

ICBA Summary of the TILA-RESPA Integrated Disclosure (TRID) Rule

October 2015

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BACKGROUND AND SCOPE

In November 2013, the Consumer Financial Protection Bureau (CFPB) issued a final rule amending Regulation Z (Truth in Lending Act) and Regulation X (Real Estate Settlement Procedures Act) to integrate several mortgage loan disclosures. On July 21, 2015, the CFPB issued a final rule establishing October 3, 2015, as the new effective date for implementation of these new forms and the associated rules. The TILA-RESPA Integrated Disclosure Rule is commonly known as the TRID rule.

Link to the Rule and CFPB summaries: <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>

Applicability to Community Banks

The TRID rule applies to community banks, unless the bank extended credit to a consumer 25 or fewer times including mortgage loans in the previous or current calendar year.

What is the new TRID rule?

- The TRID rule consolidates four existing disclosures required under TILA and RESPA for closed-end credit transactions secured by real property, the appraisal notice required by the Equal Credit Opportunity Act, and the servicing notice required by RESPA into two forms: a **Loan Estimate (LE)** that must be delivered or placed in the mail no later than the **third business day** after receiving the consumer's application, and a **Closing Disclosure (CD)** that must be provided to the consumer at least **three business days** prior to loan consummation.
- TRID also establishes a new definition of "application" for consumers to obtain an LE
- While this rule includes major changes to mortgage loan disclosures and delivery requirements, due to ICBA advocacy, no proposed changes requiring creditors to disclose an all-inclusive annual percentage rate (APR) were finalized.

Loans Covered By the Rule

- The TRID rule applies to most closed-end consumer credit transactions secured by real property, but does NOT apply to:
 - Home Equity Lines of Credit (HELOCs);
 - Reverse mortgages; or

- Chattel-dwelling loans, such as loans secured by a mobile home or by a dwelling not attached to real property.
- The TRID rule applies to all lenders making mortgage loans, including community banks, unless the lender extended credit to a consumer 25 or fewer times including mortgage loans, or made five or fewer mortgage loans in the previous calendar year or current calendar year.
- NOTE: Certain types of loans that are currently subject to TILA but not RESPA are subject to the TRID rule's integrated disclosure requirements, including:
 - Construction-only loans; and
 - Loans secured by vacant land or by 25 or more acres.

Effective Date

- The new Integrated Disclosures must be provided by a creditor or mortgage broker that receives an application from a consumer for a closed-end credit transaction secured by real property **on or after October 3, 2015**. The originally scheduled effective date was August 1, 2015, but the date was postponed due to an administrative error by the CFPB.
 - On October 1, 2015, the CFPB and other financial regulators announced that during initial examinations for compliance with the TRID rule, examiners will evaluate an institution's compliance management system and overall efforts to comply with the new requirements. Lenders will be expected to make good faith efforts to comply with the Rule's requirements in a timely manner. Specifically, examiners will consider: the lender's implementation plan, including actions taken to update policies and procedures; its training of staff; and, its handling of early technical problems or other implementation challenges.
- Creditors are still required to use the current Good Faith Estimate (GFE), HUD-1, and Truth-in-Lending forms for applications received **prior to October 3, 2015**. As the applications received prior to October 3, 2015 are consummated, withdrawn, or cancelled, the use of the GFE, HUD-1, and Truth-in-Lending forms will no longer be used for most mortgage loans.
- The TRID rule includes some new restrictions on certain activity prior to a consumer's receipt of the LE. These restrictions take effect on October 3, 2015, regardless of whether an application has been received on that date. These activities include:
 - Imposing fees on a consumer before the consumer has received the loan estimate except for a bona fide and reasonable charge to obtain a consumer's credit report;
 - Providing written estimates of terms or costs specific to consumers before they receive the LE without a written statement informing the consumer the terms and costs may change; and
 - Requiring submission of documents verifying information related to the consumer's application before providing the LE.

