

TILA-RESPA IMPLEMENTATION TOOLKIT



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Contents

| | |
|---|----|
| Effective Date | 2 |
| Forms | 2 |
| Pre-Application | 3 |
| Application | 3 |
| Imposing a Fee | 4 |
| Transition Time | 5 |
| Timing..... | 5 |
| Timing Highlights..... | 8 |
| Rate Locks | 9 |
| Business Days..... | 9 |
| Closing Disclosure | 9 |
| Delivery Methods for Disclosures | 10 |
| What is Consummation?..... | 10 |
| Tolerances..... | 11 |
| Record Retention | 13 |
| Planning..... | 13 |
| TILA RESPA Integrated Disclosure Polices, Procedures and Training Toolkit | 14 |

Effective Date

Applications on or after October 3rd, 2015.

Forms

| Old Forms | New Forms |
|-------------|--------------------|
| GFE | Loan Estimate |
| Initial TIL | Loan Estimate |
| HUD-1 | Closing Disclosure |
| Final TIL | Closing Disclosure |

The GFE and the Initial TIL now become the Loan Estimate.

The HUD-1 and the Final TIL now become the Closing Disclosure.

Important Highlights about the Loan Estimate

1. Must be provided to the borrower within 3 business days of application.
2. Has a signature line but the borrower is not required to sign it.
3. The lender or the broker can provide the Loan Estimate to the borrower.
4. If the broker is completing the Loan Estimate they can leave the name and the loan number blank until they decide who to send it to.
5. Total Interest Percentage (TIP) replaces the Total Payments from the Initial TIL – Shows the total amount of interest rate they will pay over the life of the loan (note: Yes it is a big number! You will want to be sure to cover what it is with your borrower.)
6. APR is included.
7. Shows what they will be paying at year 5 of the loan.
8. Cannot impose a fee other than a reasonable fee for a credit report. This means that you cannot even “take” the credit card number or hold a post-dated check for the appraisal until “After” the Loan Estimate has been received by the borrower and they have indicated an intent to proceed.
9. Cannot “Require” additional information until after the borrower has “Received” the Loan Estimate. This means that you cannot require them to submit the purchase agreement or any other documentation until after the borrower has “Received” the Loan Estimate. You may ask for the information but you cannot “Require” it.

Wait! The Old Forms are NOT Completely Gone

The GFE, TIL and HUD-1 will still be used for HELOCs, Reverse Mortgages and property not secured by land. (Manufactured homes not de-titled.)

| The New Forms | |
|--|--|
| Loan Estimate | Closing Disclosure |
| 3 Pages | 5 Pages |
| Combines the 2 page early TIL and 3 page GFE | Combines the 3 page HUD-1 and the 2 page final TIL |
| Who Provides? | Who Provides? |
| 2 options: Mortgage Broker or Lender | Creditor/Settlement Agent or Combination |
| When? | When? |
| Within 3 business days of application | 3 business days prior to consummation (there are exceptions) |
| Tolerances? | Tolerances? |
| Yes | Yes |

Mortgage Brokers may provide a Loan Estimate

If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker may provide the Loan Estimate.

The provision of a Loan Estimate by a mortgage broker satisfies the creditor's obligation to provide a Loan Estimate. The creditor is expected to maintain communication with mortgage brokers to ensure that the Loan Estimate and its delivery satisfy the requirements. It is important to note that the creditor is legally responsible for any errors or defects.

Pre-Application

Prior to receiving the 6 specific items of information, lenders may provide consumers with written estimates, but any pre-application written estimate must contain a disclaimer that it is not an official Loan Estimate.

Application

The Lender or Broker must provide the Loan Estimate within 3 business days of a loan application being submitted, even if this is not a formal written application.

This means that even if you take an application online, on the phone, on a napkin or on Facebook you have to give the borrower the Loan Estimate within 3 business days.

6 Items that Trigger and Application

A loan application is defined as receiving the following: (If you use the acronym ALIENS it is easier to remember what the 6 items are.

