

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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TILA-RESPA INTEGRATED **DISCLOSURE RULE** **Part 1 in a series**

In about one year, specifically on August 1, 2015, the Consumer Financial Protection Bureau's new TILA-RESPA Integrated Disclosure Rule ("Rule") will become effective. This new rule will have major procedural impact on the way mortgage lenders do business.

The CFPB has begun a major education campaign to educate all of us, particularly us regulatory geeks, on how the rule works and the many details involved. They have published an excellent Small Entity Compliance Guide summarizing the Rule which, at about 90 pages, is much more pleasing than the actual Rule which, in my copy including commentary, etc., comprises over 1900 pages. In addition, this guide is being followed up with other explanatory publications and webinars. This includes a seminar being presented at several locations around the country sponsored by the MBA, joining industry experts and CFPB representatives as presenters at the cost of \$1250 per enrollee.

We are aware that many of our readers are not specifically compliance persons and don't have the time nor the energy to do the extensive homework necessary to learn the intricacies of the Rule but would like to have a general knowledge of its makeup and effect on their business. Therefore, we thought it would be helpful to present, over the next couple of months, a series of articles starting today with a general summary of the Rule's provisions and then addressing specific areas of concern or interest.

Our goal is to present a mini-course on the Rule; one that is relatively painless and still helpful. So starting today, we will give you the background and general outline of what we are addressing. Then, on a regular basis, we will start to fill in the blanks with the specifics.

So to begin:

The Rule consolidates existing disclosures currently in use for closed-end loans secured by real property into two new disclosures; 1) the Loan Estimate given after receiving the borrower's application and 2) the Closing Disclosure given prior to consummation. Obviously, these replace the initial and final TILA disclosures and the Good Faith Estimate and HUD-1 Settlement Statement.

The new Rule applies, as we said, to closed-end loans secured by real property. It does not apply to the following:

- ✚ HELOCs,
- ✚ reverse mortgages,
- ✚ mortgages secured by a mobile home that is not attached to real property,
- ✚ construction only loans,
- ✚ loans secured by 25 acres or more of vacant land, and
- ✚ credit extended to certain tax or estate planning trusts.

Loans not covered by the new Rule will generally continue to use the disclosures currently required.

The Loan Estimate Disclosure.

This new disclosure replaces the RESPA, Good Faith Estimate and the initial TIL. The lender must generally deliver this form to the borrower within 3-business days of the receipt of the application. (More on delivery requirements in the future.) The standard form provided by the CFPB with the Rule, must be used. Generally, the form will contain information on the loan terms, projected payments and costs at closing.

The form must provide a good faith estimate of credit costs and loan terms. Where information is not known, the disclosure must be based on the best information reasonably available at the time of delivery. Due diligence must be exercised. This form is the responsibility of the creditor. However, where a broker takes the application, either the creditor or the broker may provide the Loan Estimate.

When specific circumstances are met, creditors may provide revised Estimates. Technical errors are not sufficient to issue a revised document but, as is presently the case, changed circumstances must exist.

Closing Disclosure.

Creditors will now be required to provide one closing document to replace the final TIL and the HUD-1. The document is called, with a flair for originality, the Closing Disclosure. This document must be provided no later than three business days before consummation of the transaction. Again, creditors must, for federally related mortgage loans, (most loans), use the standard form provided by the CFPB in the Rule. Again, the contents of the disclosure contain general information, loan terms, projected payments and costs at closing.

The Closing Disclosure will contain the actual terms and costs of the loan. When an actual term or cost is not reasonably known/available, the creditor may use an estimate using the best information reasonably available. The Rule imposes on the creditor a duty of good faith and due diligence in trying to obtain the actual term or cost. The creditor may rely on the good faith representations of others, such as the settlement agent, in obtaining

this information. Corrected disclosures with the actual terms must be provided to the borrower at or before consummation. If the actual terms or costs change prior to consummation, a new and accurate Disclosure must be provided. An additional three-day waiting period must be provided prior to consummation.

But, what is consummation?

As currently used, the term consummation occurs when the consumer becomes contractually bound to the creditor. This is determined by State law, that is, the state in which the loan is made. This concept could change on a state by state basis and should be verified by the lender and the settlement agent.

Special Information Booklet.

In most cases, creditors must provide the “special information booklet” to borrowers who apply for consumer loans secured by real property. This, as before, is published by the CFPB to help consumers understand federally related mortgage loans. Creditors must deliver or place the booklet in the mail no later than three business days after receiving the borrower’s application.

Well, there is the outline of the new Rule. Next issue, we will start to flesh out the details by examining the timing and delivery of the Loan Estimate and Closing Disclosure.

We hope this series will help in your further understanding of this long and complex new Rule.

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ALT & ASSOCIATES provides regulatory, compliance, operational advice and transactional assistance, as well as litigation representation, to the financial services industry. Over the past three decades, members of the firm have represented Institutional Lenders and Mortgage Bankers and Brokers in all aspects of their operations.

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