



**TILA-RESPA INTEGRATED DISCLOSURES
PROPOSED AMENDMENTS**

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GENERAL INFORMATION

- **Majority of TRID requirements apply to loans where the application was received on or after October 3, 2015.**
- **In the year following implementation, many questions have arisen relating to ambiguities in the TRID rule.**
- **The CFPB attempted to address many of these these questions through informal processes (verbal guidance, webinars, statements from Director Cordray, etc.).**
- **The proposed rule is an effort to formally codify much of this guidance, and to clear up ambiguities it the TRID rule.**
- **296 pages. . . Covers a wide range of subjects under TRID.**

ISSUES ADDRESSED IN THIS PRESENTATION

- COOPERATIVES
- HOUSING ASSISTANCE LOANS
- PRIVACY AND SHARING OF LE/CD
- “BLACK HOLE” FOR CHANGED CIRCUMSTANCES AFTER THE CD IS ISSUED.
- WRITTEN LIST OF SERVICE PROVIDERS
- INFORMATIONAL LEs
- PER DIEM INTEREST
- CONSTRUCTION-TO-PERMANENT LENDING.
- TOTAL OF PAYMENTS.
- CASH TO CLOSE.
- ROUNDING.
- POST-CONSUMMATION DISCLOSURES

COOPERATIVES

- The LE and CD are required for all closed-end consumer credit transactions secured by “real property.”
- Since Regulation Z does not define the term “real property”, this puts co-ops into a gray area. In some states they are considered personal property.
- Proposed rule eliminates this ambiguity regarding co-ops:
 - TRID will require disclosures in all closed-end consumer credit transactions secured by a co-op unit, regardless of their classification under state law.

HOUSING ASSISTANCE

- Revisions to the GFE and HUD-1 in 2010 created an exception to the disclosure requirements for certain 2nd lien, homebuyer assistance loans. The CFPB incorporated this same exception into TRID.
- Many homebuyer assistance loans have been falling outside the exception.
- Total costs payable must be less than 1% of the loan amount and include no costs other than recordation, application, and counseling.
- Loans are typically small and recording fees often exceed the 1% threshold.
- CFPB proposes to: (1) include transfer taxes in recording fees; and (2) clarify that recording fees and transfer taxes would not count towards the 1% exception.

PRIVACY AND SHARING OF LE/CD

- **TRID requires the creditor to provide the CD to the consumer, and the settlement agent to provide the CD to the seller, but does not address whether creditor or settlement agent may provide copies to other parties.**
- **Lenders and settlement agents often require the consumer to expressly consent to sharing the LE and CD with realtors and other parties.**
- **In the proposed rule, the CFPB references two exceptions in GLBA:**
 - **If the financial institution shares customer NPI to comply with federal, state, or local laws, rules and requirements;**
 - **If the financial institution’s sharing of customer NPI is required “or is a usual, appropriate, or acceptable method, to provide the customer or the customer’s agent or broker with confirmation, statement, or other record of the transaction. . . “**
- **The CD is a record of the transaction for both the consumer and the creditor, and that it is “usual, appropriate, and accepted” for creditors and settlement agents to provide a CD to consumers, sellers, and their agents.**
- **Preamble suggests that CFPB believes that the creditor and/or settlement agent may share the CD with other parties involved in the transaction, including realtors, based on existing GLBA exceptions.**

“THE BLACK HOLE”

- **A revised LE is typically issued to reset fee tolerances for a fee increase caused by a changed circumstance or borrower-requested change.**
- **The creditor is prohibited from issuing a revised LE on or after the date that the CD is provided.**
- **An initial or revised CD may be used to reset tolerances if there are less than four business days between the time a revised LE is required to be provided and consummation.**
- **The problem occurs when a changed circumstance occurs and there are four or more business days between the time a revised CD is required to be provided and consummation.**
- **CD is issued early, or if closing is delayed after the CD is issued.**

“THE BLACK HOLE”

- Proposed rule adds new comment 19(e)(4)(ii)-2:
 - If there are fewer than four business days between the time the revised version of the disclosures is required to be provided under 1026.19(e)(4)(i) and consummation or the Closing Disclosure has already been provided to the consumer, creditors comply with the requirements of 1026.19(e)(4) if the revised disclosures are reflected in the corrected disclosures provided under 1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of 1026.19(e)(4)(i).

WRITTEN LIST OF SERVICE PROVIDERS

- **TOLERANCE**

- Current rule states that if consumer is allowed to shop for settlement services, but the creditor fails to provide the Written List of Service Providers or provides a non-compliant list, then the fees fall into the 10% tolerance category.
- Proposed rule states that if consumer is permitted to shop for settlement services, but the creditor fails to provide the written list or provides a non-compliant written list, then the fees would fall into the ZERO tolerance category.
- Under these circumstances, the consumer was effectively not permitted to shop, even if the LE reflects that the consumer was allowed to shop, or may in fact have shopped.

