### Howard & Howard law for business TILA/RESPA Mortgage Disclosures



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# Overview

### **New Mortgage Disclosures**

- Comprehensive Changes
- Specific Timing Requirements
- Specific Tolerance Rules
- Specific Formatting Required
- No Exceptions for Small CUs



### Background

#### **Two Mortgage Laws & Four Disclosures**

- •Truth in Lending Act Regulation Z
  - Early TIL Disclosure
  - Final TIL Disclosure
- RESPA Regulation X
  - Good Faith Estimate
  - HUD-1 Settlement Statement

**Dodd-Frank Required Integrated Disclosures** 



### **No Exemptions**

#### **Requirements apply to all mortgage lenders**

- -Credit unions
- -Banks
- -Nondepository mortgage lenders
- -All asset sizes
- -All ranges of originations
  - 10 mortgage loans covered
  - 1000 mortgage loans covered



### **Scope & Applicability**

#### Which Mortgage Loans are Covered?

Closed-end consumer transactions secured by real property (first lien and subordinate liens)

- Purchases
- Refinances
- Closed-end home equity loans
- Vacation and second homes
- Loans on 25 acres or more\*
- Vacant lot loans\*
- Construction-only loans\*



### **Scope & Applicability**

#### Which Mortgage Loans are Excluded?

- Home equity lines of credit (HELOCs)
- Reverse mortgages

 Loan secured by a mobile home or by a dwelling that is not attached to real property

Regulation Z and Regulation X will continue to apply to these loans – but the new requirements do not apply.

 And, the existing exemption for business, commercial and agricultural loans remains



### **The New Disclosures**

#### **The Loan Estimate**

- -Combines the Early TIL with the GFE
- -Must be provided within 3 *business days* of receiving an *application*
- -Required Format and Content H-24 Model Forms

### **The Closing Disclosure**

- -Combines the Final TIL with the HUD-1
- -Must be provided 3 business days prior to closing
- -Required Format and Content H-25 Model Forms



### **Important Definitions**

### **New Definition of Application**

- -Triggers requirement to provide the Loan Estimate
- -CFPB removed "catch all" provision from RESPA definition
- -Six pieces of information
  - 1. Consumer's Name
  - 2. Consumer's Income
  - 3. Social Security Number
  - 4. Property Address
  - 5. Estimate of the Value of the Property
  - 6. Mortgage Loan Amount Sought



### **Important Definitions**

### **Two Definitions of "Business Day"**

- -Regulation Z contains two definitions of "business day"
- -Which definition depends on the underlying requirement
  - Loan Estimate timing "general definition"
  - Waiting period before closing "specific definition"

#### -General Definition:

• "a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions." *Main issue: Saturdays. Is CU open?* 

#### -Specific Definition:

All calendar days except Sundays and legal Holidays

#### Howard & Howard

### **Important Definitions**

#### **Clear as Mud?**

### 12 CFR 1026.2(a)(6):

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.20(e)(5), 1026.31, and 1026.46(d)(4), the term means 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.



### **Loan Estimate Basics**

- Must be provided in good faith
- If information is unknown, the disclosure should be based on the "best information reasonably available to the creditor" at the time of the disclosure.
- Provided by creditor or mortgage broker
  - Creditor responsible for broker's disclosure
  - Both broker and creditor retain records



### Loan Estimate Timing

#### Timing triggered when application is received

-Loan Estimate must be delivered <u>or</u> placed in mail not later than the third *business day* after receiving *application* 

-Example: Application received on Monday; Loan Estimate must be hand delivered or placed in mail on or before Thursday (assuming each weekday is a *business day*)

Initial delivery of Loan Estimate uses general definition

-Loan Estimate can be provided electronically, provided the proper E-SIGN Act consent is obtained



### **Consumer's Receipt**

#### When is the Loan Estimate received?

-If delivered in person: date of receipt

-If placed in mail or electronic: "considered" received three business days after delivered, placed in the mail or sent

