

New Amendments to TRID

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After listening to over 1600 comments from various parties involved in the real estate and mortgage industries, the Consumer Financial Protection Bureau's (CFPB) changes to the Truth in Lending Act-Real Estate Settlement Procedures Act integrated disclosures (TRID) released an amended rule on July 17, 2017. The rule was effective October 17, 2017 and has a mandatory compliance date of October 1, 2018. Lenders may start using the new rule any time between October 10, 2017 and October 1, 2018.



Lenders and settlement agents should familiarize themselves with the 2017 TILA-RESPA Rule to be sure they are up to speed in time for the mandatory compliance date. Here are just some of the key changes:

The 2017 TILA-RESPA Rule amends and clarifies the application of the good faith standard. The CFPB expanded what is the definition of good faith as it pertains to providing the best information available. How much research must a lender do to have the best information available for preparing a Loan Estimate (a three page form that the lender provides after applying for a mortgage which provides estimated interest rate, monthly payment, and estimated closing costs for the loan known as a "LE") or a Closing Disclosure (a five page form which provides the final details and terms of the mortgage loan and final closing costs known as a "CD")? Originally, good faith was defined as providing the consumer with the best information reasonably available at the time of the preparation of the document. The amended rule now extends the requirement to include the term "bona fide" which means every charge must be lawful and every service must be actually performed. This would require a lender to accurately reflect every fee it discloses on the CD.

Nothing has changed with respect to privacy. A settlement agent still cannot share the CD with various parties involved in the mortgage process without buyer's consent. Also, with respect to settlement agents and their liability for the CD, lenders are responsible for the accuracy of the CD, but if the lender wants to contractually obligate others, they can do so.

The 2017 TILA-RESPA Rule now establishes requirements for cooperative units. Currently, creditors need to provide LE's and CD's for a loan secured by a cooperative unit if the coop is classified as real property under applicable state law. It does not require a creditor to provide these disclosures for such loans if the coop is classified as personal property under applicable state law. The amended rule creates a uniform rule regarding loans for coops and requires creditors to provide LE's and CD's for a loan secured by a coop regardless of whether state law classifies a coop as real property. In other words, coops are now covered by TRID regardless of state consideration.

The CFPB has decided that trusts are now deemed natural persons. A trustee or a trust is considered as the same person and a LE given to a trust is adequate notice for the trustee and all

beneficiaries as well as any co-borrower. As such, credit extended to certain trusts established for tax or estate planning purposes is credit extended to a natural person.

The 2017 TILA-RESPA Rule includes tolerances for the total of payments disclosure, including tolerances that apply for purposes of rescission. For example, the 2017 Rule generally provides that the total of payments listed on a disclosure is considered accurate if it is overstated, or if it is understated by no more than \$100.

The amended rule also allows a principal curtailment. When a lender needs to give a credit to a borrower, but for whatever reason cannot at the time of closing, the credit can be applied to the principal amount of the loan. Therefore, if it doesn't work as a credit on the CD, the amount can then be applied as a principal curtailment.

With respect to refinances, all borrowers must be named and their address listed on the CD, but for a non borrower title holder they don't need to be named on the CD, however they must receive a CD.

Among other items not discussed herein, the 2017 TILA-RESPA Rule also clarifies various elements of construction loans, provides options for separating borrower and seller information on the LE and CD as well as guidance on sharing the CD with various parties involved in the mortgage origination process, and it also amends and clarifies when revised LE's or CD's are permitted or required.

For more information, please see:

<https://www.federalregister.gov/documents/2017/08/11/2017-15764/amendments-to-federal-mortgage-disclosure-requirements-under-the-truth-in-lending-act-regulation-z>

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_Executive-summary-of-2017-TILA-RESPA-rule.pdf