
2015 TILA-RESPA Compliance

Is Your Business Ready?

White Paper by Easy Soft Legal Software

2015 TILA-RESPA Compliance: Is Your Business Ready?

The long-anticipated Truth-in-Lending (TILA), and Real Estate Settlement Procedures Act (RESPA) changes that were finalized in 2013 go into effect this August. On August 1, 2015 real estate closing documentation requirements will change to consolidate four existing TILA and RESPA forms into just two new integrated forms: the Loan Estimate and the Closing Disclosure forms. Use of these new documents will be required for most real-estate transactions. Failure to use the new forms will put transactions at risk and can lead to severe consequences for the settlement agent or agency that is out of compliance, as well as the lender.

What Changes To Expect

The most noteworthy changes under the new rule come in the form of the integrated disclosure documents. The currently used Early TIL Statement and Good Faith Estimate will be combined into a new Loan Estimate document. The current Final TIL Statement and HUD-1 Settlement Statement will be combined into a new Closing Disclosure Form. Additional changes involve timing requirements, records retention, definition of application, change in variances, itemization of charges, and certain disclosures.

- **Timing Requirements.** Under the new rule, the Loan Estimate must be delivered to the consumer or placed in the mail within three business days of receipt of an application and no less than seven business days before consummation of the transaction. Provision of the Loan Estimate is triggered by the collection of six pieces of information about the consumer by the creditor. The rule also requires that the consumer receive the Closing Disclosure no later than three business days before consummation of the transaction.
- **Records Retention.** The new rules require creditors to retain the Closing Disclosure form for five years after consummation. Other documents, including the Loan Estimate, must be retained for three years.
- **Definition of Application.** Once an application is submitted, a Loan Estimate must be provided to the consumer. The new rule

defines an application as the submission of six pieces of information: (1) the consumer's name, (2) the consumer's income, (3) the consumer's Social Security number to obtain a credit report (or other unique identifier if the consumer has no Social Security number), (4) the property address, (5) an estimate of the value of the property, and (6) the mortgage loan amount sought.

- **Change in Variances.** A change in variances (currently called tolerances) will force more fees into the 0-10% category.
- **Itemization of Charges.** Itemization of individual charges paid by the consumer to each creditor and/or loan originator will now be required, in alphabetical listing, under three main categories.
- **Disclosures of Broker Compensation and Discount Points.** These will now be listed under "Origination Charges" on Page 2 of the Loan Estimate form.

The TILA-RESPA (TRID) rule also put new restrictions on certain activity prior to a consumer's receipt of the Loan Estimate. These activities include:

- Charging the consumer fees before he or she has received the Loan Estimate *and* indicated an interest in proceeding with the transaction.
- Providing the consumer with written estimates of terms or costs before he or she receives the Loan Estimate. If this information is provided prior to receipt of the Loan Estimate, a written statement informing the consumer that the terms and costs may change must accompany it.
- Requiring documentation verifying information about the consumer's application before providing the Loan Estimate.

How These Changes Affect Compliance

On August 1, compliance will require painstakingly precise applications. Not only do the forms change, how they are filled out and used changes too. The old, separate TILA and RESPA forms will not work any more. New, dynamic forms, specific to the consumer will take their place. There will be no margin for error in estimating fees

and little tolerance for error in collecting and providing other information to the consumer. The precision required goes so far as to require alphabetized listings of charges and fees and even specific formatting of the documents, right down to the font used.

Compliance will now be determined based on:

- Whether or not the disclosures were provided on the proper forms (the Loan Estimate and the Closing Disclosure document).
- How the disclosures delivered to the borrower.
- If they given to borrowers within the required timeframe.
- If each disclosure item on the Loan Estimate disclosed was within the "variation" tolerances on the Closing Disclosure form.

Perhaps most intimidating of all is that failure to comply with the new requirements can jeopardize transactions, lead to severe financial penalties for creditors and settlement agents, and opens the door to significantly greater liability for lenders.

Risks Of Non-Compliance

After August 1, mortgage lenders will not accept the old forms and will return to settlement agents any of the new forms that are not filled out properly. Besides the obvious delays to or complete derailment of a transaction that these mistakes entail, there are other consequences for non-compliance.

Some compliance changes remain unaffected by the new rules. They revolve around the 2010 changes to RESPA Regulation X that put settlement agents and agencies at risk for non-compliance. Those five areas of risk are:

1. Being late with initial loan estimates.
2. Providing inaccurate estimated fees.
3. Failure to properly disclose changed fees.
4. Changed circumstance disclosure timing.
5. Failure to provide a full list of settlement services and charges.

These five areas can already lead to borrower remediation if compliance measures are not followed. On August 1, the repercussions for non-compliance in these five areas don't change, but could cost more.

Statutory and civil penalties and new rights for borrowers are the biggest changes, specifically:

- Borrowers will have the right to claim actual damages, statutory damages, court costs, and attorney's fees from lenders.
- Statutory penalties can be as high as \$4,000 for failing to provide certain disclosures like the borrower's interest rate and APR.
- First Tier civil penalties levied by the CFPB of as much as \$5,000, *per day, per violation* are now possible.
- Second Tier civil penalties of up to \$25,000 *per day, per violation* for reckless violations.
- Third Tier civil penalties of up to \$1 million *per day, per violation* for knowing violations.

In addition to penalties and borrower remediation, there are other costs to consider.

- Violations of the Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) rules could arise if there is failure to issue initial or subsequently required Loan Estimates in a timely fashion.
- Investors can now be subject to the same claims brought against the creditor, in some cases. Not only are there monetary risks to these claims, they also damage investor reputations.

Ensure Compliance With Technology

How well a firm was able to comply with Regulation X is a good indicator of how well it will fare under the new TRID changes. Chances are good that agencies are already doing everything they can to remain in compliance on these issues. Now, it's just a matter of adding the new requirements to existing systems and/or procedures. But that is easier said than done for settlement agents who rely on manual and PDF forms. Manual and PDF entries won't work with the new forms.

If there was ever a time to make the switch from manual management of real estate transactions to electronic management, now is the time. These new documentation requirements and procedures present a perfect opportunity to add technology to your real estate closing process. The risks of human error are too great; the penalties too high, and the repercussions too serious to continue to manage the process manually.

As intimidating as this all sounds, technology can help. Rather than

investing in additional labor to meet the new paperwork demands, an investment in real estate closing software can be the better choice. Technology streamlines the closing process and automates many routine data entry points in the transactions, improving productivity and reducing errors. Even more important, software systems can help ensure compliance with the TRID changes.

For agencies currently using real estate closing software to facilitate transactions, it is vitally important that they find out if the software will be updated or upgraded to cover the new requirements. If it won't be, they will need to find a new way of handling real property transactions that ensures compliance.

Easy Soft Guarantees Compliance

Easy Soft is ready for the upcoming TRID requirements. We are already updating our Easy HUD software to a new program called EasyCDF. All current subscribers will receive an automatic upgrade to EasyCDF, which will bring them into compliance with the new integrated disclosure requirements.

All new subscribers will start with EasyCDF. EasyCDF will be available in June, although the new forms won't be accepted until August 1, 2015. In the meantime, settlement agents can test the software with their current transactions to verify compliance, ensuring a smooth changeover to the new forms on August 1.

About Easy Soft: A leading legal software provider for over 30 years, Easy Soft offers specialized software for commercial and residential real estate closings, family law and divorce settlements. Thousands of attorneys and legal professionals nationwide use Easy Soft products to increase their office productivity. For more information and a free trial, visit www.easysoft-usa.com.