- Business days is the specific definition
- •Creditor can use evidence to demonstrate the consumer received the Loan Estimate earlier

-Signature receipt on overnight delivery

-Acknowledgement of email receipt



# Loan Estimate Timing

### Waiting period before consummation

- -Loan Estimate must be delivered or placed in the mail no later than the seventh *business day* before consummation
  - •Waiting period begins when delivered or placed in the mail; <u>not</u> when the consumer receives the disclosures
  - Specific definition of business day
- -Waiting period can be waived by consumer for a "bona fide personal emergency"
- -Example: Loan Estimate delivered on Monday, June 1
  - Consummation can occur as early as Tuesday, June 9



### **Predisclosure Activity**

#### Limitations on when creditor can charge fees

-Similar to existing rules (credit report fee exception)

-No additional fees may be charged until disclosures are provided <u>and</u> consumer indicates an intent to proceed

–Prohibition covers checks and credit card numbers taken in advance but not to be cashed/charged until after intent

 However, can obtain a credit card number for the credit report fee and retain the number for future fees – provided the creditor obtains a separate authorization from the consumer after the disclosures and intent



### **Intent to Proceed**

#### Can be in any manner the consumer chooses

- -Must be provided after the Loan Estimate is received
- -Silence cannot be considered "intent"
- -Signature line on Loan Estimate not sufficient
- -Oral, written, email or signing a form are all acceptable
  - Creditor can require a specific manner
- -Documentation of the Intent to Proceed is key
  - Creditor must retain documentation for three years



### Written Estimate of Terms or Costs

# Creditors can provide worksheets prior to providing the Loan Estimate (before *application*)

-Information specific to the consumer

- -Must include statement at top of front page, 12-point font
  - "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan."
- -Not required for preprinted lists of closing costs or rates
- -Not required for advertisements

–Form H-26



### **Limitation on Verification**

### **Creditors cannot verify information prior to providing the Loan Estimate**

-Can obtain any information needed prior to Loan Estimate

• But, cannot require verification of the information

-Example – Sales Price & Property Address

-Example - Bank Account Balances

-Once the six pieces of information that make up the *application* are received; timing for Loan Estimate triggered



# **Shopping for Services**

# A creditor "permits a consumer to shop" for a settlement service if the consumer can select the provider of the service

-Creditor must provide a written list indicating "Services You Can Shop For" *Model Form H-27* 

•List must identify at least one settlement provider for each service (the provider must currently provide service in property location)

 List must include name of provider, address and phone number



### **New Tolerance Levels**

### **Strict Tolerances for Settlement Charges**

-Variances between Loan Estimate and Closing Disclosure

#### **General Rule**

-Charge was in good faith if it does not exceed charge on original Loan Estimate

Zero Tolerance (charges cannot increase)

- -Fees paid to creditor and broker (and affiliates\*)
- -Fee paid to unaffiliated third party if not allowed to shop\*
- -Transfer taxes
- -Lender credits



### **New Tolerance Levels**

### **10% Aggregate Threshold**

- –Recording fees; and
- -Third-party services that the consumer could shop for
  - Includes when consumer picks provider from list

#### No Tolerance (charges can increase)

- –Third-party services selected by the consumer;
  - •When consumer can shop and picks provider not on list
  - When consumer picks services not required by creditor
- –Prepaid interest; Property insurance premiums; and amounts placed into escrow account.



