

October 6, 2016

TO: State Directors
Rural Development

ATTN: Program Directors
Single Family Housing

FROM: Tony Hernandez /s/ ***Tony Hernandez***
Administrator
Housing and Community Facilities Programs

SUBJECT: Implementation of the TILA/RESPA Integrated Mortgage Disclosures
Rule for Direct Single Family Housing Programs

PURPOSE:

The purpose of this memorandum is to provide guidance on the implementation of the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) Integrated Mortgage Disclosures rule issued by the Consumer Financial Protection Bureau (CFPB) with an effective date of October 3, 2015. This memorandum is also being issued to ensure that field staff working with Direct Single Family Housing Programs provide accurate and timely delivery of disclosures associated with a mortgage loan application and as required by the TILA/RESPA Integrated Disclosures (TRID) regulation.

BACKGROUND:

Prior to October 3, 2015, RESPA and TILA were the two separate Federal laws that required lenders to provide consumers different disclosure forms detailing the nature, costs, and credit terms associated with a mortgage application. The initial disclosures were the Truth-in-Lending (TIL) Statement and the Good Faith Estimate (GFE). The law also required lenders to provide two different forms at or shortly before settlement. These forms were the final TIL Statement and the HUD-1, Settlement Statement.

EXPIRATION DATE:
October 31, 2016

FILING INSTRUCTIONS:
Housing Programs

Given that these forms were created by two different agencies under two different Federal statutes with similar objectives, the information on these forms were similar yet inconsistent and difficult to understand by most consumers.

On November 20, 2013, the CFPB, as mandated by the Dodd–Frank Wall Street Reform and Consumer Protection Act, issued the “Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)” final rule to integrate the disclosure requirements associated with the RESPA and TILA regulations. The new regulation combined the closing costs information previously disclosed in the standard GFE form and the credit terms in the initial TIL statement into a new form, the **Loan Estimate**. The HUD-1, Settlement Statement, and final Truth-in-Lending disclosure were combined into another new form, the **Closing Disclosure**.

IMPLEMENTATION RESPONSIBILITIES:

Handbook-1-3550 and DLOS Manual references to the replaced items (e.g. HUD’s Settlement Cost Booklet, Form RD 1940-41, the GFE, and the HUD-1) are superseded by this issuance and the new items discussed within this memorandum are effective on October 3, 2015, regardless of the date of memorandum. Conforming revisions to the programs’ guidance will be made as expeditiously as possible and include replacing all references to RD Instruction 1940-I in Handbook-1-3550 with the TRID regulation.

As thoroughly explained in training sessions to Agency staff, the Loan Originator is responsible for issuing accurate and timely TRID disclosures associated with Direct Single Family Housing loans. The Agency is responsible for ensuring compliance with the TRID regulation requirements and for the cost incurred to cure tolerance violations.

Initial Disclosures: Loan Estimate, Written List of Service Providers and Special Information Booklet

Loan Estimate

For transactions subject to RESPA, the CFPB requires creditors to use the standard Loan Estimate form. Similar to the GFE and the TIL statement, the Loan Estimate is designed to provide information that will help consumers understand the key features, costs, and risks of the mortgage loan for which they are applying. The Loan Estimate must be delivered or placed in the mail no later than three (3) business days after receiving the application but no later than seven (7) business days before loan closing. The applicant is considered to have received the Loan Estimate three (3) business days after it is delivered or placed in the mail.

An application, as defined by the TRID regulation, includes the following six (6) items:

1. Applicant's name;
2. Applicant's social security number to obtain a credit report (which requires *Form RD 3550-1*, "Authorization to Release Information");
3. Applicant's income;
4. Property address;
5. An estimate of the value of the property; and,
6. Mortgage loan amount sought.

The Agency may only collect the credit report fee before issuing the Loan Estimate to the applicant. Other fees (e.g. the appraisal fee or tax service fee) cannot be collected prior to issuing the Loan Estimate. For nonprogram assumptions and credit sales, the nonrefundable \$100 application fee required by 11.3 (Handbook-1-3550) cannot be collected prior to issuing the Loan Estimate to nonprogram applicants.

Loan Estimate Accuracy Requirements

The Agency is responsible for ensuring that the figures stated in the Loan Estimate are made in good faith. Whether or not a Loan Estimate was made in good faith is determined by calculating the difference between the estimated charges originally provided in the Loan Estimate (or valid revised Loan Estimate) and the actual charges paid by or imposed on the applicant in the Closing Disclosure. If this amount exceeds the amount disclosed on the effective Loan Estimate, it is not in good faith. However, a Loan Estimate is considered to be in good faith if the creditor charges the consumer less than the amount disclosed on the Loan Estimate, without regard to any tolerance limitations.

