

The 22nd Annual Robert C. Sneed
Texas Land Title Institute

CFPB

THE NEW DISCLOSURE FORMS AND REQUIREMENTS
BE READY!!



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TILA and RESPA History

Different disclosures, different regulations, different purposes, different agencies

- 1968 - Congress passed TILA (loans); regulated by Federal Reserve
- 1974 - Congress passed RESPA (RE transaction); regulated by HUD
- *Different directions*

- RESPA changes implemented Jan. 2010; The Fed considers TILA Reform but waits for Dodd-Frank.

- July 9 – CFPB issues proposed rules integrating TILA and RESPA disclosures at application and closing. Public comments will follow.



“RESPA Reform”
(effective 2009-2010):

- Provider Lists
- 10% Tolerance
- Redisclosure
- GFE 3 Days
- 3-Day TIL Cooling-off Period

Under Dodd-Frank, the CFPB takes over responsibility for both RESPA and TILA on July 21. Have one year to propose new rules.

CFPB and “The Process”

Effective July 21, 2011, the CFPB took over responsibility for both RESPA and TILA, and were tasked with:

Combining the GFE and initial TIL into one form (the Loan Estimate) & combining the final TIL and the HUD-1 into one form (the Closing Disclosure)

- **Forms are supposed to**
 - Improve consumer understanding of mortgage loan transaction
 - Facilitate industry compliance with TILA and RESPA
 - **Most of the past year has been dedicated to the forms**
 - More than a dozen iterations over a nine-month period
 - Final versions of forms have been published
1. Proposed rules regarding the disclosures were released July 9, 2012- First time the regulations were seen
 2. The CFPB addressed the small business owners panel concerns on the impact of the rules on small business

What is SBREFA?

- The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the CFPB to form a Small Business Review Panel to seek input directly from small financial service providers for any proposed rule that may have a significant economic impact on a substantial number of small providers
- **The Small Business Review Panel consists of representatives from:**
 - The CFPB
 - The Chief Counsel for Advocacy of the Small Business Administration (SBA)
 - The Office of Management and Budget's Office of Information and Regulatory Affairs (OMB)

The SBREFA Process

- Selected Small Entity Representatives (SER) for the TILA-RESPA integrated mortgage disclosures rule-making.
- A SER is a representative of a small entity that will likely be subject to the requirements of a proposed rule under consideration by the CFPB
- SER's participation in the rulemaking process helps ensure the CFPB is aware of the concerns and issues specific to small entities
- The Panel (CFPB, SBA and OMB) is to use the input of the SERs to prepare a report that includes the Panel's findings on alternatives to minimize the burden on small entities
 - The report is made part of the rulemaking record and is considered by CFPB decision makers – rule refers to panel discussion.
- Texas had only one person on the panel

APPLICATION OF RULE/EXPANSION OF RULE

- Applies to most consumer mortgages secured by real property.
- No exemption for vacant property or property of 25 acres or more (but may fall under exemption provisions for business, commercial or agricultural).
- Now applies to construction only loans
- Does not apply to home-equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to land.
- Definition of creditor (More than 5 loans)

Integrated Loan and Closing Disclosures

Borrower makes loan application



If no changes, closing takes place.

Closing Disclosure summarizes final loan terms and provides detailed accounting of transaction

Loan Estimate must be provided within 3 days, replacing early TIL & GFE.

- Summarizes key loan terms/estimated costs
- Can be used by consumer for comparison shopping.

Closing Disclosure is provided at least 3 business days before closing, replaces final TIL & HUD-1

THE LOAN APPLICATION

- **The CFPB would amend the current definition of loan application to constitute receipt of:**
 - The borrower's name
 - Monthly income
 - Social Security Number to obtain credit report
 - Property Address
 - Property Value Estimate
 - Loan Amount
- The lender must give the Loan Estimate to the consumer within three (3) business days after the consumer “applies” for the loan.



THE LOAN APPLICATION

The CFPB would eliminate the current 7th element, which is currently “any other information deemed necessary” by the [lender or mortgage broker].

- Currently, before providing an early TIL or GFE, a lender may request or collect any information about the borrower or the property that falls under the catch-all category of “any other information deemed necessary”.
 - Example – the type of loan product the borrower is seeking
- Result may be multiple Loan Estimates for each of available loan products
- Triggered immediately with refinance – information in file

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THE LOAN ESTIMATE

The Loan Estimate form would replace two current federal forms, GFE designed by HUD under RESPA and the “early” TIL disclosure designed by the Federal Reserve System.