The Loan Estimate

- For closed-end credit transactions secured by real property (other than reverse mortgages), the creditor is required to provide the consumer with good faith estimates of credit costs and transaction terms on the Loan Estimate (LE).
- Model/sample forms can be found at: <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>
- This new form integrates and replaces the existing RESPA GFE and the initial TILA disclosure for these transactions.
 - The LE must contain a good faith estimate of credit costs and transaction terms.
 - The LE must be in writing.
 - The creditor must deliver the LE or place it in the mail no later than the **third business day** after receiving the application.
 - Creditors generally may not issue revisions to the LE because they later discover technical errors, miscalculations, or underestimations of charges. Creditors can issue a revised LE only in certain situations such as when changed circumstances result in increased charges.
 - If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker may provide the LE.

Mandatory Use of Model Forms

- For any loans subject to the TRID rule that are federally-related mortgage loans subject to RESPA (which will include most mortgages), form H-24 is a standard form, meaning creditors must use form H-24.
- For other loans subject to the TRID rule that are not federally-related mortgage loans, form H-24 is a model form, meaning creditors are not strictly required to use form H-24 but the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to form H-24.
- Page 1 of the LE includes general information:
 - Loan Terms table;
 - Projected Payments table;
 - Costs at Closing table; and
 - Link for consumers to obtain more information about loans secured by real property at a website maintained by the CFPB.
- Page 1 of the LE includes the title "Loan Estimate" and the phrase "Save this Loan Estimate to compare with your Closing Disclosure."
- The top of the page also includes the name and address of the creditor. If there are multiple creditors, use only the name of the creditor completing the LE. If a mortgage broker is completing the LE, use the name of the creditor if known. If not known, leave space blank.

- Page 2 of the LE includes closing cost details:
 - A good faith itemization of the loan costs and other costs associated with the loan;
 - A Calculating Cash to Close table;
 - For transactions with adjustable payments, an Adjustable Payment table; and
 - For transactions with adjustable interest rates, an Adjustable Interest Rate table.

- Page 3 of the LE includes additional information about the loan:
 - Contact information;
 - A Comparisons table;
 - An Other Considerations table; and
 - If desired, a signature statement for the consumer to sign to acknowledge receipt.

Delivery of the Loan Estimate

- The creditor is generally required to provide the LE within **three business days** of the receipt of the consumer's loan application. For purposes of providing the LE, or any revised LE, a business day is a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions.¹

- The creditor must arrange for delivery as follows:
 - By providing it to the consumer in person; or
 - By mailing or emailing it.
 - If mailed or emailed, the consumer is considered to have received the LE **three business days** after it is delivered or placed in the mail unless the consumer confirms receipt before that period elapses.
 - If disclosures are provided electronically delivery must meet the requirements under the federal ESIGN Act².

- Application consists of the submission of the following six pieces of information from a consumer:
 - Name;
 - Income
 - Social Security Number to obtain a credit report;
 - Property address;
 - An estimate of the value of the property; and
 - Mortgage loan amount sought.

¹ For all other purposes under the TRID rule, business day means all calendar days except Sundays and legal public holidays specified in 5 U.S.C. 6103(a) such as, New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

² ESIGN Act: <http://www.gpo.gov/fdsys/pkg/PLAW-106publ229/html/PLAW-106publ229.htm>

- NOTE: A creditor or other person may not condition providing the LE on a consumer submitting documents verifying information related to the mortgage loan application before providing the LE.
- If a creditor determines within the three-business-day period the consumer’s application will not or cannot be approved on the terms requested by the consumer, or if it the application is withdrawn within that period, the creditor does not have to provide the LE.
- If a mortgage broker receives a consumer’s application, the mortgage broker may provide the LE to the consumer on the creditor’s behalf. However, the creditor is expected to maintain communication with the mortgage broker to ensure the LE and its delivery satisfy all requirements and the creditor is legally responsible for any errors or defects.
- If a mortgage broker provides the Loan LE, the mortgage broker must comply with the three-year-record-retention requirement.
- Creditors must act in good faith in obtaining information for the LE. If information is unknown, creditors may use estimates if they are designated as such on the LE.
- Any revised LEs must be delivered or placed in the mail no later than **three business days** after receiving the information. The revised LE must be delivered to the consumer or placed in the mail no later than **seven business days** before consummation of the transaction.
 - **For purposes of the “seven-business-day” requirement, business day is defined as all calendar days, except Sundays and legal public holidays.**
 - A consumer may modify or waive the seven-business-day waiting period after receiving the LE if the consumer determines the mortgage loan is needed to meet a bona fide personal financial emergency. The CFPB provides limited guidance as to what constitutes a bona fide personal financial emergency and the only example offered in commentary to the TRID rule is the imminent sale of the home at foreclosure.
- In January 2015, the Bureau made two important amendments regarding the LE.
 - The timing requirement to provide a revised LE in connection with an interest rate lock was adjusted so that revised disclosure must be provided no later than three business days after the rate is locked instead of on the date the rate is locked.
 - For transactions involving new construction, at the option of the creditor, where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the loan estimate, a clear and conspicuous statement that the creditor may issue a revised LE any time prior to 60 days before consummation.

