

TILA/RESPA Integrated Disclosure (TRID)
Compliance Guide



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Background

Consumer protection laws have been with us for over two generations now. The Truth-in-Lending Act ("TILA") became effective in 1968, while the Real Estate Settlement and Procedures Act ("RESPA") was enacted in 1973. Each has been concerned with informing consumers of how much they pay for their loans, but the approach taken by each in achieving this goal has been very different. TILA has promoted the informed use of consumer credit through disclosures about its costs over the term of the loan and the payback expectations of the lender. RESPA, on the other hand, has addressed the costs the consumer will pay, not over the term of the loan, but on the day of the closing of a real estate-secured loan.

In the 40 plus years that have passed since then, lenders have been required to provide two different sets of disclosures to consumers seeking credit secured by real estate. During that time, Federal regulators have sought to make them clearer, more detailed, and understandable. The "Federal box" of the first TILA disclosure, provided at closing, has been supplemented by those in new formats or provided at the time of application. The HUD-1 Settlement Statement required by RESPA has been joined by a Good Faith Estimate of Settlement Costs, also provided at the time of application. By now the "estimate" has become like something written in stone.

The goal of informing consumers about their loan costs, easily and clearly, has to date remained an elusive one. The complexity of real estate transactions and the interpretations by different regulatory agencies of different rules has only compounded the problem.

The Dodd-Frank Wall Street Reform and Consumer Protection Act became a law in 2012, directing the newly-formed Bureau of Consumer Protection ("CFPB") to integrate these two sets of disclosures. The process initiated then has culminated in what are perhaps the most sweeping changes in consumer protection regulations since TILA and RESPA came into being. This paper summarizes what the new rules are, how the new forms are to be used, and what the prudent banker should be aware of as they go into effect.

What Should you be Doing to Comply?

At this point, you should be well into preparations for the August 1 implementation deadline as the regulatory authorities have stated that there will be no grace period for compliance. What should your preparations include? At a minimum, they should include:

- A review of policies which may need to also be updated
- Revising procedures to ensure that compliance will be maintained after August 1, 2015
- Working with your Loan Operating System ("LOS") vendor or compliance forms service provider
- Ensuring that your service providers, such as closing attorneys or title companies, are also getting prepared
- Ensuring your employees are receiving the training they need on the rules as well as the necessary policy and procedural changes

The following interactive TRID process impact chart highlights a typical mortgage lending process from application through closing and beyond and identifies the various processes, disclosures, and timing requirements that will be impacted by TRID.

TRID LOAN PROCESS IMPACT CHART

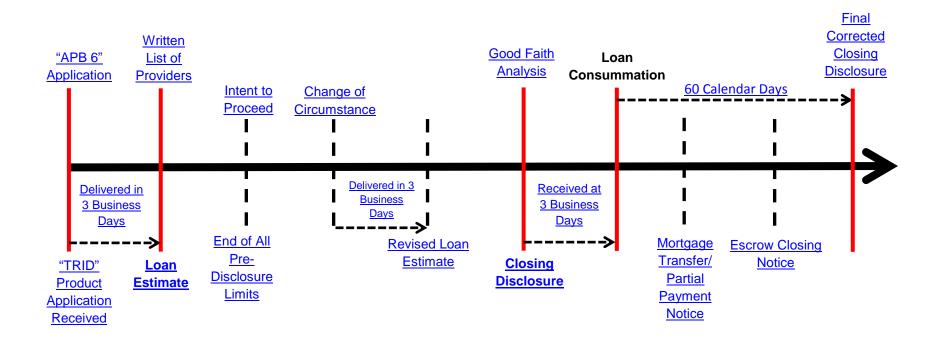
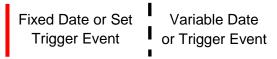


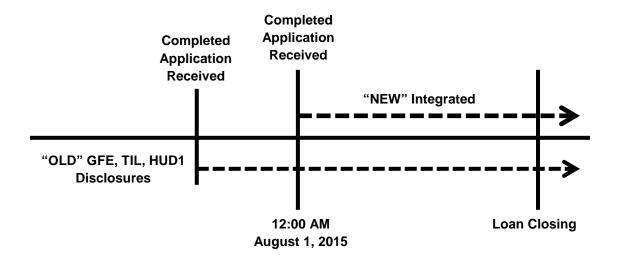
CHART LEGEND



An Introduction to TRID

The CFPB TILA-RESPA Integrated Disclosure Rule ("TRID") covers closed-end mortgage loans only if the application for the loan was submitted to a creditor or mortgage broker on or after August 1, 2015. The rules are explicit that no part of the rules will apply to a loan that was applied for prior to the effective date.

As such, the implementation for TRID is as follows:



**Banks <u>may not use the new disclosures prior to August 1, 2015</u> and must continue using current disclosures for completed applications dated July 31, 2015 or before.

As a result of the integration, Regulation Z now houses the rules, commentary, integrated forms, timing, and related requirements for most closed-end consumer mortgage loan disclosures. The TILA-RESPA Integration Rule also creates additional post-consummation servicing disclosures which must be provided to consumers by creditors or servicers prior to certain events. This includes an Escrow Closing Notice and an additional notice (partial payment) contained within the mortgage servicing transfer notice (Hello/Good-bye Letter).