WRITTEN LIST OF SERVICE PROVIDERS

- **Disclosing a Package or Combination of Services**
 - Are creditors required to itemize individual settlement services that the consumer may shop for on the written list of providers, or may the creditor combine related services if the same provider offers them?
 - Unclear in TRID as currently written.
 - Proposed rule clarifies that creditors must identify each service the consumer may shop for, unless the creditor knows that the service is provided as part of a package or combination of services offered by a single provider.
 - Ex. If the creditor itemizes 4 title-related services as services the consumer may shop for on the LE, the creditor must itemize the 4 services on the written list, unless it knows at the time it provides the written list that the provider of the services offers each of them as a package or combination of services.

INFORMATIONAL LOAN ESTIMATES

- Proposed rule includes clarifying comments about revised LE's issued for "informational purposes" to keep a consumer apprised of updated information, even if tolerances are not being reset.
- Clarifies that a revised LE which resets tolerances on a fee (or fees) must also update other costs as applicable, even if those costs are not directly related to the changed circumstances and thus do not have tolerances reset.
- All amounts reflected on a revised disclosure must be based on the best information reasonably available at the time the disclosure is provided to the consumer.

PER DIEM INTEREST

- **Current TILA/Reg. Z rule states that, as a general matter, any disclosure affected by per diem interest are considered accurate if the disclosure was based on the information known to the creditor at the time that the disclosures are prepared for consummation of the transaction.**
- **Proposed rule amends the commentary to state that a creditor is not required to provide a corrected CD after consummation if the CD reflected the best information reasonably available at the time it was provided, even if the amount actually paid by the consumer differs from the amount disclosed.**

CONSTRUCTION TO PERMANENT LOANS

- The initial TRID rule contained little guidance on completing the disclosures for construction to perm loans. Only a small amount of additional commentary was added to Appendix D to Part 1026.
- The CFPB has attempted to fill the gaps with informal guidance, including the March 1, 2016 Outlook Live Webinar.
- The proposed rule includes significant changes to Regulation Z, Section 17 and Appendix D, which codify much of the CFPB's prior informal guidance on construction lending and TRID.

CONSTRUCTION TO PERMANENT LOANS

- **Allocation of Costs**

- When disclosing a construction-to-permanent loan as 2 transactions, TRID allows creditors flexibility in the allocation of points and other costs between the construction phase and the permanent phase.
 - TILA prohibits dividing a loan into multiple transactions to avoid high-cost restrictions.
- The proposed rule adds a “but for” test for the allocation of costs between the 2 phases:
 - A cost must be allocated to the construction phase if the amount would not be imposed *but for* the construction financing.
 - All other costs must be allocated to the permanent phase.
 - Eg. inspection and handling fees would be allocated to the construction phase.
 - If a creditor charges an origination fee for a construction-only loan, but charges a greater origination fee for a construction to permanent loan, the difference in the fees would have to be allocated to the permanent phase.

CONSTRUCTION TO PERMANENT LOANS

- **May be Permanently Financed by the Same Creditor**
 - Reg Z allows a creditor to treat a construction-to-permanent loan as 1 transaction (with 1 blended disclosure) or 2 transactions (with separate disclosures for the construction phase and the permanent phase) when the construction loan *“may be permanently financed by the same creditor.”*
 - Regulation Z does not currently define that phrase.
 - The proposed rule establishes criteria to determine when the construction loan “may be permanently financed by the same creditor”:
 - Does the creditor generally offer permanent financing to consumers on its construction loans?
 - If yes, then the loan “may be permanently financed by the same creditor” and the creditor must disclose both the construction loan and the permanent loan.
 - Exception if the consumer expressly indicates to the creditor that he/she will not obtain the permanent financing from that creditor, or if the creditor does not offer permanent financing.

CONSTRUCTION TO PERMANENT LOANS

- **Construction Costs**

- “Construction Costs” include costs the consumer contracts, at or before closing, to pay in whole or in part with loan proceeds.
- Construction Holdback – a portion of a construction loan’s proceeds that are placed in a reserve or other account at consummation are considered “construction costs”.
- Proposed rule would require that construction costs, payoffs of other liens, and payoffs of unsecured debts be shown in Section H in the other costs table of the LE and CD. Construction holdback can be shown here as a separate itemized cost, or lumped with other construction costs.
- The CFPB considered, but rejected, allowing these costs to be shown in the summaries of transactions table. The CFPB wants them shown in Section H so that they will be disclosed on both the LE and the CD.

- **Inspection and Handling Fees**

- Construction loan inspection and handling fees are loan costs associated with the construction phase for purposes of the LE and CD
- Proposed rule clarifies that if the fees are collected at or before consummation, then they are disclosed in the loan costs table of the LE and CD.
- If they are collected after consummation, then they should be disclosed on an addendum to the LE/CD.
 - NEW DOCUMENT!!!!

