

Bankers Advisory COMPLIANCE MONITOR

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CFPB Releases TILA-RESPA Integrated Disclosure Rule Compliance Guide

By Margaret Wright

On April 1, 2014, the Consumer Financial Protection Bureau released their Small Entity Compliance Guide for the TILA-RESPA Integrated Disclosure Rule. The CFPB's TILA-RESPA Integrated Disclosure Rule Guide is organized in a helpful question and answer format which outlines important information concerning the requirements for each new disclosure. The Guide includes a page by page guide for completion of both the Loan Estimate and the Closing Disclosure forms.

The integrated disclosures must be used where an application for a closed end credit transaction secured by real property is received on or after August 15, 2015. For applications received prior to August 1, 2015 the old disclosure forms must be used. For transactions not covered by the new TILA-RESPA Integrated Disclosure, such as reverse mortgages or HELOCs, the old disclosure forms must continue to be used, as applicable.

Compliance Guide Overview

In addition to the page by page completion guide for the Loan Estimate form and Closing Disclosure form, the Guide also includes a section outlining the fee tolerance calculations from the Loan Estimate disclosed amounts to the Closing Disclosure charged fees. The Guide discusses the circumstances under which Loan Estimate revision is permissible and when that revised disclosure must be provided.

The Guide includes a section concerning practical implementation and compliance issues which provides helpful guidance to creditors in adjusting procedures to comply with the new RESPA-TILA Integrated Disclosure requirements.

Selected Additional Points of Notice

The Guide also outlines additional information and clarification concerning some more familiar disclosure requirements which have been impacted by the RESPA-TILA Integrated Disclosure Rule.

Loan Estimate Timing and Delivery Requirements

Similar to the old initial disclosures, the Loan Estimate must be delivered or placed in the mail to the applicant no later than the third business day after receipt of the application. However, the definition of application has been changed slightly from the current RESPA definition to exclude the final "catch-all" requirement of "any other information deemed necessary by the loan originator".

Provision of the Loan Estimate may not be delayed pending receipt of verification documents related to the submitted application information. The CFPB Guide provides the following examples:

"A creditor may ask for the sale price and address of the property, but may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the Loan Estimate."

"A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements or similar documentation to support the information orally provided by the consumer before the creditor provides the Loan Estimate."

Advance Fees and the Intent to Proceed

Fees may not be imposed prior to the consumer's receipt of the Loan Estimate and the consumer has indicated intent to proceed. Fees collected to obtain the consumer's credit report are exempt from this requirement, as long as the fee is bona fide and reasonable.

The restriction on collection of advanced fees is similar the previous advance fee restrictions, however the CFPB has taken this time to provide additional official guidance concerning when a fee is considered to have been imposed. A fee is considered to have been imposed if the consumer is required to provide a method of payment, even if a payment is not made at the time.

The Guide provides specific examples of this scenario:

"A creditor or mortgage broker requiring the consumer to provide a check to pay for a processing fee before the consumer receives the Loan Estimate, even if the check is not to be cashed until after the Loan Estimate is received and the consumer has indicated an intent to proceed."

"A creditor or mortgage broker requiring the consumer to provide a credit card number for a processing fee before the consumer receives the Loan Estimate, even if the credit card will not be charged until after the Loan Estimate is received and the consumer has indicated an intent to proceed. "

The requirements concerning the method of the consumer's communication of their intent proceed have also not changed, however the CFPB has provided additional clarifying guidance in the Guide. There is no specific requirement that the consumer must communicate intent to proceed in a certain manner, however the communication must be documented by the creditor. The Guide additionally notes that a consumer's silence is not sufficient to indicate intent to proceed.

Closing Disclosure Timing and Delivery Requirements

The consumer must receive the Closing Disclosure form no later than three business days before consummation. A settlement agent may provide the Closing Disclosure on the creditor's behalf and responsibilities for completion are permitted to be divided between the settlement agent and creditor.

The Closing Disclosure must be re-disclosed if changes subsequently occur causing the Disclosure to become inaccurate. Changes occurring before consummation may require a new three day waiting period. A new waiting period is required where the APR becomes inaccurate, the loan product changes or a prepayment penalty is added.

Where the change is not one of these three items, an additional three day waiting period will not be required; however the revised Closing Disclosure must be received at or before consummation.

Post-Closing Disclosures

Additionally, the RESPA-TILA Rule has changed requirements for post-consummation disclosures including the Escrow Closing Notice, mortgage servicing transfer notice and partial payment notices.



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