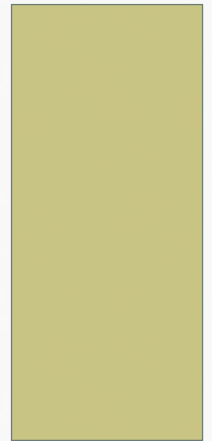




TRID - 2.0

2017 FINAL REVISIONS TO TILA/RESPA INTEGRATED
MORTGAGE DISCLOSURES



POST OCTOBER 3, 2015 EVENTS

December 29, 2015 Letter from R. Cordray to MBA

- There is no general TILA assignee liability unless the violation is apparent on the face of the disclosure documents and the assignment is voluntary. 15 U.S.C. § 1641(e).
- Formatting errors and the like are unlikely to give rise to private liability unless the formatting interferes with the clear and conspicuous disclosure of one of the TILA disclosures listed as giving rise to statutory and class action damages.
- The listed disclosures in 15 U.S.C. §1640(a) that give rise to statutory and class action damages do not include either the RESPA disclosures or the new Dodd-Frank Act disclosures, including the Total Cash and Total Interest Percentage.
- Accordingly, the Bureau believes that if investors were to reject loans on the basis of formatting and other minor errors, as you indicate has been occurring, they would be rejecting loans for reasons unrelated to potential liability associated with the Know Before You Owe mortgage disclosures.

March 11, 2016 Letter from Senator Corker (Tennessee) to R. Cordray

March 30, 2016 Association of Mortgage Investors Letter to R. Cordray

April 28, 2016 Letter from Bureau announcing Notice of Proposed Rulemaking set for July, 2016

EFFECTIVE DATE

- **October 10, 2017 – Optional Compliance** for transactions for which a creditor or mortgage broker receives an application prior to October 1, 2018. However, compliance was not made mandatory on the effective date.
- **October 1, 2018 – Mandatory Compliance** for transactions for which a creditor or mortgage broker receives an application on or after October 1, 2018.
- **Escrow Closing Notice and Partial Payment Disclosure** requirements apply **October 1, 2018**, regardless of when the application for the covered loan was received.

COVERAGE

Clarifies that **Co-Ops** are covered by TRID, regardless of whether considered real property under state law.

Definition of "**Consumer**" expanded:

- **Trusts** created for tax or estate planning purposes and certain land trusts are treated as natural persons, rather than organizations, for purposes of the definition of consumer.

HOUSING ASSISTANCE LOANS

- 1026.3(h) exempts certain interest-free, subordinate-lien **homeowner assistance loans** from disclosure requirements under TRID.
- Current rule requires total fees, including recording fees and transfer taxes, to be less than 1% of loan amount.
- Because of low loan amounts, recording fees and transfer taxes often exceed 1%.
- 2017 Rule excludes recording fees and transfer taxes from the 1% fee limit.



GOOD FAITH REQUIREMENT

REQUIRED SERVICES FOR WHICH CONSUMER MAY SHOP

- **Settlement Service Provider List** - Estimated fees are NOT required to be included on the List. Creditors may delete the Estimated Fees column of form H-27 without losing the safe harbor.
- **10% cumulative tolerance standard** applies to a required third-party, non-affiliate settlement service charge, even if the creditor has failed to disclose on the written list of service providers that required service or the written list was not provided at all, as long as the creditor permitted the consumer to shop for the service.
- **Omitted Charges** ancillary to a required service remain under 10% rule.



GOOD FAITH REQUIREMENT

REAL PROPERTY TAXES – Are now specifically included in the unlimited tolerance category, if estimate is based on the best information reasonably available at the time of disclosure. Original rule erroneously stated that they were 0% tolerance. The amendment confirms the Bureau's February, 2016 correction of this error.

BASELINE FOR COMPARING ESTIMATES – If a creditor decreases an estimated charge on a Revised Loan Estimate or Closing Disclosure, the amount paid at closing may be compared to the Original Loan Estimate for determining good faith.

LOAN ESTIMATE

Loan Amount = Face amount of the Note.

Closing Costs Expiration Date - Left blank on any Revised Loan Estimates, once borrower has indicated an intent to proceed.

Rate Lock - If the rate was not locked when the Initial Loan Estimate was issued, the creditor is required to provide a Revised Loan Estimate no later than 3 business days after the interest rate is subsequently locked, even if the terms and charges disclosed remain the same. (**NOTE** – A subsequent revision to §1026.19(e)(4)(i), effective June 1, 2018, to address the “Black Hole” also permits the locked rate to be disclosed on an initial or revised CD).

Taxes, Insurance and Assessments - may use the word “**some**”, if only a portion. of property taxes, homeowner’s insurance or assessments will be paid out of an escrow account.

LOAN ESTIMATE

Rounding of Percentages - All percentages rounded to 3 decimals, with any trailing zeros dropped. For example, a 2.4999 percent annual percentage rate, when rounded as an exact amount to three decimal places, becomes 2.500% but is disclosed as "2.5%"

Seller Credits – Creditors now have the option to disclose **specific** Seller Credits in the "**Calculating Cash to Close**" Table on the Loan Estimate, or the Seller Credits may be reflected in the amounts disclosed for those specific items in the "**Loan Costs**" or "**Other Costs**" Tables.

