



RESPA/TILA INTEGRATION – PART I: OVERVIEW AND LOAN ESTIMATE

Jonathan Foxx *

WHITE PAPER

This first of a four-part series will introduce the RESPA/TILA Integration and treat the numerous features of the **Loan Estimate**. In the second part of the series, I will detail the features of the **Closing Disclosure**. The third part will be a detailed analysis of the Loan Estimate. The fourth part will provide an in depth scrutiny of the Closing Disclosure.

Accompanying this article is a **Loan Estimate Table** that may be used for certain itemized categories and action requirements. The table outlines the types of areas of interest in many of the routine requirements of the Loan Estimate process. In reviewing the table, notice how many of these categories in some respects reflect the pre-August 2015 disclosure process. Rather than a before-and-after, comparative analysis, the Loan Estimate Table provides the requirements of the post-August 2015 Rule itself.

In the other articles of this four-part series, I will provide charts, tables, form specimens, and annotations for applicable categories and action requirements relating to the RESPA-TILA Integration. The full series, and accompanying charts, tables, and form specimens, will appear in National Mortgage Professional Magazine, commencing October 2014.

* President and Managing Director, Lenders Compliance Group of Companies

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DISCUSSION

Let's admit at the outset that having to explain to loan applicants the fees and boxes and pages of the Good Faith Estimate (GFE) is not for the faint of heart. The Truth in Lending Disclosure (TIL) remains a conundrum without peer: difficult to explain to a consumer in just a few words; inscrutable even to loan officers; and, blisteringly enigmatic often even to lenders. Both disclosures are somewhat archaic, examples of good intentions gone to the shadowy realm of Unintended Consequences.

Notwithstanding the foregoing debacle, there is the infamous HUD-1 Settlement Statement (HUD-1), infamous for its myriad codes, infamous for codes that should correlate or sometimes seem not to correlate to the GFE itself, infamous for mapping challenges to the loan origination system, and infamous for irksome consternation about where, what, and how to show certain fees!

A consumer's distrust of the lender seems to increase with the duration of the explanation provided by the mortgage loan originator. If it takes more than a sentence or two to explain a disclosure's contents, many consumers are already hesitating, wondering if there's something they're not being told! So, is there a way to provide a new kind of consumer disclosure that replaces the overly-encrusted, superannuated, periodically reconditioned, creaky, decades' old twosome and settlement documents that have dominated the origination of residential mortgage loans for an entire generation of mortgage loan originators?

Into this maelstrom of implacable confusion steps the Consumer Financial Protection Bureau ("CFPB" or "Bureau"). The debate as to whether we need to replace the GFE, TIL, and settlement disclosures, into an overall, encompassing disclosure, is over and done. Behind us now are the many analyses, heat maps, comment periods, public outreach, focus groups, committee reviews, Interagency evaluations, extensive consumer and industry research, association position papers, quantitative studies, speeches, public relations, announcements, and presentations. Before us unfolds on August 1, 2015 a brand new set of disclosures – a combined set, as in new disclosure at the commencement of the loan origination and new disclosure at its closing – the former to be called **Loan Estimate** and the latter to be called **Closing Disclosure**.¹

The new set has been dubbed "RESPA-TILA Integration," since the consolidation requirements reflect the mandates of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA Sections 4 and 5.² For the balance of this article, I will refer to these provisions as the "RESPA-TILA Rule" or ("Rule"). Additionally, I will refer to the consolidated disclosures as

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“Integrated Disclosures.”

The Rule applies to most closed-end consumer mortgages. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or chattel-dwelling loans, such as mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). The provisions also do not apply to loans made by persons who are not considered “creditors,” where such persons make five or fewer mortgages in a year. However, certain types of loans that are currently subject to TILA but not RESPA are subject to the Rule’s Integrated Disclosure requirements, including construction-only loans, loans secured by vacant land or by 25 or more acres, and credit extended to certain trusts for tax or estate planning purposes. So, creditors originating these types of mortgages must continue to use, as applicable, the GFE, TIL, and HUD-1 disclosures required under current law.

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers. These creditors are exempt from the requirement to provide the RESPA settlement cost booklet, GFE, HUD-1, and application servicing disclosure statement requirements, and, thus, exempt from the requirements to provide a Loan Estimate, Closing Disclosure, and Special Information Booklet for these loans.

