

Know Before You Owe: the TILA-RESPA Integrated Disclosure Rule

The TILA-RESPA Integrated Disclosure (TRID) rule became effective on October 3, 2015. A proposed rule to make corrections and offer additional clarity has not yet been finalized. TRID's implementation remains a great challenge to the real estate finance industry. MBA urges the Consumer Financial Protection Bureau (CFPB) to continue working with the industry to enhance clarity and improve compliance with TRID.

OVERVIEW

- The Dodd-Frank Act required the CFPB to propose a rule that combines and integrates the disclosures under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The final rule (i.e., TRID) was issued on November 20, 2013 and became effective for most loans applied for on or after October 3, 2015.
 - A proposal to amend provisions of the rule—to make corrections and offer additional clarity—was published in August 2016, but no final rule has been issued as of mid-2017.
- For TRID-era loans, the rule requires the use of new, integrated disclosure forms for consumers at the time of application and settlement—known as the Loan Estimate (LE) and the Closing Disclosure (CD), respectively.
 - The LE is intended to integrate RESPA's Good Faith Estimate (GFE) and TILA's Early Truth in Lending (TIL) disclosure, and the Closing Disclosure is intended to integrate the Final TIL and the HUD-1 settlement statement.
- In addition to new forms, the rule brings major changes to the mortgage origination and closing process, including changing the definition of application, clarifying responsibilities for providing the forms, establishing tighter tolerances or limits on cost increases from application to closing, and installing a three-day review period between provision of the CD and consummation of the loan.
- If a creditor makes certain changes between the time the CD is provided and closing, a revised CD must be provided to the borrower and an additional three business days must elapse from the time the borrower is provided the revised CD until closing.
- Considering the complexity of the rule and the significant resources required to implement it, the CFPB stated that it would be sensitive to “good faith” implementation efforts and that early examinations for compliance would be more diagnostic than punitive.

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IMPACT

- The TRID rule constitutes a sea change for lenders, settlement service providers, real estate agents and consumers. More than 18 months after the effective date, many issues remain to be clarified. In the months immediately following its implementation, the many lingering open questions, misperceptions and technical ambiguities in the rule resulted in significant market disruptions. Investors and due diligence firms took an extremely conservative interpretation of several aspects of the TRID rule—including disclosure requirements, resulting in a very high percentage of loans being held in suspense, rendered unsaleable or sold at a significant discount in a “scratch and dent” marketplace.
 - A letter from CFPB Director Richard Cordray in December 2015 included some helpful guidance around errors, corrections and cures, which helped to ameliorate some concerns; unfortunately though, the CFPB chose not to issue the letter as an authoritative bulletin, nor did it address corrections and cures in the August 2016 proposed rule.
- Many of the errors being identified are minor or technical in nature—issues with the alignment or shading of forms, rounding errors, time stamps with the wrong time zone or check boxes that are improperly completed on the LE.
- Finally, it is unknown how Fannie Mae and Freddie Mac (the GSEs) and the Department of Housing and Urban Development (HUD) ultimately will view TRID compliance. For now the GSEs and HUD are honoring the grace periods but soon they may begin applying their own interpretations of TRID to their post-close quality control, repurchase (i.e., GSE) and claims review (i.e., HUD) processes. Compliance with TRID appears to be a “life of loan” warranty for the GSEs.

MBA’S POSITION / NEXT STEPS

- MBA urges the CFPB to issue its final rule amending provisions of the TRID rule in order to make corrections and provide additional clarity. There remain numerous areas of confusion and the final rule will help decrease concerns.
- Beyond the amending rule, MBA will continue to seek ongoing authoritative, written guidance from the CFPB—developed with stakeholder input—with regard to other difficult issues presented by TRID.
- MBA is engaged in several areas to help its members comply. MBA will continue to:
 - Conduct standalone webinars and provide meaningful opportunities at all MBA meetings—with the CFPB and other stakeholders—to focus on key implementation issues and options for resolution;
 - Work closely with other trade associations to facilitate compliance;
 - Offer up-to-date compliance guidance through webinars, forums and other venues, including MBA’s Compliance Essentials (CE) resource guide, CE self-study and other materials to assist MBA members; and
 - Comment on any additional proposed changes to the rule.