

Outlook Live Webinar- June 17, 2014

TILA-RESPA Integrated Disclosures

Presented by the Consumer Financial Protection Bureau

The content of this webinar is current as of the date the webinar was originally presented. This webinar has not been updated since its original presentation date and does not reflect the changes and clarifications set forth in the final rule issued on July 7, 2017.

Visit us at www.consumercomplianceoutlook.org

Disclaimer

- The Bureau issued the TILA-RESPA Integrated Disclosure final rule in November of 2013 to implement provisions under the Dodd Frank Wall Street Reform and Consumer Protection Act.
- The Final Rule will take effect in August 2015.
- This presentation is current as of June 17, 2014. This presentation does not represent legal interpretation, guidance or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.

Background

- Bureau finalized amendments to Regulations X and Z that integrate existing RESPA and TILA disclosures and take effect in August 2015.
 - Initial Truth-in Lending disclosure and RESPA Good Faith Estimate (GFE) combined into new Loan Estimate form (1026.37 and Appendix H-24)
 - Final Truth-in-Lending disclosure and RESPA HUD-1 combined into new Closing Disclosure (1026.38 and Appendix H-25)
 - New timing requirements for disclosures (1026.19(e) and (f))
 - New tolerance levels for disclosed estimates (1026.19(e) and (f))
 - New pre-disclosure requirements (1026.19(e)(2))
- A summary of the rule and the rule itself are available on the Bureau's website at: www.consumerfinance.gov/regulations

Basic Overview and Scope

- The TILA-RESPA Integrated Disclosure rule consolidates four existing disclosures required under TILA and RESPA for most closed-end consumer credit transactions secured by real estate into two forms:
 - a **Loan Estimate** given 3 business days after **application**
 - a **Closing Disclosure** given 3 business days prior to **consummation**.
- The rule does not apply to:
 - Reverse mortgages
 - Home-equity lines of credit (HELOCs)
 - Chattel-dwelling loans
 - Loans made by a person who makes five or fewer mortgages in a year
 - Certain no-interest loans secured by subordinate liens made for the purpose of downpayment or similar home buyer assistance, property rehabilitation, energy efficiency, or foreclosure avoidance or prevention

Loan Estimate (§§ 1026.19(e) and .37)

- Integrates and replaces the Initial Truth-in-Lending disclosure and the RESPA GFE
- Loan Estimate must:
 - Provide consumers with a good faith estimate of credit costs and transaction terms
 - Be in writing and contain the information prescribed in 1026.37 (as shown in Appendix H-24)
 - Satisfy timing and delivery requirements set forth in the rule

Loan Estimate: General Contents (§ 1026.37)

- Page 1: General
 - General information related to applicants, property, loan, and rate lock status; Loan Terms; Projected Payments during term of the loan; Costs at Closing, including the total estimated closing costs and the estimated cash to close
- Page 2: Costs
 - Loan Costs; Other Costs; Calculating Cash to Close; Adjustable Interest Rate Table (when applicable); Adjustable Payment Table (when applicable)
- Page 3: Other
 - Contact information for creditor and loan officer, Comparisons, Other Considerations, and Confirm Receipt (optional)

Loan Estimate: Alternative (§ 1026.37(d)(2))

An **Alternative Loan Estimate** may be used if the transaction does not have a seller

- Checkboxes are used to indicate if the Cash to Close is being paid by or to the consumer on Page 1.
- An Alternative Calculating Cash to Close table is used with fewer entries on Page 2.

Loan Estimate: Differences from Existing Disclosures

- Mostly the same information, presented in a different format
- Information most helpful to consumer on page 1
- Added more useful information required by the Dodd-Frank Act and sought by consumers, such as estimated cash to close
- Costs can be itemized, but each category is subtotaled
- Information consumer testing indicated did not improve consumer understanding was excepted from Loan Estimate (e.g., finance charge, approximate cost of funds)
- The annual percentage rate is disclosed on the third page
- Signature of consumer to confirm receipt is permitted

Loan Estimate Delivery Requirement (§ 1026.19(e)(1))

- A creditor must deliver or place the Loan Estimate in the mail not later than the third **business day** after the creditor receives the consumer's **application**
- If a **mortgage broker** receives a consumer's application, either the creditor or the **mortgage broker** may provide a consumer with the Loan Estimate
- If the Loan Estimate is not provided to the consumer in person, the consumer is considered to have received it three business days after it is delivered or placed in the mail.

Application (§ 1026.2(a)(3))

- An **application** consists of the submission of:
 - the consumer's name,
 - the consumer's income,
 - the consumer's social security number to obtain a credit report,
 - the property address,
 - an estimate of the value of the property, and
 - the mortgage loan amount sought.

Business Day (§ 1026.2(a)(6))

- For purposes of providing the **Loan Estimate**, 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.
- For other purposes, including delivery of the **Closing Disclosure**, **business day** means all calendar days except Sundays and legal public holidays.

