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GENERAL QUESTIONS

1. Question: What is TRID?

Answer: TRID stands for TILA (Truth in Lending Act) RESPA (Real Estate Settlement Procedures Act) Integrated Disclosure. This new Federal rule replaces the existing Early Truth-in-Lending Disclosure and Good Faith Estimate of Closing Costs (GFE) and combines them into a new disclosure called the Loan Estimate. The new rule also replaces the final Truth-in-Lending Disclosure and HUD-1 Settlement Statement and combines them into a new disclosure called the Closing Disclosure.

The rule was an attempt by the Consumer Financial Protection Bureau to simplify and clarify existing disclosures to make it easier for consumers to understand the terms of their mortgage loan and to be better able to shop between competing mortgage loan offers.

2. Question: When does this new rule go into effect?

Answer: The new rule is effective for mortgage applications received on or after October 3, 2015. Mortgage applications received on or before October 2, 2015 will use the current disclosures. Mortgage applications received on or after October 3, 2015 will use the new integrated disclosures.

Because the new disclosures are being rolled out based on application date, both the old disclosures and new disclosures will co-exist for a while until all the loans in the pipeline using the old disclosures have closed.

3. Question: What type of mortgages does this rule apply to?

Answer: The new rule applies to most closed-end consumer credit transactions secured by real property. This means it will apply to lot loans, home equity loans, home improvement loans, refinances and purchase money loans.

HELOCS, reverse mortgages, and loans secured by a mobile home are specifically exempted from the rule.

4. Question: Are investment properties covered by TRID?

Answer: The rules regarding coverage of TILA and RESPA over investment properties have not changed with the new TRID rules. If a property is being purchased for a “business purpose” (like an investment duplex) where the member does not intend to live in the property for more than 14 days during the coming year, the loan is technically for a business purpose. (§1026.3(a)(1) and Comment 3(a)-4).

Historically however, mortgage lenders have given TILA and RESPA disclosures even for investment properties because there is no harm in over disclosure and the risk of under disclosure is great.

We recommend that policy be continued in the new TRID environment – lenders should issue an LE and CD even for investment property loans.

5. Question: What is the definition of “business day”?

Answer: There are two definitions of “business day.” For timing purposes regarding the Loan Estimate, “business day” is any day on which the creditor’s offices are open to the public for carrying out substantially all of its business functions (Comment 19(e)(1)(iii)-1). For example, if a lender's retail locations are open only Monday through Friday, those are the “business days” for purposes of delivering the loan estimate and Saturday and Sunday wouldn’t count.

For timing purposes regarding the Closing Disclosure, “business day” is all calendar days except Sundays and 10 federal holidays (Comment 19(f)(1)(ii)-1).

6. Question: How do we “assume receipt” of the LE and CD?

Answer: You must document the timing of delivery of both disclosures. If the LE or CD is hand delivered, have the member sign to document delivery.

If LE or CD is mailed or e-mailed, make a note in the file when it was sent. This note will be your proof that the disclosure was sent and the member received it 3 business days after it was sent. (Note that e-mails are also subject to 3 day “mailbox rule”, unless the member acknowledges receipt of email).

7. Question: With the new restriction on requiring documentation prior to the borrower receiving their LE and giving their “Intent to Proceed”, is the pre-approval dead?

Answer: A lender cannot **require** documents prior to the LE being issued. However, if the member requests a pre-approval, they can voluntarily provide information necessary for the pre-approval.

8. Question: When is “consummation” in Texas?

Answer: “Consummation” is the day on which the member becomes contractually obligated on a credit transaction. (§1026.2(a)(13)) In Texas, the member becomes contractually obligated on the day of closing. Therefore, Texas treats consummation as the day of closing, even on refinances or home equities where funding occurs 3 days after closing.

9. Question: Does the LE need to be re-disclosed if the escrows are going to change?

Answer: No. Escrows can change any amount without regard to tolerance considerations and changes in escrow do not require re-disclosure of the LE. (§1026.19(e)(3)(iii)(A)-(C)).

10. Question: If borrower’s name does not fit on limited space provided on LE/CD, can we use an addendum?

Answer: Yes. An addendum may be used when required information for each consumer and seller doesn’t fit in the space provided. The addendum should comply with model forms. The CFPB has not released an example addendum yet. Comment 38(a)(4); Comment 37(a)(5)-1; §1026.38(t)(3).

11. Question: Can you have 4 signature lines on LE/CD?

Answer: A signature addendum page needs to be added if there are more than 2 borrowers. The addendum page must have the liability after foreclosure heading and warning. Comment 37(n)-2.

LOAN ESTIMATE

12. Question: How can we prove we allowed the borrower to shop?

Answer: In order to allow a member to shop, you list the service in the Section C. “Services You Can Shop For” of the Loan Estimate and provide the member with the Written List of Settlement Service Providers (§ 1026.19(e)(3)(ii)(C) and (e)(1)(vi)(C)). The Written List of Settlement Service Providers should have at least one service provider for each service for which the member is allowed to shop. If the member chooses a service provider from the list, that fee is subject to a 10% tolerance (§1026.19(e)(3)(ii)). If the member chooses their own service provider not on the list, you are not bound by the fee listed on the Loan Estimate and the fee can vary any amount without regard to tolerance issues (§1026.19(e)(3)(iii)(D)).