- Proposed rule and “Official Interpretations” (on which lenders can rely) contain detailed instructions as to how each line of the Loan Estimate form would be completed.
- Proposal rule has provided sample forms for different types of loan products.
- The lender must give the form to the consumer within three (3) business days after the consumer “applies” for the loan.
- At least seven business days waiting period before loan can close (can still be waived for emergency)
- If mailed, presumed received 3 business days after mailing

THE LOAN ESTIMATE

- **Can be no changes unless permitted exceptions:**
 - The consumer asks for a change
 - The consumer chooses a service provider that was not selected by the lender
 - Information provided at application was inaccurate or becomes inaccurate;
 - The Loan Estimate expires

When exception applies, the Lender must provide updated Loan estimate within 3 business days

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Limits on Closing Cost Increases

- **The CFPB is revising the current rules to improve the reliability of the estimates lenders give consumers shortly after application, while largely preserving lender flexibility to respond to unanticipated changes during underwriting.**
- **CURRENT PRACTICE:**
 - Lender is held to a “0” tolerance for the Lender’s own charges
 - Lender provides a consumer with an estimate of the cost of third party services and lists at least one provider of each service. The actual cost cannot be more than 10% higher than the estimate unless there is a valid “change of circumstances”
 - If consumer uses a provider that is not on the Lender’s list, Lender is not held to a tolerance.

Limits on Closing Cost Increases

NEW RULE – Unless an exception applies, charges for the following services could not increase:

- The Lender's charges for its own services
 - Charges for services provided by an affiliate
 - Charges for services for which the lender does not permit the consumer to shop.
-
- UNLESS an exception applies, charges of other services generally could not increase by more than 10% - service providers on the "Provider List"

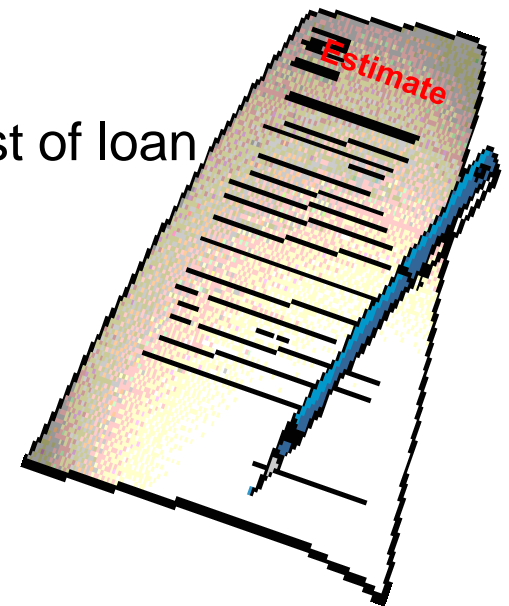
Limits on Closing Cost Increases

- **EXCEPTIONS - The rule would provide exceptions, for example, when:**
 - The consumer asks for a change
 - The consumer chooses a service provider that was not selected by the lender
 - Information provided at application was inaccurate or becomes inaccurate
 - The Loan Estimate expires
- **WHEN AN EXCEPTION APPLIES** – the Lender generally must provide an updated LOAN ESTIMATE form within three (3) business days

Limits on Closing Cost Increases

Old concern – fees at closing table

- Practice since 2010 – Over estimating
- Remedied by tolerance rules effective 2010
- Hold over concern by CFPB
 - “sticker shock”
 - Worksheets show true estimate of cost of loan
 - Practice will continue with new rule



Limits on Closing Cost Increases

- Tolerances stay at 10% for the provider list
- Form for the provider list is provided in the rule
- OTP is listed as “optional” on the Loan Estimate – problem at several levels



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THE CLOSING DISCLOSURE

Current Practice

Lender

- Prepares and delivers the TILA disclosure three business days in advance of closing (“consummation” per TILA)
 - Complies with TILA
 - APR and finance charge disclosure
 - Re-disclosure is required only if APR changes 1/88%

Settlement agent

- Prepares and delivers HUD-1 at the time of closing
 - Complies with RESPA
 - Final Cost Disclosure “at closing or upon the request of the borrower... items known on preceding day.”

THE CLOSING DISCLOSURE

- **The Closing Disclosure form would replace the current form used to close a loan, the HUD-1. Also replaces the revised Truth in Lending disclosure.**
 - The proposed rule and “Official Interpretations” (on which lenders can rely) contain detailed instructions as to how each line would be completed
 - Forms contain new disclosures required under Dodd-Frank (see forms)
 - Forms contain a detailed accounting of the settlement transaction

The Lender must give this Closing Disclosure at least three (3) days BEFORE the consumer closes on the loan.