Loan Estimate: Good faith requirement (§ 1026.19(e)(3))

- Loan Estimate figures must be made in **good faith** and consistent with the best information reasonably available to the creditor at the time disclosed.
- **To determine good faith:**
 - Look at difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer
 - Generally (exceptions on next two slides), if the charge paid by or imposed on the consumer **exceeds** the amount originally disclosed on the Loan Estimate it is **not in good faith**
 - This is true regardless of whether the creditor later discovers a technical error, miscalculation, or underestimation of a charge

Loan Estimate: Tolerance Limitations (§ 1026.19(e)(3))

- Certain charges are not subject to a tolerance limitation, meaning the amount charged to the consumer may exceed the amount disclosed on the Loan Estimate by any amount
 - 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 **written list of service providers**; and
 - Charges paid to third-party service providers for services not required by the creditor (may be paid to affiliates of the creditor).
- However, creditors may only charge more than the amount disclosed when the original estimate, or lack thereof, was based on the best information reasonably available at the time of the disclosure.

10% Cumulative and Zero Tolerances (§ 1026.19(e)(3))

- Some charges subject to a **10% cumulative tolerance**
 - Recording fees
 - Charges for third-party services where
 - The charge is not paid to the creditor or the creditor's affiliate
 - Consumer is permitted by the creditor to shop, but selects a third-party service provider on the creditor's written list of service providers
- Other charges subject to **zero tolerance** – i.e., the creditor may never charge more than the estimated amount unless there is a “changed circumstance” (or other triggering event)
 - 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
 - Transfer taxes

Revisions and Corrections to Loan Estimates (§ 1026.19(e)(3)(iv))

- **General Rule:** Creditors are bound by the Loan Estimate, and may not issue revisions because they later discover technical errors, miscalculations, or underestimations of charges.
- Revised Loan Estimates permitted only in certain specific circumstances:
 - **Changed circumstances** that occur after the Loan Estimate is provided to the consumer cause settlement charges to increase more than permitted
 - **Changed circumstances** that occur after the Loan Estimate is provided to the consumer affect the consumer's eligibility for the terms for which the consumer applied or the value of the security for the loan
 - Revisions are requested by the consumer
 - Interest rate not locked when the Loan Estimate was provided, and locking the rate causes the points or lender credits disclosed on the Loan Estimate to change
 - Consumer indicates an **intent to proceed** with the transaction more than 10 business days after the Loan Estimate was originally provided
 - The loan is a new construction loan, and settlement is delayed (§1026.19(e)(3)(iv)(F)).

Changed Circumstance (§ 1026.19(e)(3)(iv)(A))

- A **changed circumstance** for purposes of a revised Loan Estimate is:
 - An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
 - Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or
 - New information specific to the consumer or transaction that the creditor did not rely on when providing the Loan Estimate.
- For example, a changed circumstances may be war, natural disaster, or unexpected event specific to the consumer or the transaction (e.g., loss of employment)

Closing Disclosure (§§ 1026.19(f) and .38)

- Integrates and replaces the Final Truth-in Lending disclosure and the RESPA HUD-1
- Closing Disclosure must:
 - Generally contain the actual terms and costs of the transaction
 - Be in writing and contain the information prescribed in 1026.38 (as shown in Appendix H-25)
 - Satisfy timing and delivery requirements set forth in the rule

Closing Disclosure: General Contents (§ 1026.38)

- Page 1: General
 - Information, Loan Terms, Projected Payments, Costs at Closing
- Page 2: Costs
 - Loan Costs, Other Costs
- Page 3: Cash to Close and Summaries
 - Calculating Cash to Close, Summaries of Transactions
- Page 4: Additional Loan Information
 - Loan Disclosures, Escrow Account, AP and AIR Tables (when applicable)
- Page 5: Other Information
 - Loan Calculations, Other Disclosures, Contact Information, Confirm Receipt

Closing Disclosure: Alternative (§ 1026.38(e))

An Alternative Closing Disclosure may be used if the transaction does not have a seller

- Checkboxes are used to indicate if the Cash to Close is being paid by or to the consumer on Page 1
- The seller's column for costs is deleted on Page 2
- The Summaries of Transactions is deleted and Payoffs and Payments are disclosed at the top of Page 3
- An Alternative Calculating Cash to Close table is used with fewer entries on Page 3

Closing Disclosure: Differences from Existing Disclosures

- Mostly the same information, presented in a different format
- Page 1 mirrors the Loan Estimate's Page 1
- Costs itemized with columns indicating party and timing of payment on Page 2
- Added information to show changes to costs and how cash to close was calculated on Page 3
- “Fed Box” disclosures and more contact information for the consumer on page 5
- Signature of consumer to confirm receipt is permitted