A – Address

L – Loan Amount

I – Income

E – Estimated Value of the Property

N – Name

S – Social Security Number



Imposing a Fee

The TILA-RESPA rule includes some new restrictions on certain activity prior to a consumer's receipt of the Loan Estimate. These restrictions take effect on the calendar date October 3, 2015, regardless of whether an application has been received on that date. These activities include imposing fees on a consumer before the consumer has received the Loan Estimate and indicated an intent to proceed with the transaction.

This means that you cannot take their credit card number or take a post-dated check for things like the appraisal prior to the consumer receiving the Loan Estimate AND indicating an intent to proceed. This also means that you cannot order the appraisal with your own credit card prior to the consumer receiving the Loan Estimate AND indicated an intent to proceed with the transaction.

The key is to create an effective system to track when the Loan Estimate is sent to the consumer and when they have in turn responded back to you that they wish to proceed. The consumer can indicate an intent to proceed in any manner. They can phone you, email you or inform you in writing that they intend to proceed, but you need to have the confirmation from them and it is strongly encouraged that you track this in some way to prove that the procedures and timing was met on each transaction.

Transition Time

| | Applications Before October 3 rd | Applications After October 3 rd |
|-------------------------------------|--|--|
| Forms | Old Forms | New Forms |
| Transaction | Use old forms through the entire transaction. This means all the way through closing. | Use new forms through the entire transaction. This means all the way through closing. |
| Tracking and Reporting for Accuracy | <p>Tracking Sheets - Set up tracking sheet with dates to track application dates.</p> <p>Checklists – Set up checklist to keep with the file to allow for your staff to follow a guide to which form needs to be used.</p> | <p>Tracking Sheets - Set up tracking sheet with dates to track application dates.</p> <p>Checklists – Set up checklist to keep with the file to allow for your staff to follow a guide to which form needs to be used.</p> |
| HELOCS and Reverse Mortgages | Old Forms | Old Forms |

Timing

| Form | Trigger | Days | Who can complete | Special Notes |
|---------------|------------------------|---|---|---|
| Loan Estimate | Application | 3 business days 7 business days prior to consummation. | Broker Lender Creditor/Wholesale Lender | <p>Loan Estimate may be delivered</p> <p>In-person Mail Electronically</p> <p>Must use secure electronic method (must follow all e-sign rules, including opt in).</p> <p>The initial disclosure must be delivered or placed in the mail 7 business days prior to consummation.</p> |
| Form | Trigger | Days | Who can complete | Special Notes |
| Loan Estimate | Change of Circumstance | 3 business days | Lender Creditor/Wholesale Lender | Must provide a revised Loan Estimate to the borrower within 3 business days of becoming aware of the change. |

| Form | Trigger | Days | Who can complete | Special Notes |
|--------------------|----------------|--|--|---|
| Loan Estimate | Re-disclosure | Received 4 business days before consummation. 7 business days if mailed. | Broker (Initial LE only) Lender (Initial LE and re-disclosure) Creditor/Wholesale Lender (Initial LE and re-disclosure) | Loan Estimate must be received, or considered to have been received by the borrower no later than 4 business days prior to closing/consummation. The revised estimate may be given in person or mailed. If mailed, the disclosure estimate will be considered received 3 business days after it is placed in the mail. |
| Form | Trigger | Days | Who can complete | Special Notes |
| Loan Estimate | Rate Lock | 3 business days after rate lock. | Broker (Initial LE only if interest rate is locked at the time the initial LE is completed.) Lender Creditor/Wholesale Lender | If the interest rate is not locked in advance, a revised Loan Estimate must be issued 3 business days after the rate lock agreement is entered into. |
| Form | Trigger | Days | Who can complete | Special Notes |
| Closing Disclosure | Closing | 3 business days prior to consummation | Lender Creditor/Wholesale Lender | Consummation is defined at the state level. This means you follow the laws in your state. The definition of consummation is the day in which the borrower becomes contractually obligated to the creditor. |