CONSTRUCTION TO PERMANENT LOANS

- **Other Technical Changes**

- *Disclosing the interest rate for the permanent loan: fully indexed rate (ARM) or best information reasonably available (fixed).*
- *Increase in Periodic Payment: “Technically correct” answer for draw loans where the payment may increase as the loan is drawn is “NO”. Lender may at its option disclose this as “YES”.*
- *Projected Payments Table: balloon payment disclosure for construction phase LE/CD.*
- *Loan term (31 years), Product (duration of interest only period), Initial periodic payment (applies to Appendix D calcs), etc.*

TOTAL OF PAYMENTS

- **Prior to TRID, the Total of Payments disclosure was subject to the finance charge tolerance. Creditor was required to disclose the sum of the amount financed and the finance charge for the Total of Payments.**
- **Under TRID, the Total of Payments is required to disclose the sum of the “principal, interest, mortgage insurance, and loan costs.”**
 - **“Loan costs” may or may not be part of the finance charge.**
- **The proposed rule clarifies that the CFPB never intended to remove the tolerances that apply to the Total of Payments disclosure.**
 - **Finance charge tolerances apply to the Total of Payments**

CASH TO CLOSE

- TRID has very inflexible rules for how each row of the Calculating Cash to Close Table should be calculated, which has made it difficult for lenders to account for all factual situations.
- Proposed rule implements several changes and add clarifications to the calculation of amounts disclosed on the Cash to Close Table:
 - Simultaneous loan for subordinate financing – CFPB would exclude the sales price, which will allow the Cash to Close calculation to accurately reflect the proceeds of the subordinate financing.
 - **Closing Costs Financed:**
 - = loan amount minus estimated total amount of payments to 3rd parties not otherwise disclosed.
 - Rule would explain that the loan amount is the total amount the consumer will borrow, as reflected by the amount of the note.

CASH TO CLOSE

- **Seller Credits**

- Proposed rule would clarify that specific seller credits for the payment of certain loan costs and other costs may be disclosed either as lump sum “Seller Credits” in the Calculating Cash to Close table or be reflected within the amounts itemized for the specific fees.

- **Adjustments and Other Credits:**

- Currently required to be disclosed as a negative number.
- The rule would eliminate this requirement for a negative number.
- The rule would clarify that amounts expected to be paid by third parties not involved in the transactions are to be included in the amount **ONLY IF** expected to be paid at consummation.

CASH TO CLOSE

- **Down Payment and Other Funds from Borrower:**
 - The number no longer must be 0 or positive and may reflect funds disbursed to the consumer at closing.
- **Funds for Borrower:**
 - Changes to this section result in the number always being zero in a purchase transaction. Cash-out purchases will be reflected in the Down Payment and Other Funds from Borrower as a negative number or a negative offset.
- **Optional Alternative Cash to Close Table:**
 - Permits the use of the optional alternative cash to close table for the disclosure of simultaneous loans for subordinate financing in purchase transactions. Also permits the Payoffs and Payments line to be negative or positive depending on the components.

ROUNDING

- **TRID includes various rounding requirements.**
- **Proposed rule clarifies that the per diem interest amount and monthly amounts required for initial escrow payments should be rounded to the nearest cent and disclosed to 2 decimal places.**
- **For example, per diem interest of \$68 would be disclosed as “\$68.00”; \$68.257 would be disclosed as “\$68.26”.**
- **The proposed rule also clarifies that % disclosures (APR, TIP, AIR table, etc.) should be disclosed by rounding the exact amounts to 3 decimal places and then dropping any trailing zeros to the right of the decimal point:**
 - **For example, 7.000% APR would be disclosed as 7%. 2.4999% APR becomes 2.500%, and is disclosed as 2.5%.**

POST-CONSUMMATION DISCLOSURES

- **TRID applies to covered loans for which an application was taken on or after October 3, 2015**
 - **Only a few enumerated sections of the rule became effective on October 3rd without regard to the date of application.**
 - **Post-consummation disclosures are not one of the enumerated sections – disclosures include the escrow account cancellation notice and the partial payment disclosure.**
 - **Accordingly, TRID can be read as requiring these disclosures only in connection with loans for which the application was received on or after October 3, 2015.**
- **The proposed rule includes commentary to require post-consummation disclosures to be provided effective October 1, 2017 for loans where the application was received prior to October 3, 2015.**

EFFECTIVE DATE FOR PROPOSED AMENDMENTS

- **CFPB proposes an effective date of 120 days after publication of the final rule.**
- **CFPB assumes at this point that the final rule will be promulgated on or before April 1, 2017.**
- **CFPB requests comments on whether this effective date would give stakeholders enough time to make necessary changes.**

WHAT DOES THE PROPOSED RULE NOT ADDRESS?

- **Title Insurance Premiums:**

- The formula for calculating owner’s and mortgagee title insurance premiums where simultaneous issue discounts are available does not accurately reflect the actual charges for title insurance.
- CFPB does not revisit this issue.

- **Cure provisions:**

- Whether lenders and assignees have liability for errors disclosed on the LE, despite corrected disclosures on the CD.
- CFPB believes that addressing cure provisions would be “extraordinarily complex and “would not be practicable without substantially undermining incentives for compliance with the rule.”
- Significant focus of secondary market purchasers.

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