The TRID regulation mimics the current three variations, or tolerance, categories:

- No Variations Permitted (zero tolerance, charges that cannot increase)
- Limited Variations Permitted (10% cumulative tolerance limit, charges that in total cannot increase more than 10%)
- Variations permitted (no tolerance limit, charges that can change)

These accuracy requirements make the Agency accountable for accurate settlement cost estimates. The Agency is required to cure tolerance violations by reimbursing to the borrower the amount by which the tolerance was exceeded, either at settlement or within 60 calendar days after consummation. In instances where the tolerance is exceeded, the State's Program Loan Cost Expense (PLCE) funds, Salaries and Expense Account ("A" funds), will be used to cover the difference. States may use "A" funds to cure TRID violations without obtaining approval from National Headquarters.

Changed Circumstances

The Loan Estimate cannot be revised and reissued unless certain changed circumstances occur. “Changed Circumstances” is defined by the regulation as:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
- Information specific to the consumer or transaction that the creditor relied upon when providing the required disclosures and that was inaccurate or changed after the disclosures were provided; or
- New information specific to the consumer or transaction that the creditor did not rely on when providing the original disclosures.

In the event changed circumstances occur, the Loan Originator must send the revised Loan Estimate within three (3) business days of receiving the information that established the change. Only those fees impacted by the changed circumstance may change and supporting documentation must be retained in the case file for no less than three years after settlement.

Written List of Service Providers

Field staff must continue to provide a written list of settlement service providers along with the Loan Estimate. If the applicant is permitted to shop for a settlement service, the Agency must provide the applicant with a written list of services providers for which the applicant can shop. Attachment 3-I, Settlement Service Providers and Mortgage Loan Application Related Disclosures, will remain in effect but it will be revised to mimic the technical language in the new regulation.

If the applicant selects a service provider from the list provided by the Agency, the charges associated with that provider are subject to the applicable tolerance limit. Any services for which the applicant selects a provider other than those identified by the Agency will not be subject to the tolerance test.

Special Information Booklet

Field staff must provide to the applicant the “Your home loan toolkit: A step-by-step guide” issued by the CFPB. This booklet should be provided only once per loan application (not per applicant) and along with the Loan Estimate. The new CFPB’s booklet is posted on the SharePoint site for on-demand printing.

Final Disclosure: Closing Disclosure

Under the new TRID regulation, creditors must ensure the consumer receives the Closing Disclosure at least three (3) “Business Days” before loan “Consummation”. “Business Days” for Closing Disclosure delivery are all calendar days except Sundays and legal public holidays. “Consummation” occurs when the consumer becomes contractually obligated to the creditor. Although consummation may commonly occur at the same time as closing or settlement, it is a legally distinct event that is not the same thing as closing or settlement.

While the closing agent/attorney will complete the Closing Disclosure, the Agency is ultimately responsible for meeting the accuracy and delivery requirements of this form. The appropriate Agency staff will review the Closing Disclosure prepared by the closing agent and, if correct, will proceed (or authorize the closing agent/attorney) to provide the disclosure to the applicant within the timeframe provided by the law.

If there is more than one applicant involved in a transaction, the Closing Disclosure may be provided to any applicant with primary liability on the obligation for purchase transactions. However, for transactions with a rescission period, the Closing Disclosure must be given separately to each applicant who has the right to rescind under the regulation.

The Agency must redisclose the terms and costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided to the applicant and that cause the disclosures to become inaccurate. Revising the Closing Disclosure after it has been provided to the applicant may require an additional three (3) business day waiting period prior to consummation.

APPLICABILITY

The TRID rule applies to all federally related mortgage loans, which includes most purchase loans, assumptions, refinances, and property improvement loans under the Direct Single Family Housing Programs. Any loan, including a Section 504 loan, is subject to the TRID regulation if a security interest will be taken on the property.

Any application in the pipeline by October 2, 2015, and where a GFE has already been issued, is not subject to the new regulation. These loans will proceed to closing using the current HUD-1, Settlement Statement, even if closing occurs after the new TRID regulation’s effective date. For example, a GFE was issued prior to October 3, 2015 with a \$105 tax service fee, but FY ’15 funds were not approved and obligated; therefore, the loan will be subject to a \$108 tax service fee and a revised GFE is required prior to closing.

As a reminder, field office staff should access the following SharePoint site to find helpful information regarding the requirements outlined in the TRID regulation: Single Family Housing > Single Family Housing Information > Direct Program Information>TILA-RESPA Integrated Disclosures.

State Office staff with questions regarding this memorandum may contact Migdaliz Bernier at (202) 690-3833 or at Migdaliz.Bernier@wdc.usda.gov. Field staff should direct their questions to their State Office.

Electronically sent to the State Directors and Program Directors on October 6, 2015, at 8:20 a.m. by the Single Family Housing Direct Loan Division. The State Director will also send to other appropriate parties. ‘