| Form | Trigger | Days | Who can complete | Special Notes |
|--------------------|------------------------|-----------------|-------------------------------------|---|
| Closing Disclosure | Change of Circumstance | 3 business days | Lender Creditor/Wholesale Lender | <p>After the Closing Disclosure has been provided you cannot provide a revised Loan Estimate.</p> <p>There are three changes to disclosures that require a new waiting period if they become inaccurate before consummation. They are:</p> <p>1. The annual percentage rate (APR) disclosed becomes inaccurate. If the lender makes changes to the APR greater than 1/8 of a percent for most loans and 1/4 of a percent for loans with irregular payments or periods, changes the loan product, or adds a prepayment penalty to the loan, the borrower must receive a new Closing Disclosure and an additional 3 business day waiting period after receipt of the new form.</p> <p>2. The loan product changes. The loan product is considered to have changed if any of the “Product” information required to be disclosed changes—generally, any rate or payment feature (e.g., an adjustable rate, step rate, fixed rate, negative amortization, interest only, step payment, balloon payment or seasonal payment schedule).</p> <p>3. A prepayment penalty is added that causes the required prepayment penalty statement to become inaccurate.</p> |

| Form | Trigger | Days | Who can complete | Special Notes |
|--------------------|------------------------|--------|-------------------------------------|---|
| Closing Disclosure | Change of Circumstance | 0 days | Lender Creditor/Wholesale Lender | Other than the changes requiring a new 3 day period listed above, less significant changes can be disclosed on a revised Closing Disclosure form without delaying the closing. In such cases, the lender or creditor only needs to issue new disclosures to reflect any changes to the required disclosures. The borrower does not receive an additional 3 business day waiting period under these circumstances. However, the borrower must be provided with a revised Closing Disclosure at or before consummation and does have the right to inspect the Closing Disclosure during the business day before consummation. |

Timing Highlights

Loan Estimate

The Loan Estimate must be provided to the consumer within 3 business days after the lender or broker receives the consumer's application for the loan but no later than 7 days before consummation of the transaction.

A transaction is consummated when the consumer becomes contractually obligated to a creditor. State law prevails so this means follow your state definition of consummation.

Revised Disclosures

Any revised disclosure must be provided within 3 business days of *receiving* information that would cause a revision.

4 business day waiting period for Revised Loan Estimates

Just like with the initial Loan Estimate, a revised Loan Estimate must be placed in the mail 7 business days before closing or consummation. If the revised Loan Estimate is delivered in person or considered "received" electronically then the waiting period on a revised Loan Estimate is 4 business days.

This time period may be waived or altered for a bona fide personal financial emergency, which is rare. The consumer must waive this timing requirement in writing. A pre-printed form may not be used for this purpose. A bona fide personal financial emergency would be a situation where the consumer must have

the loan consummated for a personal reason. It would be determined by the facts of the situation. Preventing the loss of the consumer's home to foreclosure would be an example of a bona fide personal financial emergency.

Revised Loan Estimate and Closing Disclosure Shall Not Meet on the Same Day

The Loan Estimate or revised Loan Estimate may not be received by the borrower after or at the same time as they receive the Closing Disclosure.

3 Business Days Before Closing

The borrower must receive the Closing Disclosure 3 business days prior to closing or consummation. If mailed, the disclosure estimate will be considered received 3 business days after it is placed in the mail.

4 Business Days Before Closing

A revised Loan Estimate must be received, or considered to have been received by the borrower no later than 4 business days prior to closing. The revised estimate may be given in person or mailed. If mailed, the disclosure estimate will be considered received 3 business days after it is placed in the mail.

Rate Locks

Revised Loan Estimates must be provided 3 business days from the rate lock if the rate is not initially locked in with the initial Loan Estimate.

Business Days

Loan Estimate

Business day is any day in which the creditor is open to the public for carrying out substantially all of its business functions. If an application is denied or withdrawn during the 3 business day period, the creditor does not need to provide the consumer with the disclosures. If the consumer subsequently amends the application, the timeline is reset and the 3 business day period begins to run from the amended application.

Closing Disclosure

A "business day" for this and other purposes in the regulations is all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

The significant distinction between this definition and that used for the provision of providing the Loan Estimate is that Saturday is considered a business day, whether or not the creditor's offices are open to the public and carrying on most of its business functions.