Not only do the rules improve upon and add to the disclosure environment for banks, but they also modify or, at the very least, provide a stricter view of compliance to certain RESPA items, most specifically:

- The definition of Application
- Pre-disclosure activities
- Identifying a Change of Circumstance
- Variance (formerly Tolerance) limits

TRID also imposes a new standard of what it means to make an estimate disclosure in "Good Faith," which is arguably circular, but never-the-less is still important given the significant compliance and legal repercussions of the integrated disclosures.

The Integrated Disclosures

Other than the format of the Loan Estimate and Closing Disclosure, much of the language and process of the TRID disclosures parallels the current disclosure process for the GFE, eTIL and HUD 1. Additionally, the TRID rules, as set out in the revised Regulation Z, require creditors to:

- 1. Within three business days of application, deliver good faith estimates of credit costs and transaction terms in writing using the proscribed Loan Estimate form.
- 2. Provide a written list of providers if the consumer is permitted to shop for any services.
- 3. Provide the Special Information Book.
- 4. Limit pre-disclosure activities until consumers receive the Loan Estimate, and the bank has documented the intent to proceed.
- 5. Under certain circumstances, deliver a revised Loan Estimate which can be used to determine whether the Loan Estimate was provided in good faith.
- 6. Ensure the consumer receives a final disclosure reflecting the actual terms of the transaction at least three days prior to consummation, using the prescribed Closing Disclosure form.
- 7. Deliver a corrected Closing Disclosure, when required prior to settlement.

Applicability of TRID to My Institution

If you engage in any consumer lending secured by real estate, the likelihood of TRID applying to your institution is about 100 percent. However, not all the disclosures required under the new rules apply to all loan products. The following table offers a breakdown of the applicability of various RESPA/TILA and TRID disclosures as required by product type:

	Į.	Applica	bilit	y of Di	sclos	ures by	Loan P	roduct			
		Loan Estimate	GFE	Initial TIL	Written List	Special Info Booklet	Closing Disclosure	HUD -1	TIL	Mortgage Servicing/ Partial Payment	Escrow Closing Notice
	Real Property Secured	d									
	Closed-End Loans										
	Purchase 1-4 Family	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes
	Refinance 1-4 Family	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes
'n	Home Equity First	Yes	No	No	Yes	Yes*	Yes	No	No	Yes	Yes
ANS	Home Equity Second	Yes	No	No	Yes	No	Yes	No	No	Yes	No
LO	Construction to Perm	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes
TRID LOANS	Vacant Land	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes
F	25 + Acres	Yes	No	No	Yes	Yes*	Yes	No	No	Yes	Yes
	Temporary Financing	Yes	No	No	Yes	No	Yes	No	No	Yes	Yes
	Time-Share Secured	Yes	No	No	Yes	Yes	Yes	No	No	Yes	Yes
	Reverse Mortgage	No	Yes	Yes	Yes	No	No	Yes	Yes	No	No
	Open-End Loans:										
	HELOC	No	No	Yes	No	Yes	No	No	Yes	No	No
۷	Reverse Mortgage	No	No	Yes	No	No	No	No	Yes	No	No
	No Real Property										
RESPA/TIL	Chattel-Dwelling: mobile homes, boats, trailers as residences.	No	No	No	No	No	No	No	Yes	No	No
	Isolated Exceptions										
	Non "creditor" Financial Institutions	No	Yes	No	Yes	No	No	Yes	No	No	No
	Housing Assistance Loans	No	No	Yes	No	No	No	No	Yes	No	No

^{*}If for the purpose of purchasing 1-4 family residence

Small Creditor Exception

It is important to note that the integrated disclosure rules do not apply to institutions that do not meet the definition of "creditor" under Regulation Z. Institutions that originate five or fewer dwelling secured consumer loans, or 25 or fewer secured and unsecured consumer loans per year do not qualify as "creditors" under Regulation Z, for as long as they are below the threshold. However, even if your organization is not covered by the TRID rules, because it is not considered to be a creditor under Regulation Z, it may still have to make disclosures required by RESPA.

Banks with limited consumer lending should carefully consider the decision to avoid the integrated disclosures under this exception. While it is easier in the short term to continue using the system currently in place for the few loans originated each year, it puts the bank at risk of being unprepared if the five loan threshold is exceeded. Regulation Z and the integrated disclosure requirements do not have any grace period for compliance. The bank must meet the integrated disclosure requirements immediately on loan

number six. Institutions should also consider their form vendors and third-party service providers who may phase out, or stop maintaining the necessary documents or products.

Delivered or Received

Throughout the requirements related to the disclosures, TRID categorizes the bank's timing requirements for disclosures in relation to the timeframe within which they must be **delivered** to the consumer, or the timeframe for which they must be **received** by the consumer.

	TRID Disclosure Terminology				
Delivered/Delivery	The date the completed disclosure must leave the bank's possession without consideration of the method of disclosure and when it will actually reach the customer.				
Received/Receipt	The date the consumer must have actual possession of the disclosure. There is a presumption associated with receipt of disclosures sent by mail (or otherwise not provided in person or delivered with strict compliance to E-Sign*) that the consumer will have actual possession of the disclosure three days after it is placed in the mail.				