THE RESPA/TILA RULE

I am sure that the question will be asked whether creditors may use the Integrated Disclosure on loans not covered by the Rule but subject to RESPA and TILA. The short answer is that using the Integrated Disclosures for such purposes is not prohibited on loans that are not covered by RESPA and TILA (i.e., mortgages associated with housing assistance loan programs for low- and moderate-income consumers). A creditor cannot use the new Integrated Disclosure forms instead of the GFE, TIL and HUD-1 forms for transactions that are covered by RESPA and TILA that require those disclosures (i.e., reverse mortgages).

With its usual flair for brevity, the Bureau’s proposal in July 2012 is a mere 1,099 pages.³ In November 2013, the final rule was issued, reaching the gargantuan proportions of 1,888 pages.⁴ Some of the seemingly boundless verbiage has thankfully been distilled to a 91 page guide, entitled *TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide* (“Guide”).⁵ The most recent update to the Guide was issued in September 2014. The Guide touches on many features of the Rule and the implementation of the new disclosures; however, a thorough reading of the final rule is needed in order to comprehend the scope, application, and breadth of the Rule in effectuating its provisions.^{6 7 8}

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Much of the Rule can be encapsulated in a single sentence, leaving aside all the details, as set forth by the Bureau:

The TILA-RESPA rule consolidates four existing disclosures required under TILA and RESPA for closed-end credit transactions secured by real property into two forms: a *Loan Estimate* that must be delivered or placed in the mail no later than the third *business day* after receiving the consumer's *application*, and a *Closing Disclosure* that must be provided to the consumer at least three *business days* prior to *consummation*.⁹ (Emphases in original)

As in all consumer disclosure regulations, the compliance effective date and the operational recognition of that date are critical timing points. The new Integrated Disclosures must be provided by a creditor or mortgage broker that receives an application from a consumer for a closed-end credit transaction secured by real property on or after August 1, 2015. But creditors will still be required to use the GFE, TIL, and HUD-1 forms for applications received prior to August 1, 2015.

Operationally speaking, as the applications received prior to August 1, 2015 are consummated, withdrawn, or cancelled, the use of the GFE, TIL, and HUD-1 forms will no longer be used for most mortgage loans.¹⁰

But from a process perspective, this timing can get complicated quickly. Various restrictions take effect on the calendar date August 1, 2015, regardless of whether an application has been received on that date. For instance, take note of these restrictions:

- Imposing fees on a consumer before the consumer has received the Loan Estimate and indicated an intent to proceed with the transaction;¹¹
- Providing written estimates of terms or costs specific to consumers before they receive the Loan Estimate without a written statement informing the consumer that the terms and costs may change;¹² and
- Requiring the submission of documents verifying information related to the consumer's application before providing the Loan Estimate.¹³

In any event, the Bureau has made clear that, for transactions where the application is received prior to August 1, 2015, creditors will still need to follow the current disclosure requirements under Regulations X and Z, and use the existing forms (i.e., GFE, TIL, and HUD-1).¹⁴

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The Rule requires other disclosures besides the Loan Estimate and Closing Disclosure. In addition to the Integrated Disclosures, the Rule also changes some other post-consummation disclosures provided to consumers by creditors and servicers; these are (1) the Escrow Closing Notice¹⁵ and (2) the mortgage servicing transfer and partial payment notices.¹⁶

LOAN ESTIMATE

We will now turn to an overview of the Loan Estimate form, the form that integrates and replaces the existing GFE and the initial TIL for the transactions subject to the Rule.

The creditor is generally required to provide the Loan Estimate within three-business days of the receipt of the consumer's loan application. There are features to this timing requirement that harken back to established timing requirements in the current RESPA and TILA disclosure mandates.

Notice some of the similarities between the Rule's requirements and those of the current initial disclosures:

1. The Loan Estimate must contain a good faith estimate of credit costs and transaction terms.
2. The Loan Estimate must be in writing and contain the information prescribed in the form itself.
3. Delivery must satisfy the timing and method of delivery requirements.
4. Creditors may only use revised or corrected Loan Estimates when specific requirements are met.
5. In certain situations, mortgage brokers may provide a Loan Estimate.¹⁷

Permit me to elucidate these five items in a little more detail, pairing with the foregoing enumeration:

1. **Loan Estimate vis-à-vis GFE costs and terms.** If any information necessary for an accurate disclosure is unknown, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer,

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and use due diligence in obtaining the information.¹⁸

2. **Loan Estimate vis-à-vis completing the form.** The creditor must disclose only the specific information set forth in § 1026.37, which provides the required content of disclosures for certain mortgage transactions.¹⁹
3. **Timing and delivery method.** The creditor is responsible for delivering the Loan Estimate or placing it in the mail no later than the third business day after receiving the application.²⁰
4. **Revised or corrected Loan Estimates.** Creditors generally may not issue revisions to Loan Estimates because they later discover technical errors, miscalculations, or underestimations of charges. Creditors are permitted to issue revised Loan Estimates only in certain situations such as when changed circumstances result in increased charges.²¹
5. **Mortgage brokers providing Loan Estimates.** If a mortgage broker receives a consumer's application, either the creditor or the mortgage broker may provide the Loan Estimate.²²

PAGE BY PAGE

The Loan Estimate consists of three pages. I will provide certain salient features in an outline, page by page, in order to give an understanding of each page's purpose. I will embolden key terms throughout.