The seven-day waiting period between receipt of the initial Loan Estimate and consummation begins when the lender delivers the Loan Estimate or places it in the mail, not when the applicant receives or is considered to have received it.

Delivery Methods for Disclosures

In Person

The disclosure may be delivered in person. The Loan Estimate must be delivered to the borrower within the 3 business day requirement.

Revised Loan Estimates must be provided 3 business days after the rate lock.

Mail

Placing the Loan Estimate in the mail within 3 business days complies with the regulation.

The applicant is considered to have received the Loan Estimate 3 business days after it is placed in the mail.

In the case of mail delivery, the creditor may consider the Loan Estimate delivered earlier than 3 business days if the creditor has evidence of this. A signed receipt by the consumer for overnight delivery would be evidence that would support a claim of early delivery.

Can send disclosures by email ONLY if using a E-sign compliant delivery method. This means you cannot send disclosures un-secured and the borrower must opt in to receive disclosures electronically. Remember to follow all E-Sign requirements.

Electronic

Electronic delivery means sending the disclosures using a secure email delivery method.

Consumer Must Consent

This method may be used to deliver the disclosures, however the consumer must consent to electronic delivery for it to be effective.

Early Delivery

The lender or creditor may rely on evidence of early delivery such as a reply from the consumer acknowledging receipt of the email. There are many systems available today that can be used to deliver disclosures securely.

What is Consummation?

Consummation occurs when the consumer becomes contractually obligated to the creditor on the loan. The point in time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable state law.

For example, in California, consummation occurs when the borrower signs the closing documents. So, the initial Loan Estimate must be provided 7 business days prior to signing or “received” 4 business days prior to signing on a revised Loan Estimate and the Closing Disclosure must be received 3 business days prior to signing.

Tolerances

The new rule sets out a new standard for what will be considered a “good faith” estimate. It also establishes more stringent tolerances for the disclosure of all fee types associated with the origination and closing process. This generally means that fees at closing do not exceed the fees at application.

The goal is to use the best information available at the time, thus “good faith”. There are three fee categories.

Three Fee Categories

If a fee is assessed at closing in an amount greater than that disclosed on the Loan Estimate document, then as a general rule, it is not disclosed in good faith. To avoid this, a lender or broker will have to abide by an estimate provided or the fee will have to be of a type that falls into a limited exception. We are already familiar with this rule with the existing GFE. The rule provides for the same RESPA tolerance categories but with some important changes that tighten the tolerance for some fees. The tolerance categories continue to be:

- Zero tolerance (cannot increase at closing)
- 10% cumulative tolerance (category may not increase more than 10% at closing)
- No tolerance (fees may increase at closing, subject to good faith requirement)

The concept of changed circumstances continues the same as it is today with the GFE. Changed circumstances are usually events initiated by the application or out of the lenders or creditors control and requires the delivery of a new Loan Estimate or a revised Loan Estimate.

Zero Tolerance

For all other charges, lenders are not permitted to charge borrowers more than the amount disclosed on the Loan Estimate under any circumstances other than changed circumstances that permit a revised Loan Estimate.

Zero tolerance charges include:

- Charges paid to the lender or an affiliate of the lender
- Required charges paid to the mortgage broker, or its affiliate
- Charges paid to third-party service providers for which the borrower was not permitted to shop
- Transfer taxes

Zero tolerance charges may not exceed the amount disclosed on the Loan Estimate. The estimated charges may be revised, however, if any of the following situations occur:

- Changed circumstance affecting settlement charges
- Changed circumstance affecting eligibility of the borrower for a certain estimated charge
- Revisions requested by the borrower that caused an increase

- Interest rate dependent charges
- The estimate expires due to the borrower's indication of intent to proceed with the transaction more than ten days after the disclosures are provided
- Delayed settlement date on a construction loan

10% Tolerance

Paragraph (e)(3)(ii) permits certain closing charges to exceed the amount provided by the lender in the Loan Estimate by up to 10% in the aggregate. These charges are:

- Recording fees
- Fees paid to an unaffiliated third party if the lender permits the borrower to shop for a settlement service provider that is on the lender-provided service provider list

A charge for a third-party service qualifies for the 10% bucket if three circumstances are met:

1. The charge cannot be paid to the lender or its affiliate. A charge is considered "paid to" the lender or affiliate if the lender or affiliate retains the charge. Therefore, if the borrower pays a charge to the lender, but the lender uses the funds to pay the third party, the charge is not "paid to" the lender.
2. The lender must permit the borrower to shop for the third-party service. The borrower must be able to select the provider, although the lender may impose reasonable requirements on the borrower regarding the third party, such as requiring proper licensure. The lender must identify the services for which the borrower may shop in the Loan Estimate. Apart from the Loan Estimate, the lender must also provide a written list of at least one available provider of each service for which the borrower may shop. This list must provide enough information to permit the borrower to contact each provider, such as the provider's name, address and phone number. The written list must also include a statement that the borrower may shop for providers that are not on the list.
3. The borrower either selects a provider from the written list or fails to select any provider for the specific service. In the latter instance, the lender will end up choosing the provider of the service. However, since the lender gave the borrower the opportunity to shop around for his or her own provider, the charge still meets the requirements under this paragraph.

The aggregate amount of charges used to determine the 10% ceiling is the actual charges incurred for services performed. Ten percent category fees listed on the Loan Estimate that are not actually performed must be subtracted from the aggregate amount of estimated charges before considering whether the actual closing costs paid exceeds the estimated charges by 10%.

Refund

The lender or creditor must refund any amount paid by the borrower that exceeds the zero tolerance or 10% percent tolerance buckets. The amounts must be refunded no later than 60 calendar days after consummation.

No Limit Tolerance

For certain fees and charges, the good faith standard is not limited to a particular range of variance from the originally disclosed fee. Instead, the charges are considered to be provided in good faith if the estimate is consistent with the best information reasonably available to the lender at the time the estimate is disclosed. The charges that are included in as “no limit” are:

- Prepaid interest
- Property insurance premiums
- Amounts placed into an escrow, impound, reserve, or similar account
- Charges paid to third-party service providers selected by the borrower that are not on the written list of available third-party service providers offered by the lender
- Charges paid for third-party services not required by the lender, even if paid to affiliates of the lender

Record Retention

Both mortgage brokers and lenders must retain records of the Loan Estimate for a period of 3 years from the date the loan was consummated, not the date it was issued.

The creditor must retain copies of the Closing Disclosure (and all documents related to the Closing Disclosure) for 5 years after consummation.

The creditor, or servicer if applicable, must retain the Post-Consummation Escrow Cancellation Notice (Escrow Closing Notice) and the Post-Consummation Partial Payment Policy disclosure for 2 years.

For all other evidence of compliance with the Integrated Disclosure provisions of Regulation Z (including the Loan Estimate) creditors must maintain records for 3 years after consummation of the transaction.

If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the Closing Disclosure to the new owner or servicer of the mortgage as a part of the transfer of the loan file. Both the creditor and such owner or servicer shall retain the Closing Disclosure for the remainder of the 5 year period.

Regulations X and Z permit, but do not require electronic recordkeeping. Records can be maintained by any method that reproduces disclosures and other records accurately, including computer programs.

Planning

You should consult with legal counsel or your compliance officer to understand your obligations under the TILA-RESPA rule and to devise the policies and procedures you will need to have in place to comply with the TILA-RESPA rule’s requirements.

TILA RESPA Integrated Disclosure Polices, Procedures and Training Toolkit

There are many training and implementation programs that Morf Media can help you deliver to your staff and business partners. Contact us if you would like to find out how you can have your own gamification e-Learning platform that will make it easy for you to train your staff in a more engaging and results driven environment.

Find out more about how your company can use this state-of-art gamification e-learning platform for your integrated disclosure training at

www.morflearning.com

- Online E-Learning of the New Rule
- Train the Trainer Programs for Loan Originators
- Training Programs for Realtors

Morf Media can help you get your staff and your business partners up to speed.

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