### **The New Forms**

#### **Standard Forms versus Model Forms**

- -What is the difference?
  - Standard Form is REQUIRED
  - Model Form is Safe Harbor for Compliance
- -What are the Loan Estimate & Closing Disclosure?
  - It depends on the type of transaction

-If transaction is a "federally-related mortgage loan" the forms are Standard Forms and are REQUIRED

• This is *most* credit union mortgages

Limited exception

Short Answer: Specific Forms (and Content) are REQUIRED



#### The best starting point is to review the forms

- -Blank Forms
  - •H-24(A)
    - -Two variations of Page One
    - -Four variations of Page Two
    - -Four variations of Page Three
- -Sample Forms
  - •H-24(B) Fixed-Rate Loan Sample
  - •H-24(D) Refinance Sample



#### **3 Pages & Tons of Moving Parts**

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See Projected	rincipal & Interest Payments below for your tal Monthly Payment	\$761.78		NO				
				Does the lo	an hav	e these features?		
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Balloon Pa	yment		NO					
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Payment C	alculation		Years 1-	-7		Years 8-30		
Principal 8	k Interest		\$761.7	8		\$761.78		
Mortgage	Insurance	+	82			+ -		
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Estimated Monthly F			\$1,05	0		\$968		
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Total Interest Percentag	ge (TIP) 6	59.45%		t of interest that you will p our loan amount.	ay over the loan term as a
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#### Sample available online: http://files.consumerfinance.gov/f/201311\_cfpb\_kbyo\_loan-estimate.pdf



#### Sample Forms – Lists Example Transaction

#### **FICUS BANK**

4321 Random Boulevard • Somecity, ST 12340

#### Loan Estimate

DATE ISSUED	2/15/2013
APPLICANTS	Michael Jones and Mary Stone
	123 Anywhere Street
	Anytown, ST 12345
PROPERTY	456 Somewhere Avenue
	Anytown, ST 12345
SALE PRICE	\$180,000

LOAN TERM	30 years
PURPOSE	Purchase
PRODUCT	Fixed Rate
LOAN TYPE	Conventional □FHA □VA □
LOAN ID #	123456789
RATE LOCK	NO IN YES, until 4/16/2013 at 5:00 p.m. EDT
	Before closing, your interest rate, points, and lender credits can

Save this Loan Estimate to compare with your Closing Disclosure.

change unless you lock the interest rate. All other estimated closing costs expire on 3/4/2013 at 5:00 p.m. EDT

Loan Terms		Can this amount increase after closing?
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest See Projected Payments below for your Estimated Total Monthly Payment	\$761.78	NO
		Does the loan have these features?
Prepayment Penalty		YES • As high as \$3,240 if you pay off the loan during the first 2 years
Balloon Payment		NO



#### **Annotated Forms** – Lists Regulatory Requirement

		12 CFR 1026.	37
Bank Name - (a)(3)		Save this	Loan Estimate to compare with your Closing Disclosure. (a)(2
Loan Estimate (a)(1) DATE ISSUED (a)(4) APPLICANTS (a)(5) PROPERTY (a)(6) SALE PRICE (a)(7)		LOAN TER PURPOSE PRODUCT LOAN TYP LOAN ID # RATE LOCH	(a)(9) (a)(10) E Conventional OFHA OVA (a)(11) (a)(12)
Loan Terms		Can this	amount increase after closing?
Loan Amount	(b)(1)		
Interest Rate	(b)(2)		(b)(6)
Monthly Principal & Interest See Projected Payments below for your Estimated Total Monthly Payment	(b)(3)		
		Does the	loan have these features?
Prepayment Penalty		(b)(4)	(b)(7)
Balloon Payment		(b)(5)	



#### Sample Forms – Lists Example Transaction

Projected Payments						
Payment Calculation		Years 1-7	Years 8-30			
Principal & Interest		\$761.78		\$761.78		
Mortgage Insurance	+	82	+	_		
Estimated Escrow Amount can increase over time	+	206	+	206		
Estimated Total Monthly Payment		\$1,050		\$968		
Estimated Taxes, Insurance & Assessments Amount can increase over time	\$206 a month	This estimate includ Property Taxes Homeowner's Insur Other: See Section G on page 2 property costs separately	ance for escrowed prope	In escrow? YES YES erty costs. You must pay for other		
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Estimated Cash to Close	\$16,054	Includes Closing Costs. See	Calculating Cash t	o Close on page 2 for details.		
Visit <b>www.cons</b>	umerfinance.go	v/mortgage-estimate for ge	neral informatio	on and tools.		