PAGE 1: LOAN ESTIMATE

Page 1 includes general information, a **Loan Terms** table with descriptions of applicable information about the loan, a **Projected Payments** table, a **Costs at Closing** table, and a link for consumers to obtain more information about loans secured by real property at a website maintained by the Bureau. It is titled, of course, "Loan Estimate" and is accompanied by the statement "Save this Loan Estimate to compare with your Closing Disclosure."²³

At the top of Page 1 the creditor places its name and address.²⁴ A logo or slogan is permitted, so long as the logo or slogan does not exceed the space provided for that information.²⁵ In the case of multiple creditors, only the name of the creditor completing the Loan Estimate is permitted.²⁶ If a mortgage broker is completing the Loan Estimate, the creditor's name should be used, if known; and, if not known, the subject space is to be left blank.²⁷

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PAGE 2: CLOSING COST DETAILS

Page 2 breaks down into four main categories, each with its own section. I will embolden key terms throughout.

1. A good faith itemization of the **Loan Costs** and **Other Costs** associated with the loan.²⁸
2. A **Calculating Cash to Close** table, showing the consumer how the amount of cash needed at closing is calculated.²⁹
3. An **Adjustable Payment (AP) Table**, for transactions with adjustable monthly payments, with relevant information about how the monthly payments will change.³⁰
4. An **Adjustable Interest Rate (AIR) Table**, for transactions with adjustable interest rates, with relevant information about how the interest rate will change.³¹

Elaborating on these categories, the costs associated with the mortgage transaction are broken down into two general types: Loan Costs and Other Costs. Loan Costs are those costs paid by the consumer to the creditor and third-party providers of services the creditor requires to be obtained by the consumer during the origination of the loan.³² Other Costs include taxes, governmental recording fees, and certain other payments involved in the real estate closing process.³³

Further, items that are a component of title insurance must include the introductory description of Title.³⁴ And, if state law requires additional disclosures, those additional disclosures may be made on a document whose pages are separate from, and not presented as part of, the Loan Estimate.³⁵

PAGE 3: ADDITIONAL INFORMATION ABOUT THE LOAN

Page 3 contains **Contact information**, a **Comparisons** table, an **Other Considerations** table, and, if desired, a **Confirm Receipt** line, essentially a signature statement for the consumer to sign to acknowledge receipt.³⁶

EXEMPTIONS TO THE RULE AND PROHIBITIONS

Many rules have exemptions and prohibitions and the RESPA-TILA Integration is no exception. For instance, there are exceptions to the disclosure requirements for loans secured by a

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timeshare. Although such loans are still subject to the Rule, the Bureau offers “abbreviated timing, delivery, and disclosure obligations” for these loans when consummation occurs within three business days of the application. Specifically, creditors may forego a Loan Estimate and provide only the Closing Disclosure.³⁷ For the most part, the waiting periods and timing requirements applicable to most loans subject to the Rule are inapplicable to loans secured by timeshare interests. Creditors are required to ensure only that the consumer receives the Closing Disclosure no later than consummation.³⁸

The Rule continues the significant prohibition limiting the fees that may be charged prior to disclosure or application. A creditor or other person *may not impose any fee* on a consumer in connection with the consumer’s application for a mortgage transaction until the consumer has received the Loan Estimate and has indicated intent to proceed with the transaction.³⁹ The restriction includes limits on application fees; appraisal fees; underwriting fees; and, other fees imposed on the consumer. Continuing also is the one exception for a *bona fide* and reasonable fee for obtaining a consumer’s credit report.⁴⁰

We are often asked by a client, What does it mean to impose a fee? A fee is imposed if the person requires a consumer to provide a method for payment, even if the payment is not made at that time.⁴¹ There are various scenarios that the Bureau has given that apply. For instance, a creditor or mortgage broker is imposing a fee if it requires the consumer to provide a check to pay for a processing fee before the consumer receives the Loan Estimate - even if the check is not to be cashed until after the Loan Estimate is received and the consumer has indicated the intent to proceed; or, requiring the consumer to provide a credit card number for a processing fee before the consumer receives the Loan Estimate - even if the credit card will not be charged until after the Loan Estimate is received and the consumer has indicated an intent to proceed.⁴²