Tolerances on the Loan Estimate

- Creditors are responsible for ensuring the figures stated in the LE are made in good faith with the best information reasonably available at the time of disclosure.

- Generally, if the charge paid by or imposed on the consumer exceeds the amount disclosed on the LE, it is not in good faith.
 - A creditor may charge the consumer more than the amount disclosed in the LE when:
 - Certain variations between the amount disclosed and the amount charged are expressly permitted by the TRID rule;
 - The amount charged falls within a tolerance threshold; or
 - Changed circumstances permit a revised LE Estimate or a Closing Disclosure that permits the amount to be changed:
 - An event beyond the control of the parties occurs;
 - Information the creditor relied upon is inaccurate; or
 - New information specific to the consumer or transaction the creditor did not rely on is found.
 - Creditors may charge consumers more than the amount on the LE without any tolerance limitation for:
 - Prepaid interest;
 - Property insurance premiums;
 - Amounts placed into an escrow, impound, reserve or similar account;
 - Services required by the creditor if the creditor permits the consumer to shop and the consumer selects a third party service provider not on the creditor's list of service providers; or
 - Charges paid to third-party service providers for services not required by the creditor.
 - The creditor may charge the consumer more than the amount disclosed on the LE for any of the following, so long as the total sum of the charges added together does not exceed the sum of all such charges disclosed on the LE by more than 10 percent:
 - Recording fees; or
 - Charges for third-party services where:
 - The charge is not paid to the creditor or their affiliate; and
 - The consumer is permitted by the creditor to shop for the third-party service and the consumer selects a third-party service provider on the creditor's written list of service providers.
 - ✓ If a consumer chooses a provider not on the creditor's list of providers, then the creditor is not limited in the amount that may be charged for the service.
 - For all other charges, creditors are not permitted to charge consumers more than the amount disclosed on the LE under any circumstances other than changed circumstances that permit a revised LE. Zero tolerance charges include:
 - Fees paid to the creditor, mortgage broker, or an affiliate of either;
 - Fees paid to an unaffiliated third-party if the creditor did not permit the consumer to shop for a third-party service provider for a settlement service; or
 - Transfer taxes.

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

Limits on Fees

- A creditor or other person may not impose any fee on a consumer in connection with the application for a mortgage transaction until the consumer has received the LE and has indicated intent to proceed with the transaction. This includes limits on imposing:
 - Application fees;
 - Appraisal fees;
 - Underwriting fees; and
 - Any other fees.
- The exception to this exclusion is for reasonable fees for obtaining a consumer's credit report.
- A consumer's intent to proceed is shown when the consumer communicates, in any manner, they choose to proceed after the LE has been delivered, unless a manner of communication is required by the creditor.
 - The creditor must document the communication to satisfy record retention requirements.