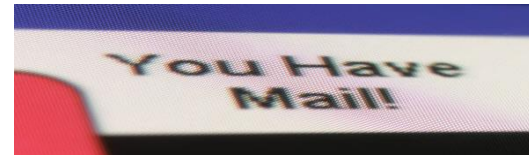
THE CLOSING DISCLOSURE

- **IF changes occur between the time the Closing Disclosure form is given and the closing**
 - The consumer **MUST** be provided a new form **AND**
 - The consumer must be given three (3) additional business days to review the form
- **EXCEPTIONS** from the three (3) day requirement:
 - Changes due to seller and consumer negotiations
 - Exception for minor changes which result in less than \$100 in increased charges
 - Fixes of non-numeric clerical errors
 - Changes to reflect tolerance violation cures (30 days)

THE CLOSING DISCLOSURE



- **What is a “Business Day”**
 - All calendar days except Sundays and Federal legal public holidays
- **Three ways to deliver:**
 - In person
 - Disclosure is deemed received by the consumer the day it is delivered in person
 - Mail/Fed-Ex/Courier
 - Creditor or settlement agent can presume the consumer received the disclosure three business days after mailing
 - This presumption may be rebutted by evidence that the consumer received the disclosures earlier or later than three business days.
 - E-mail
 - Same presumption as for mail
 - Creditor or settlement agent must obtain prior approval to use electronic disclosure.



THE CLOSING DISCLOSURE

Can Consumer Waive the Waiting Period?

Bona Fide Personal Financial Emergency

- Fact intensive
- One example: Imminent foreclosure sale

How to waive

- Can only waive after receiving the disclosure
- Give the creditor a dated written statement describing the emergency
 - Specifically modifies or waives the waiting period
 - Signed by all consumers who are primarily liable on the legal obligation
- Printed forms for this purpose are prohibited

Exemptions to three day waiting period

Seller – Buyer negotiation

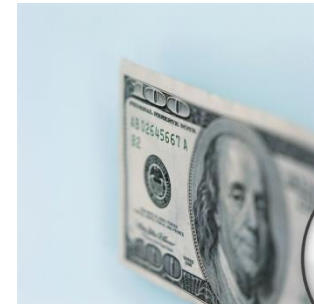
- After the consumer receives the disclosures, the consumer and the seller agree to make changes to the transaction and those changes affect the costs of the items disclosed

Example

- Closing scheduled for Thursday
- Consumer received the disclosures on Monday
- Walk-through inspection on Wednesday morning
- Discovery of damage to the dishwasher
- Parties agrees to \$500 credit
- Okay to close on Thursday

Post Delivery Minor Cost Increase (\$100)

- Amount actually paid by the consumer does not exceed the amount disclosed by more than \$100
 - Aggregate not each item
- Example
 - Disclosure has homeowner's insurance premium of \$800
 - Premium is actually \$850
 - \$50 understatement is not a violation
 - Okay to close with corrected disclosure
- Question: Is \$100 the right threshold?



Correction of Non-Numerical Clerical Error

- **Inadvertent or technical errors will not be considered violations of the disclosure requirements**
 - An error is considered clerical if it does not affect a numerical disclosure
- **Example**
 - Disclosure identifies the incorrect settlement service provider as the recipient of a payment
 - Okay to close
 - Creditor/settlement agent must provide revised disclosures reflecting the correct payee
 - As soon as reasonably practicable
 - But no later than 30 days after closing

Tolerance Refund

- **If an amount listed on the disclosure exceeds the tolerance, which would entitle the consumer to a refund, the refund can be included in the disclosure without triggering a new waiting period**
- **Example**
 - Disclosure has creditor tolerance violation
 - Creditor cures violation at or after closing
 - Okay to close as scheduled
 - New disclosure must be created
 - As soon as reasonably practicable
 - No later than 30 days after consummation

Preparing and Providing Closing Disclosure

- **Who Provides the Settlement Disclosure?**
- **Current Practice** – Title company (settlement agent) is required to provide the HUD-1, while Lenders are required to provide the TIL Disclosure.
 - Big Change in 2010 changes
 - Title company provides estimate of settlement charges to lender for GFE
 - Lender provides loan information for 3rd page of the HUD-1

Preparing and Providing Closing Disclosure

- **New Rule**
 - **Alternative #1: Lender is solely responsible for providing the integrated Closing Disclosure to the consumer.**
 - **Alternative #2: Lender may rely on the settlement agent to provide the form but is still responsible for the “accuracy of the form”.**
 - Under Alternative #2, the lender and settlement agent would have shared responsibility for providing a single, completed Closing Disclosure to the borrower (no further guidance or definition given)

