, 2015, the old procedures & forms will apply





TRID FINAL THOUGHTS

- How will you document?
 - Receipt of Loan Estimate
 - Intent to proceed
 - Receipt of Closing Disclosure
- How will you manage timing issues?
 - Business day definitions §1026.2(a)(6)
 - Loan Estimate
 - Closing Disclosure



TRID FINAL THOUGHTS

- Coordination with settlement agents
- Identification of all policies & procedures impacted
- Training
- Review applications immediately after October 3



THANK YOU

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