Other Estimates of Costs and Terms

- The new TRID rule does not prohibit a creditor or other person from providing a consumer with estimated terms or costs prior to the consumer receiving the LE.
 - However, if a written estimate is provided before the LE, it must clearly and conspicuously state at the top of the front of the first page, "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan."
 - This statement must be in 12-point font size or larger; and
 - There must be no headings, content, or format substantially similar to the LE or the Closing Disclosure. Example:

***Your actual rate, payment, and costs could be higher.
Get an official Loan Estimate before choosing a loan.***

The Closing Disclosure

- For loans that require a LE and that proceed to closing, creditors must provide a new final disclosure reflecting the actual terms of the transaction called the Closing Disclosure (CD). The form integrates and replaces the existing HUD-1 and the final TILA disclosure for these transactions.
- Model/sample forms can be found at: <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>
- The creditor is generally required to ensure the consumer receives the CD no later than **three business days** before consummation of the loan.
 - Consummation occurs when the consumer becomes contractually obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction. This point in time depends on applicable state law.
- The CD generally must contain the actual terms and costs of the transaction.
 - Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. However, creditors must act in good faith and use due diligence in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation.

If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected disclosure. If the creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional three-business-day waiting period prior to consummation. **Mandatory Use of Model Forms**

- For any loans subject to the TRID rule that are federally-related mortgage loans subject to RESPA, form H-25 is a standard form that creditors must use. For other transactions subject to the TRID rule that are not federally-related mortgage loans, form H-25 is a model form, so creditors are not strictly required to use the form but disclosures and format must be substantially similar to form H-25.
- Page 1 of the CD must include:
 - Information identifying borrower and loan;
 - Loan Terms table;
 - Projected Payments table; and
 - Costs at Closing table.

- Page 2 of the CD must include:

- Loan Costs table; and
- Other Costs table

NOTE: The number of items in these tables can be expanded and deleted to accommodate the disclosure of additional line items.

- Items required to be disclosed even if they are not charged to the consumer cannot be deleted.
- Loan costs and other costs tables can be disclosed on two separate pages if the page cannot accommodate all the costs required to be disclosed on one page.

- Page 3 of the CD must include:

- The Calculating Cash to Close table; and
- Summaries of Transactions tables.
 - For transactions without a seller, a Payoffs and Payments table may substitute for the Summaries of Transactions table and be placed before the alternative Calculating Cash to Close table.

- Page 4 of the CD must include:

- Loan disclosures;
- Adjustable Payment table; and
- Adjustable Interest Rate table.

- Page 5 of the CD must include:

- Loan Calculations table;
- Other disclosures;
- Contact information; and
- Confirmation of receipt.

Delivery of Closing Disclosure

- The creditor must arrange for delivery as follows:
 - By providing it to the consumer in person; or
 - By mailing or emailing it.
 - If mailed or emailed, the consumer is considered to have received the CD within **three business days** after it is delivered or placed in the mail unless the consumer confirms receipt before that period elapses.
 - If disclosures are provided electronically delivery must meet the requirements under the ESIGN Act.

- Settlement agents may provide the CD on the creditor’s behalf; however, the creditor is legally responsible for any errors or defects with delivery. In a purchase transaction, settlement agents will still be responsible for providing the CD to the seller.
- The settlement agent must provide the seller its copy of the CD no later than **the day of consummation**.
- Disclosures must be provided separately to each consumer who has the right to rescind the transaction under TILA. In transactions that are not rescindable, the CD may be provided to any consumer with primary liability on the obligation.

Revisions and Corrections to the Closing Disclosures

- Creditors must re-disclose terms or costs on the CD if certain changes occur to the transaction after the CD was first provided that cause it to become inaccurate. Changes that require a corrected CD include:
 - Changes that occur before consummation that require a new three-business-day waiting period, such as:
 - The APR increases by more than 1/8 of a percent for a fixed rate loan or 1/4 of a percent for adjustable loans (A decrease in APR will not require a new 3-day review if it is based on changes to interest rate or other fees.)³;
 - The loan product changes; or
 - A prepayment penalty is added.
 - Changes that occur before consummation and do not require a new three-business day waiting period (which includes all other changes).
 - For these changes, the creditor must ensure only that the consumer receives the revised CD at or before consummation.
 - Changes that occur after consummation, such as:
 - An incorrectly disclosed recording fee.
 - Other post-consummation events not related to settlement, such as tax increases, do not require a revised CD.
 - BUT, creditors must provide a corrected CD if an event in connection with the settlement occurs during the 30-calendar-day period after consummation that causes the CD to be inaccurate and result in a change to an amount paid by the consumer from what was previously disclosed.
 - In this case, the corrected CD must be delivered or placed in the mail no later than **30 calendar days** after receiving information the event occurred.
 - Creditors must provide a revised CD to correct clerical errors no later than **60 calendar days** after consummation.