CLOSING DISCLOSURE

Escrow Account Disclosure – (Page 4)

- The amounts the consumer pays into the escrow account for **mortgage insurance premiums** are now included in the “Escrowed Property Costs over Year 1” and “Monthly Escrow Payment” boxes in the Escrow Account Disclosure.
- Creditor may use the 12-month period beginning with the Initial Payment date (rather than consummation), when disclosing Escrowed Property Costs, Non-Escrowed Property Costs, Monthly Escrow Payment and Estimated Property Costs over Year 1. This permits a creditor to conform this disclosure to the escrow account analysis under Reg. X, 1024.17, which defines the **Escrow Account Computation Year** as the 12-month period beginning with the borrower's initial payment date.

CLOSING DISCLOSURE

Total of Payments Disclosure (Page 5) - 2017 Rule establishes tolerances that apply to the Total of Payments Disclosure generally, as well as for purposes of a consumer's right of rescission, which mirror tolerances applicable to Finance Charges.

In general, the Total of Payments Disclosure is considered accurate if it:

- Is understated by no more than \$100; or
- Is greater than the amount required to be disclosed.

Total of Payments - excludes charges that are offset by another party through a **specific credit**. However, **general credits** may not be used to offset charges for Total of Payments.

CLOSING DISCLOSURE

Principal Reductions – May be used for other purposes in addition to tolerance refunds.

Principal Reductions must:

- Be disclosed in the “Summary of Transactions” table on the standard Closing Disclosure or in the “Payoffs and Payments” table on the alternate Closing Disclosure;
- State the amount of the principal reduction;
- Use the phrase “principal reduction” or similar phrase;
- For a principal reduction disclosure on the alternate Closing Disclosure only, include the name of the payee;
- If applicable, include the phrase “Paid Outside of Closing” or “P.O.C.” and the name of the party making the payment; and
- If used to cure a tolerance violation, include a statement that the principal reduction is being provided to offset charges that exceed legal limits, using any language that meets the clear and conspicuous standard.

SIMULTANEOUS SUBORDINATE LIEN LOANS

For a purchase transaction that involves a subordinate lien loan, if the Closing Disclosure for the first lien contains all the required disclosures related to the Seller, then:

- The settlement agent may provide the seller with only the first lien Closing Disclosure;
- The creditor may use the optional alternative disclosures, (formerly used only for transactions without a seller) when disclosing the simultaneous subordinate lien loan;
- If the creditor for the subordinate lien uses the alternative tables on the disclosures for the subordinate lien loan, contributions towards the subordinate lien from the seller must be included in the Closing Disclosures for both the first lien (in the Summaries of Transactions table) and subordinate lien (in the Payoffs and Payments table); and
- The requirement to disclose the Summary of Seller's Transaction table does not apply to the Closing Disclosure for the simultaneous subordinate lien loan.

CORRECTING CLOSING DISCLOSURES

Post-Consummation changes to Per Diem Interest

- Comment 19(f)(2)(iii)-2 clarifies that a creditor **is not** required to provide a corrected Closing Disclosure after consummation due to a change in Per Diem interest if the Closing Disclosure reflected the best information reasonably available at the time, even if the amount actually paid by the consumer differs from the amount disclosed.
- If the Creditor is providing a Correcting Closing Disclosure for reasons other than changes in per-diem interest, the Creditor must also disclose the correct amount of per-diem interest and provide corrected disclosures of any items that are affected by the change in per-diem interest

CONSTRUCTION LOANS

Allocation of costs - If the creditor discloses a construction-permanent loan as two separate transactions, the creditor must allocate to the construction phase amounts for **finance charges** (12 CFR 1026.4) and **points and fees** (12 CFR 1026.32(b)(1)) that would not be imposed **but for** the construction financing. Fees that are not finance charges or points and fees may be allocated between the construction phase and permanent phase in any manner the creditor chooses.

Timing – The final rule provides that, when disclosing a construction-permanent loan as two separate transactions, a creditor must provide a Loan Estimate for a particular phase within 3 business days of receiving the application for that phase and not later than the 7th business day before consummation of that phase.



TRID 2.1

FIXING THE BLACK HOLE

Original rule only authorizes resetting tolerances with a revised LE, and LE may no longer be provided on or after the date on which a CD is provided.

Original comment 19(e)(4)(ii)-1 - If there are less than 4 business days between the time a revised LE is required to be provided and consummation, the creditor may use the CD to revise charges .

No authority existed to reset tolerances with CD outside of this time period - the "**Black Hole**".

TRID 2.1 – EFFECTIVE JUNE 1, 2018- Amends 1026.19(e)(4) and its commentary to permit creditors to also reset tolerances with either an initial or corrected Closing Disclosure regardless of when the Closing Disclosure is provided relative to consummation, provided that revised Closing Disclosure is issued within three business days of receiving information sufficient to establish that one of the reasons for revision applies. However, Bureau remains concerned about creditors providing Closing Disclosures too early and will continue to monitor the market for practices that do not comply with the rule's Closing Disclosure accuracy standard.

QUESTIONS?

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