Closing Disclosure Delivery Requirement (§ 1026.19(f))

- A creditor is generally responsible for ensuring that the consumer (buyer) receives the Closing Disclosure no later than three business days before consummation
 - May contract with a settlement agent to provide the Closing Disclosure on the creditor's behalf
 - Consummation defined under Regulation Z as the time that a consumer becomes contractually obligated on a credit transaction
- The settlement agent must provide the seller with the Closing Disclosure
- If the Closing Disclosure is not provided to the consumer in person, the consumer is considered to have received it three business days after it is delivered or placed in the mail

Revisions and Corrections to Closing Disclosures (§ 1026.19(f)(2))

- **General Rule:** creditors must redisclose terms or costs on the Closing Disclosure if certain changes occur to the transaction that cause the disclosures to become inaccurate
- Three categories of changes require a corrected Closing Disclosure containing all changed terms:
 - Changes before consummation that require new three-business-day waiting period
 - Changes before consummation that do not require new three-business-day waiting period
 - Changes that occur after consummation
- Consumer has right to inspect revised Closing Disclosure during the business day before consummation

Changes Before Consummation (§ 1026.19(f)(2))

- New three-business-day waiting period **required** when:
 - Disclosed APR becomes inaccurate
 - Loan product changes
 - Prepayment penalty is added
- New three-business-day waiting period **not required** for other changes

Changes After Consummation (§ 1026.19(f)(2))

- A corrected Closing Disclosure is required after consummation:
 - When an event in connection with the settlement causes the Closing Disclosure to become inaccurate and that results in a change to an amount paid by the consumer or seller occurs within the 30-day period after consummation
 - To document refunds for tolerance violations
 - To correct non-numerical **clerical** errors
 - An error is **clerical** if it does not affect a numerical disclosure and does not affect the timing, delivery, or other requirements imposed by § 1026.19(e) or (f)

Curing Tolerance Violations (§ 1026.19(f)(2)(v))

- **General Rule:** If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold
 - The creditor must refund the excess to the consumer no later than **60 days after consummation**, and
 - The creditor must deliver or place in the mail a corrected Closing Disclosure that reflects the refund no later than **60 days after consummation**
- **Zero tolerance charges:** any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer
- **10% cumulative tolerance charges:** to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10%, the difference must be refunded to the consumer

Pre-Disclosure Restrictions (§ 1026.19(e)(2))

- No fees may be imposed on a consumer in connection with the application before the consumer has received the Loan Estimate and indicated to the creditor an intent to proceed with the transaction
 - Exception for bona fide and reasonable fee for obtaining the consumer's credit report
- If a consumer is provided with a written estimate of terms or costs before receiving the Loan Estimate:
 - Top of first page must contain a statement that “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan”
 - The estimate may not be made with headings, content, and format substantially similar to the Loan Estimate form and must be in font size no smaller than 12-point
- May not require a consumer to submit documents verifying information related to the application before providing the Loan Estimate

Special Information Booklet (1026.19(g))

- Creditors generally must provide the **special information booklet** (REPSA Settlement Costs Booklet) to consumers who apply for a consumer credit transaction secured by real property no later than three business days after receiving the consumer's loan application
- Not required if the consumer is applying for:
 - Refinance
 - Subordinate lien
 - Reverse mortgage

Other Disclosures: Escrow Account Cancellation Notice

(§ 1026.20(e))

- A creditor must provide a consumer notice no later than three business days before the consumer’s escrow account is canceled
- For loans subject to the **escrow account cancellation notice** requirement, creditor or servicer must disclose
 - When and why the escrow account will be closed
 - That an escrow account may also be called an impound or trust account
 - That without an escrow account the consumer must directly pay all property costs (i.e., taxes, homeowner’s insurance)
 - A “**Cost to you**” table itemizing the amount of any fee imposed on the consumer in connection with the closure of the escrow account and a statement that the fee is for closing the escrow account
 - Under “**In the future**,” consequences for failure to pay property costs, a telephone number for additional information, whether escrow account can be kept open and whether there is a deadline to request that the escrow account be kept open

Other Disclosures: Partial Payment Policy in Mortgage Transfer Notice (§ 1026.39(d))

- If notice of a mortgage ownership’s transfer is required, that notice must include information about the applicable **partial payment** policy
- **Partial payment disclosure** must include:
 - The heading “**Partial Payment**” above the following, additional information:
 - If periodic payments that are less than the full amount due are:
 - Accepted, a statement that the “**lender**” may accept partial payments and apply them to the loan
 - Accepted but not applied to the loan until the remaining amount is paid, a statement that the “**lender**” may hold partial payments in a separate account until the remainder of the payment is made and then apply the full periodic payment to the loan
 - Not accepted, a statement that the “**lender**” does not accept any partial payments
 - A statement that the “**lender**” may have a different policy if the loan is sold

Questions?