³ CFPB Factsheet: Will the new mortgage disclosures delay my closings, http://files.consumerfinance.gov/f/201506_cfpb_factsheet_will-the-new-mortgage-disclosures-delay-my-closing.pdf

- If a creditor cures a tolerance violation by providing a refund to the consumer, the creditor must deliver or place in the mail a corrected CD no later than **60 calendar days** after consummation.

Delivery of the Home Loan Toolkit (Special Information Booklet)

- As part of the TRID implementation process, CFPB has developed a new Special Information Booklet which it calls the “Home Loan Toolkit.”
- The Home Loan Toolkit can be found at: http://files.consumerfinance.gov/f/201503_cfpb_your-home-loan-toolkit-web.pdf
- Creditors must provide a copy of the Home Loan Toolkit to consumers who apply for a consumer credit transaction secured by real property, except:
 - If the consumer is applying for a Home Equity Line of Credit (HELOC), the creditor can instead provide a copy of the brochure entitled, “When Your Home is On the Line: Lines of Credit.”
 - The creditor need not provide the special information booklet if the consumer is applying for a real property-secured consumer credit transaction that does not have the purpose of purchasing a one-to-four family residential property, such as a refinancing, a closed-end loan secured by a subordinate lien, or a reverse mortgage.
- Creditors must deliver or place in the mail the Home Loan Toolkit no later than **three business days** after receiving the consumer’s loan application.
 - This need not be provided if the creditor denies the application or the application is withdrawn.
 - For multiple applicants, the creditor may provide a copy of the special information booklet to just one of them.
 - If used, the mortgage broker must provide the special information booklet instead of the creditor.

Escrow Closing Notice

- This notice must be provided prior to cancelling an escrow account to consumers for whom an escrow account was established on a closed-end mortgage secured by a first lien, except for a reverse mortgage.
 - This additional notice must be provided no later than **three business days** before the consumer’s escrow account is cancelled.
 - Notice is not required if the escrow account being cancelled was established in connection with the consumer’s delinquency or default on the debt obligation or when the debt obligation is terminated.

- The notice must include:
 - The date on which the account will be closed;
 - That an escrow account may also be called an impound or trust account;
 - The reason why the escrow account will be closed;
 - That without the account, the consumer must pay all property costs, such as taxes and insurance directly, in one or two large payments a year;
 - A table titled “Cost to You” that has an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the escrow account, labeled “Escrow Closing Fee,” and a statement the fee is for closing the escrow account; and
 - Under the reference “In the future”:
 - The consequences if the consumer fails to pay property costs;
 - A telephone number the consumer can use to request additional information about the cancellation of the escrow account;
 - Whether the creditor/servicer offers the option of keeping the escrow account open and a telephone number the consumer can use to request the account be kept open; and
 - Whether there is a cut-off date to request the account be kept open.

- The creditor/servicer may also, at its option, disclose:
 - Its name or logo;
 - The consumer’s name, telephone number, mailing address, and property address;
 - The issue date of the notice; or
 - The loan number or consumer’s account number.

- The disclosures must also:
 - Contain a heading;
 - Be clear and conspicuous;
 - Be written in 10-point font or larger; and
 - Be consolidated on the front side of a one-page document, separate from all other materials, and substantially similar to model form H-29 found at <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>.

Record Retention Requirements

- The creditor must retain copies of the CD (and all documents related to the CD) for **five years** after consummation.
- The creditor, or servicer if applicable, must retain the Post-Consummation Escrow Cancellation Notice (Escrow Closing Notice) and the Post-Consummation Partial Payment Policy disclosure for **two years**.

- For all other evidence of compliance with the Integrated Disclosure provisions of Regulation Z (including the LE), creditors must maintain records for **three years** after consummation of the transaction.
- If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the CD to the new owner or servicer of the mortgage as a part of the transfer of the loan file. Both the creditor and such owner or servicer shall retain the CD for the remainder of the five-year period.