Preparing and Providing Closing Disclosure

What This Change Will Mean for Your Client

- **Closer coordination with lender**
 - If settlement agents provide the disclosure
 - Work with lenders to get final numbers and approvals earlier in the process
 - If lender provides the disclosure
 - Provide final settlement numbers to lender earlier in the process
 - Alert lender of changes in those numbers and reason for them
- **Large lenders performing closings**
 - Do not look at Realtor or Buyer as their client
 - Lenders are not impartial third parties
 - Sellers and Sellers' Realtors will be lost in the new process

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Changes in the Closing Process

THE “CLOSING”

The nature of closings will have to change to accommodate the rules

- Lenders and Title Companies must be available to answer questions 3 days before closing
- Process for a “pre-closing” closing so that the lender and the title company can answer questions about the disclosure when the consumer gets it.
- Alternative - Closing not set until the Closing Disclosure is receipted
 - Issues with proration
- Closing longer – how do you explain lender pages
 - 5 pages instead of 3 – takes longer to explain
- No docs/closing instructions from lender

Changes in the Closing Process

- No exception for “things the buyer wants” like he decides at the closing table he wants the Owners Title Policy (with LP endorsements >\$100)
- Short sale lender requirements; POAs; Seller endorsements etc.
- \$100 not enough or proportionate to loan amount
- Waiting on lender to reissue
- How will you know when the Loan Estimate is delivered or re-delivered

Annual Percentage Rate

- **Closing fees (escrow fees) are included in APR**
- **Property insurance premiums excluded**
- **Lender's Title Policy is included in APR**
 - **At full rate, not the simultaneous issue rate**
- **Owner's Title Policy is not included in APR**
- **Appraisal and inspection costs**
- **Survey costs included**





Annual Percentage Rate

While intentions are good (protection of the consumer), potential unintended consequences still need to be considered:

- **FEWER LENDERS OFFERING FEWER LOAN OPTIONS**
 - **Tighter credit/lending practices**
 - **More difficult for consumers to qualify for a loan**

FEWER LENDERS OFFERING FEWER LOAN OPTIONS

LOAN QUALIFICATION

- **Qualified Residential Mortgage (QRM) Requirement**
 - Requirements that Lenders must meet or keep a portion of loan
- **Qualified Mortgage (QM) – Ability to Repay**
 - Lenders must make a reasonable determination of the borrower's ability to repay
- **Amendments to the Home Ownership and Equity Protection Act (HOEPA) that trigger “high cost” loans**
 - Changes in APR and other calculations can put more loans in this category
 - Appraisals for high-risk mortgages
 - Escrows on high-risk mortgages

Mandatory vs. Model Forms

- Currently – TIL disclosures are model forms; HUD-1 is mandatory
- Proposal – is not clear – seems to provide for a number of variations of a mandatory form.
- Model could lead to multiple forms by different lenders
- Seller's form – 1st time seen.
- Utilizing the existing form numbering system is cost savings

Recordkeeping and Data Collection

- The proposed rule requires lenders to keep records of the Loan Estimate and Closing Disclosure forms provided to consumers in a standard, machine-readable electronic format.
- Record Keeping and Data Collection guidelines expanded to require “Machine Readable Documents”
- This is not electronic copies of PDF format.
- Loan Estimate 3 years; Closing Disclosure 5 years



Dodd-Frank Requirements

In Addition to the New Disclosure Forms:

- Buyer's Ability to Repay/Qualified Mortgage (QM) – requires creditors to determine that a consumer can repay a loan
- Qualified Residential Mortgage – consumers must put 20% down or lenders assume a percent of the risk
- Amendments expanding protections under the Home Ownership and Equity Protection Act (HOEPA)



Dodd-Frank Requirements

In Addition to the New Disclosure Forms:

- New Loan Servicing Rules
- Loan Originator Compensation limitations
- Appraisal requirements for higher risk mortgages
- Escrow Account Disclosures

THE LIST GOES ON

- **1099 pages!!!!**
- **Beginning on page 686 –
instructions to fill out forms**



Effective Date of Final Rules

- **CFPB sought comments on when final rule should be effective**
 - Every industry stakeholder asked for flexibility due to related areas also under consideration
 - “Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible.”
 - “However, the Bureau understands that the final rule will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their soft ware and to retrain their staff.”

Effective Date of Final Rules

NOT TO MENTION IMPLEMENT AN ENTIRE NEW PROCESS

- Should small entities have more time than larger entities – bifurcated implementation period – possibly detrimental to consumers & large entities who purchase loans from smaller entities
- CFPB proposes to delay compliance later than the original Jan. 21, 2013 date for this rule

RESPA Conclusion





**Do You Have
Any Questions?**