



## TRID: Caution Ahead\*

Katie Wechsler

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When the Consumer Financial Protection Bureau's (CFPB) TILA-RESPA Integrated Disclosure Rule (TRID) is in effect, Americans seeking a home mortgage will be going down a new road, and there are likely to be a few bumps along the way. TRID includes a consolidation of four disclosures into two, with a hefty amount of rules and procedures accompanying those disclosures. CFPB recently announced that, largely due to an administrative error, the Agency has proposed to delay the effective date of TRID from August 1 to October 3<sup>1</sup>.

In creating the new disclosures, the Loan Estimate and the Closing Disclosures, the CFPB focused on the consumer's understanding. In 2011-2012, the CFPB tested iterations of the new disclosures through its Know Before You Owe initiative which involved qualitative testing across the country, publishing the disclosures on CFPB's website for public input, and a round of quantitative testing, along with the SBREFA small-business panel and the typical APA notice and comment process.

This article looks at the road ahead for homebuyers under the new TRID regime.

### **First Stop: Loan Estimate**

A consumer must give a lender (or broker) six pieces of information to apply for a mortgage: name, income, social security number (to obtain a credit report), property address, estimate value of

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\*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

<sup>1</sup>*2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date*

the property, and mortgage loan amount sought. TRID removes a catchall category which permitted lenders to require additional information or verification to complete an application.

This submission of the application triggers the timing of the delivery of the Loan Estimate as well as other documents, such as the newly redone education booklet about mortgages, “Your home loan toolkit: A step-by-step guide.” The Loan Estimate must be delivered or placed in the mail no later than the third business day<sup>2</sup> after the lender receives the application. A consumer has to receive the Loan Estimate at least 7 business days before consummation of the loan.<sup>3</sup> A mortgage broker can provide the Loan Estimate to the consumer, but the lender is ultimately responsible for any errors or defects in the document and the broker would have to keep a record of the document for 3 years.

The Loan Estimate is a 3-page document that includes a good faith estimate of credit costs and transaction terms. The first page has the basic loan terms, projected payments, estimates for taxes, insurance and assessments and whether those fees will be escrowed, and the bottom line costs of closings. The second page includes details on the closing costs, including origination charges, services the consumer can and cannot shop for, and other costs such as taxes and escrowed amounts. This page also includes a calculation of how much money the consumer needs at closing, factoring in any deposit, down payment, etc. The final page is additional information with certain disclosures about appraisals, homeowners insurance, late payments, servicing, among other items. That page also includes a comparison chart marking how much the consumer will pay in 5 years, the APR, and the total interest as a percentage of the loan, intended for consumers to compare the loan with other loans. Most of those pieces are statutorily mandated, although, it does not seem likely that a consumer will actually use that chart to compare loans. A consumer would be much more likely to compare interest rates, term, and whether the loan is fixed or adjustable, all of which is on the first page of the Loan Estimate.

There are new rules regarding the accuracy of the Loan Estimate in comparison to the Closing Disclosure. The breakdown of the fees is as follows:

- Estimates that cannot change at all:
  - Fees paid to the lender, broker, or an affiliate of either;
  - Fees paid to an unaffiliated third party if the lender did not permit the consumer to shop; and
  - Transfer taxes
- Estimates that can change a little (cumulatively, these charges can increase by no more than 10%)

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<sup>2</sup>Note that there are two definitions of “business day” in TRID.

<sup>3</sup>Consummation is typically at closing, but not always; it is a question of state law.

- Recording fees; and
  - Charges for third party services if: the charge is not paid to the lender or affiliate, the consumer can shop for the service, and the consumer selects a service provider from the list the lender provided.
- Estimates that can change by any amount:
    - Prepaid interest;
    - Property insurance premiums;
    - Amount placed into an escrow account;
    - Services required by the lender if the lender permits the consumer to shop and the consumer chooses a provider not on the list the lender provided; and
    - Charges paid to a third party service provider for services the lender does not require.

The rules on accuracy of estimates has always been complex and continue to be so. The CFPB has tightened these rules for the industry and third party service providers. Only time will tell if consumers will understand these rules and whether these new tolerances are effective.

### **Detour: Revised Loan Estimate**

Once the consumer receives the Loan Estimate, they may receive a Revised Loan Estimate, for a variety of reasons. One involves “changed circumstances” that cause estimated settlement charges to increase more than the permitted amount or affect either the consumer’s eligibility for the loan or the value of the property. A “changed circumstance” is a natural disaster or the introduction of new or changed information specific to that transaction (e.g., the consumer’s actual income is less than stated at the time of application). Additionally, a new disclosure can be issued if the consumer requests changes to the credit terms or settlement. Or if the interest rate was not locked when the original estimate was given and locking it changes points or credits, a new estimate must be given. The only items on the Loan Estimate that can change are those actually affected by the changed circumstance, the consumer’s request, or the locking of the interest rate. It is not an opportunity to correct mistakes or change other unaffected estimates. Finally, and importantly, if more than 10 business days have passed since the Loan Estimate was given, a new Loan Estimate may be given. Basically, the Loan Estimate has an expiration of 10 business days.

