

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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August 20, 2014

## **REVISIONS AND CORRECTIONS TO** **LOAN ESTIMATES AND CLOSING** **DISCLOSURES** **Part 3 in a series**

After our first article generally outlining the new CFPB TILA-RESPA Integrated Rule, we followed up with last week's discussion of the delivery and timing of the delivery of the Loan Estimate and the Closing Disclosure. Both of these articles are available on our web site at [www.altandassociates.com](http://www.altandassociates.com). This week we are discussing the how and when of modifying these documents and how such modifications affect the necessary waiting periods.

### **Loan Estimate ("LE").**

Creditors are pretty much stuck with the Loan Estimate they originally provide. They cannot provide a new estimate because there was a mistake of some kind in the first version, Revised LEs can be provided in only limited circumstances;

- ✚ Changed circumstances that occur after the original LE has been provided and that cause estimated charges to increase.
- ✚ Change in circumstances that occur after the LE is provided and affect the consumer's eligibility for the loan.
- ✚ Revisions requested by the consumer.

- ✚ Locking an interest rate.
- ✚ The consumer indicates an intent to proceed more than 10 days after the LE is provided.
- ✚ Under some circumstances, if a construction loan is delayed by more than 60 days.

Our first question is, what is a changed circumstance? This is a question often arising under the current GFE protocol.

For LE purposes, a Changed Circumstance is:

- ✚ An extraordinary event beyond the control of any interested party or unexpected events specific to the consumer or the transaction.
- ✚ Information relied upon by the creditor which becomes inaccurate or changes.
- ✚ New information the creditor did not rely on becomes available.

Examples include natural disasters, a settlement provider who was used as a basis for an estimate goes out of business, or a newly revealed boundary line claim.

If a changed circumstance occurs and causes the estimated charge to increase or causes the sum of the items subject to the 10% tolerance to go over that limit, then a revised estimate may be provided. Only those items effected by the change can be adjusted.

The general rule is that the creditor must deliver or place in the mail the revised LE no later than 3 business days after sufficient information is received that there has been a Changed Circumstance. Also, the revised LE must be delivered or placed in the mail no later than 7 business days before the loan is consummated (remember, when the loan is consummated is a question to be determined under state law). This may mean that consummation may have to be postponed if the 7 day waiting period cannot be met.

Again, just to make things difficult, as we said in our last article, business day is defined (for delivery of the LE after the initial application) as days the creditor is open for business. However, in this case, for this 7 day time period, business day is defined as all calendar days except Sundays and Legal holidays. Also, in this instance the seven day waiting period begins when the creditor delivers the LE or places it in the mail, not when the consumer receives it.

**Closing Disclosures (“CD”).**

Creditors must re-disclose terms or costs on the CD after the CD was first provided if:

- ✚ Changes occur before consummation that require a new 3 day waiting period. These include circumstances when 1) the disclosed APR becomes inaccurate, 2) the loan product changes or 3) a prepayment penalty is added.
- ✚ For other changes that occur before consummation that do not fall under the 3 circumstances just listed above a new 3 day waiting period is not required. However, the creditor must just ensure that the consumer receives the revised CD before consummation.
- ✚ Changes that occur after consummation impose a duty on the creditor to provide a corrected disclosure if they occur during the 30 day calendar period after consummation that makes the CD inaccurate and results in a change to the amount paid by the consumer or by the seller. The revised CD must be delivered or mailed to the consumer or seller, as applicable, not later than 30 days after receiving the information sufficient to determine that such an event has occurred. Also, if the creditor cures a tolerance violation by providing a refund, the creditor must deliver or place in the mail a corrected CD no later than 60 days after consummation.

***Speaking of tolerance violations, next week we will discuss the good faith requirement and tolerances.***

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