The intent to proceed with the loan transaction is activated when a consumer indicates intent to proceed with the transaction, specifically, when the consumer communicates, in any manner, that the consumer chooses to proceed after the Loan Estimate has been delivered, unless a particular manner of communication is required by the creditor,⁴³ including oral communication in person immediately upon delivery of the Loan Estimate; and oral communication over the phone, written communication via email, or signing a pre-printed form after receipt of the Loan Estimate. Silence on the part of the consumer does not constitute intent to proceed.⁴⁴

Creditors are not permitted to require additional verifying information other than the six pieces of information that form an application from consumers before providing a Loan Estimate. A creditor or other person may not condition providing the Loan Estimate on a consumer submitting documents verifying information related to the consumer’s mortgage loan application

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before providing the Loan Estimate.⁴⁵ This can get tricky. Two possible scenarios are where a creditor asks for the sale price and address of the property, but does not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the Loan Estimate; and, where a mortgage broker asks for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker does not require the consumer to provide bank statements or similar documentation to support the information orally provided by the consumer before the creditor provides the Loan Estimate.

In the second part of this four-part series on RESPA-TILA Integration, I will provide a broad-based understanding of the Closing Disclosure and also show some principal ways that it is linked seamlessly to the Loan Estimate.

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¹ *Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)*, 78 FR 7973, December 31, 2013

² Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012

³ *Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)*, 12 CFR Parts 1024 and 1026, Proposed rule with request for public comment, Bureau of Consumer Financial Protection, July 9, 2012

⁴ *Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)*, 12 CFR Parts 1024 and 1026, Final rule; official interpretation, Bureau of Consumer Financial Protection, November 20, 2013

⁵ Op. cit. 7

⁶ *TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide*, March 2014

⁷ *TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide*, September 2014, Note: the September guide provides updates to the March guide with respect to information on where to find additional resources on the rule; additional clarification on questions relating to the Loan Estimate and the 7 day waiting period; and, additional clarification on questions relating to Timing for Revisions to Loan Estimate. In this article, I will use the March and September Guides, endeavoring to provide text and citations using the Guides as primary sources.

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⁸ The complete rule and the Official Interpretations are available at:
<http://www.consumerfinance.gov/regulations/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z/>

⁹ Op. cit. 7, 2.1

¹⁰ Idem. 3.1

¹¹ § 1026.19(e)(2)(i)

¹² § 1026.19(e)(2)(ii)

¹³ § 1026.19(e)(2)(iii)

¹⁴ Op. cit. 7, 3.3

¹⁵ § 1026.20(e)

¹⁶ § 1026.39(a) and (d)

¹⁷ Op. cit. 7, 5.1

¹⁸ § 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1)

¹⁹ § 1026.37(a) through (n), as shown in the Bureau's form in appendix H-24. (§ 1026.37(o))

²⁰ § 1026.19(e)(1)(iii)

²¹ § 1026.19(e)(3)(iv)

²² § 1026.19(e)(1)(ii)

²³ § 1026.37(a)(1), (2)

²⁴ § 1026.37(a)(3)

²⁵ § 1026.37(o)(5)(iii)

²⁶ Comment 37(a)(3)-1

²⁷ Comment 37(a)(3)- 2

²⁸ § 1026.37(f) and (g)

²⁹ § 1026.37(h)

³⁰ § 1026.37(i)

³¹ § 1026.37(j)

³² § 1026.37(f)

³³ § 1026.37(g)

³⁴ § 1026.37(f)(2)(i) and (g)(4)(i)

³⁵ Comments 37(f)(6)-1 and 37(g)(8)-1

³⁶ § 1026.37(k), (l), (m), and (n)

³⁷ § 1026.19(e)(1)(iii)(C) and (f)(1)(ii)(B); Comment 19(e)(1)(iii)-4 and Comment 19(f)(1)(ii)-3

³⁸ § 1026.19(f)(1)(ii)(B); Comment 19(f)(1)(iii)-3

³⁹ § 1026.19(e)(2)(i)(A)

⁴⁰ § 1026.19(e)(2)(i)(B); Comment 19(e)(2)(i)(A)-1 through -5 and Comment 19(e)(2)(i)(B)-1

⁴¹ Comment 19(e)(2)(i)(A)-5

⁴² Op. cit. 7, 13.4

⁴³ § 1026.19(e)(2)(i)(A)

⁴⁴ Comment 19(e)(2)(i)(A)-2

⁴⁵ § 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)- 1

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