The delivery and timing of the Revised Loan Estimate can get tricky if it is close to closing, and there are special rules for how to handle that, including that the revisions can be reflected in the Closing Disclosure instead.

Once a consumer receives the Loan Estimate, they must indicate an intent to proceed with the loan. Silence is not an indication, but otherwise, the lender can dictate the method of communicating this intent.

A quick note on fees: A consumer cannot be charged any fees (such as an application or appraisal fee), until the consumer receives the loan estimate and indicates she wants to proceed with the loan. The only exception to this is a bona fide and reasonable fee for obtaining the consumer's credit report.

### **Next Stop: Closing Disclosure**

Once a consumer has told the lender they want to move forward with the loan and assuming no events occur to trigger a Revised Loan Estimate, the consumer next receives the Closing Disclosure. The consumer must receive the Closing Disclosure no later than 3 business days (every day except Sunday and federal holidays) before consummation. If the lender is mailing it, it must be in the mail at least 7 business days before consummation. There is very little opportunity to waive this so-called waiting period of 3 days. Settlement agents can complete and deliver the Closing Disclosure, but the creditor is liable for errors and defects and must maintain the records. Already a couple of large lenders have indicated that they will control the completion and delivery of the Closing Disclosure because of the liability, record keeping requirements, and tight accuracy expectations.

The Closing Disclosure is 5 pages long, with the first page being identical in format with the first page of the Loan Estimate. The idea being that the consumer will compare the first two of each form. A pretty good assumption, given that the first page is easy to read in table format and includes all the key information that consumers care about. The next two pages include the breakdown of closing costs, with columns to indicate what party is paying for what. Page three has a table that compares estimates from the Loan Estimate to the actual amounts on the Closing Disclosure. The last two pages contain additional information similar to the final page of the Loan Estimate, plus a few more disclosures, such as a consumer's liability after foreclosure and contact information for all the key parties.

### **Detour: Revised Closing Disclosure**

Like the Loan Estimate, the Closing Disclosure may need to be revised. If there are certain changes, a new Closing Disclosure must be issued and there must be an additional three-business-day waiting period (certain changes to the APR;<sup>4</sup> the loan product changes; or a prepayment penalty is added to the loan). For any other changes, a new Closing Disclosure is required, but no new waiting period is triggered (it can be given at consummation). If there are changes after consummation (e.g., a creditor curing an accuracy violation), a new Closing Disclosure may need to be given, depending on the changes and when they occur.

### **Caution: Bumpy Road Ahead**

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<sup>4</sup>The APR increases by more than 1/8 of a percent for fixed rate loans or 1/4 of a percent for adjustable loans. A decrease in the APR that is not based on changes to interest rate or other fees also triggers the 3-day waiting period. ***Know Before You Owe: You'll get 3 days to review your mortgage closing documents.***

At least in the beginning of the new TRID regime, expect a rough road.

TRID will be effective for all new applications received on or after October 3, assuming the CFPB's new deadline is finalized as proposed. Those consumers will get all the new forms and the new rules will apply. If a consumer applied for a loan on October 2 say, all the old rules and old forms apply. That means for a considerable period of time, there will be confusion. Lenders will have to keep two systems going until all the consumers who applied for a loan before October 3 have closed on their loan or chosen not to move forward with it. Settlement agents will have some hurdles as they will be orchestrating closings on the same day in which very different rules apply and different forms are used. Expect confusion and mistakes.

As indicated above, the responsibilities of the parties involved are shifting. There are significant liabilities under TRID and the rule doesn't give much leeway or flexibility. Lenders are taking on more of the responsibility. Any delegation to third party service providers, settlement agents, mortgage brokers, or others will be closely and carefully monitored. This may have serious negative impacts on small businesses that provide real estate settlement services as they may not be able to meet the compliance and due diligence demands.

There is a strong likelihood that closings will be delayed directly due to the TRID regime. While the CFPB recently clarified the limited circumstances that trigger a new 3-day waiting period, there are still other circumstances that will delay a closing. For example, during a walk-through it is discovered that the stove is broken, and the buyer requires the seller to repair it before closing. If that repair cannot be done quickly, the delay could cause the consumer's lock on the interest rate to expire, which could mean new (and potentially more costly) loan terms, new disclosures and additional fees. This will cause confusion and frustration for consumers. Additionally, it may make consumers who must obtain a mortgage very unattractive to a seller. Investors may increasingly edge out consumers for homes. That's not a change many would like to see, least of all the CFPB.

The CFPB has indicated that they will be mindful of good faith efforts by supervised entities to be in compliance.<sup>5</sup> Only time will tell what the real impact of TRID will be, and how bumpy or smooth the road is for potential homebuyers. In the meantime, buckle your seat belt.

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*Katie Wechsler is an associate with the law firm of **Barnett Sivon & Natter, P.C.***

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<sup>5</sup> ***Know Before You Owe: You'll get 3 days to review your mortgage closing documents*** (The CFPB "will be sensitive to the progress made by those entities that have been squarely focused on making good-faith efforts to come into compliance with the rule on time).