LOAN ESTIMATE

PAGE 1 OF 3 + LOAN ID # 123456789



#### **Annotated Forms** – Lists Regulatory Requirement

Projected Payments			
Payment Calculation		(c)(3)	
Principal & Interest			
Mortgage Insurance		(c)(2)	
Estimated Escrow Amount can increase over time			
Estimated Total Monthly Payment			
Estimated Taxes, Insurance & Assessments Amount can increase over time	(c)(4)	This estimate includes  Property Taxes Homeowner's Insurance Other: See Section G on page 2 for escrowe property costs separately.	In escrow? ed property costs. You must pay for other
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Estimated Cash to Close		ncludes Closing Costs. See Calculati ] From 🔲 To Borrower	ng Cash to Close on page 2 for details.
Visit www.consum	erfinance.gov/n	nortgage-estimate for general in	formation and tools. <mark>(e)</mark> PAGE 1 OF 3 - LOAN ID #



#### The best starting point is to review the forms

- -Blank Forms
  - •H-25(A)
    - -Three variations of Page One
    - -Four variations of Page Four
    - -Four variations of Page Five
- -Sample Forms
  - •H-25(B) Fixed-Rate Loan Sample
  - •H-25(E) Refinance Sample



### Closing Disclosure – 1026.38 5 Pages & *Metric* Tons of Moving Parts

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#### Sample Forms – Lists Example Transaction (Pg 2)

#### **Closing Cost Details**

		Borrow	er-Paid	Selle	r-Paid	Paid by Others
Loan Costs		At Closing	Before Closing	At Closing	Before Closing	Others
A. Origination Charges		\$1,8	02.00			
01 0.25 % of Loan Amount (Point	s)	\$405.00				
02 Application Fee		\$300.00				
03 Underwriting Fee		\$1,097.00				
04						
05						
06						
07						
08						
B. Services Borrower Did Not Sh		\$23	6.55			
01 Appraisal Fee	to John Smith Appraisers Inc.					\$405.00
02 Credit Report Fee	to Information Inc.		\$29.80			
03 Flood Determination Fee	to Info Co.	\$20.00				
04 Flood Monitoring Fee	to Info Co.	\$31.75				
05 Tax Monitoring Fee	to Info Co.	\$75.00				
06 Tax Status Research Fee	to Info Co.	\$80.00				
07						
08						
09						
10						
C. Services Borrower Did Shop F			55.50			
01 Pest Inspection Fee	to Pests Co.	\$120.50				
02 Survey Fee	to Surveys Co.	\$85.00				
03 Title - Insurance Binder	to Epsilon Title Co.	\$650.00				
04 Title - Lender's Title Insurance	to Epsilon Title Co.	\$500.00				
05 Title - Settlement Agent Fee 06 Title - Title Search	to Epsilon Title Co.	\$500.00				
	to Epsilon Title Co.	\$800.00				
07						
08 D. TOTAL LOAN COSTS (Borrowe	(Paid)		94.05			
	n+raio)					
Loan Costs Subtotals (A + B + C)		\$4,664.25	\$29.80			



#### **Annotated Forms** – Lists Regulatory Requirement

#### **Closing Cost Details**

	Borrower-P	Paid	Selle	Paid by Others	
Loan Costs	At Closing Bef	ore Closing	At Closing	Before Closing	Others
A. Origination Charges					
9 % of Loan Amount (Points)					
2					
33	(0.4)				
м	(f)(1)				
5					
26 27					
8. Services Borrower Did Not Shop For					
01					
32					
13					
34	(5)(2)				
35	(f)(2)				
06					
37					
18					
39					
0					
. Services Borrower Did Shop For					
01					
2					
3	(6)(2)				
M	(f)(3)				
05 06					
07					
	(6)(4)				
D. TOTAL LOAN COSTS (Borrower-Paid)	(f)(4)				
Loan Costs Subtotals (A + B + C)	(f)(5)				