By listing the fee as a service the member CAN shop for on the loan estimate, and providing the Written List of Service Providers to the member, you have proved you allowed the member to shop.

13. Question: What if we don't know if a survey will be needed when we provide the loan estimate?

Answer: If a lender requires a survey and chooses the survey company for the member, the member was not allowed to shop. This is true regardless of whether a lender has established relationships with any particular survey company.

A lender should include the survey fee in the loan estimate. If a T-19 will be sufficient and no new survey is needed, the estimate for the survey fee won't be included in any tolerance calculation. (Comment 19(e)(3)(ii)-5).

If a lender requires a survey and allows the member to select the survey company, the member has been allowed to shop.

14. Question: What is considered an "application" that triggers the lender's duty to provide the LE?

Answer: Once a lender has these 6 pieces of information, they have an application under the TRID rule:

1. consumer's name
2. consumer's income
3. consumer's SSN
4. property address
5. estimated value of property
6. loan amount sought

If a lender wants to show members their fees, they should use the optional "cost estimate." The cost estimate should not resemble the LE and should have this disclosure: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." (§1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1).

15. How much business must be done at the lender's office to be considered a "business day" for purposes of the LE?

Answer: Activities that indicate the creditor should count the business day include availability of personnel to make loan disbursements, open new accounts and handle credit transaction inquiries.

Activities that indicate the creditor is not open include a lender merely having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

16. Question: When can I reset tolerance baselines when a fee changes in the 10% tolerance bucket?

Answer: Only when a changed circumstance has pushed fees in the 10% bucket cumulatively beyond 10% do you get to reset tolerance baselines. (Comment 19(e)(3)(iv)(A)-1.ii)

For example, say your 10% tolerance bucket has a total of \$400 in fees on the LE. Changed circumstances push fees in that bucket up to \$430. Because the fees have not changed by more 10%, you must compare the final fees in 10% bucket to the \$400 initially provided. You are allowed to reissue a LE, but you cannot reset tolerance baselines – so you must compare final fees with initial LE, not revised LE. Because of this, we recommend only re-issuing LE when tolerance baselines reset to avoid confusion.

However, in this example, if changed circumstances push fees in the 10% bucket to \$450, you can reset tolerance baselines and re-issue a LE with \$450 as the new baseline for the 10% tolerance bucket.

17. Question: What happens if the lender discloses a credit on the LE for a particular service, but the fee for that service is later reduced or eliminated?

Answer: A lender may not reduce the credit to the borrower initially disclosed, even if the cost of the service the credit was meant to pay for is reduced or eliminated. Comment 37(g)(6)(ii)1&2.

18. Question: Does aggregate adjustment need to be shown on LE (Section G)?

Answer: No, it should not be shown. “*The aggregate escrow account adjustment required under §1026.38(g)(3) and 12CFR 1024.17(d)(2) is not included on the Loan Estimate.*” Comment 37(g)(3)-2.

CLOSING DISCLOSURE

19. Question: Can the borrower waive the 3 day review period?

Answer: Technically, yes. If the borrower has a “bona fide personal financial emergency”, they can close their loan before they have had three days to review the CD. However, the only example the CFPB has given of a “bona fide personal financial emergency” is an example where the borrower will be foreclosed on and lose their home if they don’t close their new loan immediately and waive the three day CD review period.

However, any loan that waives the three day review period will be toxic. It will be an unsellable loan to investors and it will be scrutinized by regulators. For all intents and purposes, a lender should probably never allow a “bona fide personal financial emergency” except in extraordinary circumstances.

20. Question: Can a CD be sent out before the 7 days of the LE waiting period has expired – OR – do we have to wait the 7 days, disclose CD, then wait the 3 days before closing?

Answer: There is no prohibition on disclosing the CD prior to the 7 day LE waiting period.

21. Question: Will investors require alternative CD for Refis/Home Equities?

Answer: Yes. Fannie Mae put out a bulletin on June 30, 2015. They have updated their selling guide. It can be found here:

<https://www.fanniemae.com/content/announcement/sel1507.pdf>

Here is the relevant excerpt regarding which form of CD to use:

“Lenders must use the version of the Closing Disclosure that is applicable to the transaction; for example, the lender may not use the purchase version of the form for a refinance transaction.”

22. Question: What happens when fees don’t fit onto Page 2 of the Closing Disclosure?

Answer: The number of items in the Loan Costs and Other Costs tables can be expanded and deleted to ensure that the Loan Costs and Other Costs tables fit onto page 2 of the Closing Disclosure. (§ 1026.38(t)(5)(iv)(A)) However, items that are required to be disclosed, even if they are not needed (such as Points in the Origination Charges subheading), cannot be deleted. (Comment 38(t)(5)(iv)-1)

The amounts paid by the consumer, seller and others for each item are disclosed. For items paid by the consumer or seller, the amount that is paid at or before closing is also entered into the applicable columns. (§ 1026.38(f)) To the extent that an individual item is paid by different parties to the transaction and both at and before closing, the amounts associated with an item can be entered in multiple columns. (§ 1026.38(f))

The Loan Costs and Other Costs tables can be disclosed on two separate pages of the Closing Disclosure. (§ 1026.38(t)(5)(iv)(B)) When used, these pages are numbered page 2a and 2b. (Comment 38(t)(5)(iv)-3) For an example of this permissible change to the Closing Disclosure, see form H-25(H) of appendix H to Regulation Z.