#### Sample Forms – Lists Example Transaction (Pg 2)

E. Taxes and Other Government Fees	Fees \$85.00				
01 Recording Fees Deed: \$40.00 Mortgage: \$45.00	\$85.00				
02 Transfer Tax to Any State			\$950.00		
F. Prepaids	\$2,120.80				
01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.	\$1,209.96				
02 Mortgage Insurance Premium ( mo.)					
03 Prepaid Interest (\$17.44 per day from 4/15/13 to 5/1/13)	\$279.04				
04 Property Taxes ( 6 mo.) to Any County USA	\$631.80				
05					
G. Initial Escrow Payment at Closing	\$412.25				
01 Homeowner's Insurance \$100.83 per month for 2 mo.	\$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes \$105.30 per month for 2 mo.	\$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	- 0.01				
H. Other	\$2,400.00				
01 HOA Capital Contribution to HOA Acre Inc.	\$500.00				
02 HOA Processing Fee to HOA Acre Inc.	\$150.00				
03 Home Inspection Fee to Engineers Inc.	\$750.00			\$750.00	
04 Home Warranty Fee to XYZ Warranty Inc.			\$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			\$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			\$5,700.00		
07 Title – Owner's Title Insurance (optional) to Epsilon Title Co.	\$1,000.00				
08					
I. TOTAL OTHER COSTS (Borrower-Paid)	\$5,018.05				
Other Costs Subtotals (E + F + G + H)	\$5,018.05				
J. TOTAL CLOSING COSTS (Borrower-Paid)	\$9,712,10				
Closing Costs Subtotals (D + I)	\$9,682.30	\$29.80	\$12,800.00	\$750.00	\$405.0
Lender Credits					



#### **Annotated Forms** – Lists Regulatory Requirement

E. Taxes and Other Government Fees		
01 Recording Fees Deed: Mortgage:	(g)(1)	
02		
F. Prepaids		
01 Homeowner's Insurance Premium ( mo.)		
02 Mortgage Insurance Premium ( mo.)	(g)(2)	
03 Prepaid Interest ( per day from to )	(9/(-/	
04 Property Taxes ( mo.)		
05		
G. Initial Escrow Payment at Closing		
01 Homeowner's Insurance per month for mo.		
0.2 Mortgage Insurance per month for mo,		
03 Property Taxes per month for mo.	(g)(3)	
04		
05		
06		
07		
08 Aggregate Adjustment		
H. Other		
01		
02		
03	(g)(4)	
05		
85		
07		
07		
I. TOTAL OTHER COSTS (Borrower-Paid)	(g)(5)	
Other Costs Subtotals (E + F + G + H)	(g)(6)	
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	(b)(1)	1
J. TOTAL CLOSING COSTS (Borrower-Paid)	(h)(1)	
Closing Costs Subtotals (D + I)	(h)(2)	
Lender Credits	(h)(3)	



### **The New Forms**

#### Short Answer: Specific Forms (and Content) are REQUIRED

- -Very detailed requirements
  - What if section is not applicable?
  - What if there is no value for a particular line?
    - –Mark N/A?
    - -Use \$0?
    - -Leave blank?
  - Rounding of numbers
  - Alphabetical listing of costs in subcategories
    - –I am not joking this is a real requirement
      - •12 CFR 1026.37(f)(5)(ii) & (g)(7)(ii)

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# **Key Takeaways**

- Understand the Scope
- Review the Forms First
- New Definitions
- New Timing Requirements
- New Tolerance Levels
- August 1, 2015 will be here soon
  - Reviewing, implementing, understanding, testing, training



# **Questions?**

### **Sign-Up for Regulatory e-Alerts**

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