^{*}The Official Interpretation of Regulation Z indicates that disclosures provided electronically (for instance via e-mail), but not in accordance with E-Sign, do not constitute delivery or receipt for compliance with TRID timing requirements.

Business Day

In addition to the TRID terminology relative to delivery and receipt, the rules also specify the timeframes of making the various disclosures using the term **Business Day**. However, the definition of business day changes depending on which TRID disclosure a bank is making. As such, the two definitions are as follows:

- 1. Business Day is any day an office of the bank is opened to carry out substantially all of its functions. This may be Monday through Friday except for holidays, or, for some institutions, this could include Sundays and some holidays.
- 2. Business Day is any calendar day except Sundays and legal holidays.

What should appear obvious is that the first definition is essentially a "Banking Day" and the second definition is the same as a "Postal Day". For most institutions, this creates a confusing standard. For the sake of clarity, the following chart should help banks to identify the timing requirements of a TRID disclosure.

TRID Disclosure Timing Requirements						
	Loan Estimate	List of Providers	Pre Disclosure Limits*	Revised Loan Estimate**	Closing Disclosure	Escrow Closing
Delivered	X	X		X		
Received			X	X	X	X
Business Day same as Postal Day			x	x	x	х
Business Day same as Banking Day	Х	х		x		

^{*}Some of the Pre-Disclosure Limits expire 3 postal days after the Loan Estimate is received

Record Keeping Requirements of TRID

There are three standards for record keeping under Regulation Z that may apply to closed-end consumer loans secured by real property. The basic requirements are indicated below.

Integrated Disclosure Record Retention Requirements				
Scenario	Retention From Latest Date	Retention Length		
All required disclosures for Reg Z <u>other than</u> the Loan Estimate and Closing Disclosure	Disclosure required to be madeAction required to be taken	2 Years		
All required disclosures of the Loan Estimate provisions	 Consummation Disclosure required to be made Action required to be taken 	3 Years		
All Closing Disclosures and all documents related to such disclosure	 Consummation 	5 Years*		

^{*}If loan is purchased or transferred retention does not extend beyond 5 years, but documentation must be transferred

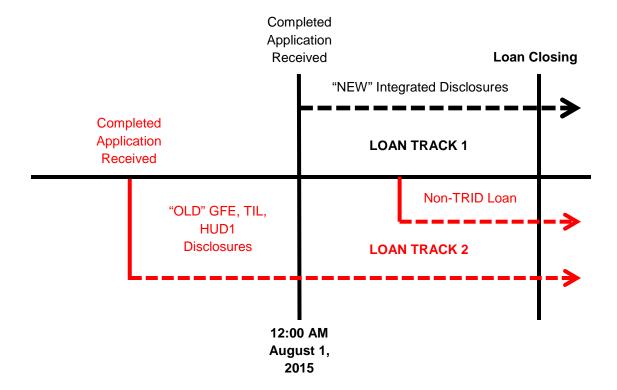
How do Banks Comply with TRID?

First and foremost, banks need to start working with the vendors responsible for helping it implement the integrated disclosures. This would include the bank's Core System, LOS, and any separate form or online application systems/vendors. At this time, many of the well-known vendors for these systems are anticipating mid-summer roll out, which means that the bank may not receive, and therefore, not be able to test the integrated forms it is expected to use on August 1 until June or July.

Secondly, the bank should be addressing its policies and procedures internally to gear them towards compliance with TRID. While on the surface, the rules do not seem that challenging; the fact of the matter is that implementing the integrated disclosures is not so simple. In many cases, the bank will have to totally deconstruct its policies and processes and then reconstruct them entirely to bring them into compliance. Much of this deconstruction and reconstruction will be tied back to the timing requirements of the integrated disclosures, but also in large part to the stricter interpretations provided in the rules.

One practical procedural challenge for banks implementing the new integrated disclosures is the fact that the Loan Estimate and Closing Disclosure are not simply replacing and eliminating the GFE/ HUD-1 and TIL Disclosures, but will be coexisting with the very disclosures they are meant to replace for quite some time after the effective date. Until the bank is able to phase-out all of the applications subject to current RESPA and TILA, the bank should consider a way to handle the two separate and distinct tracks that the effective date of the rules create. The bank will also need to be aware of these two tracks as they relate to the updates of the Core, LOS or application systems. These systems will need to be able to produce both sets of forms concurrently until applications received on or before July 31 work their way towards completion either through consummation, denial, or being withdrawn. The bank's system will also need to continue to produce TILA and GFE forms for any TRID exclusions going forward for loan products which do not require the TRID disclosures.

^{**}The revised Loan Estimate needs to be delivered 3 Banking Days from a chance of circumstance, but received at least 1 Postal Day before the customer receives the Closing Disclosure



Lastly, as with anything that requires updating policies and procedures, the bank will also need to identify and train all impacted employees. This training should at least include the following:

- Mortgage Loan Originators ("MLO")
- Loan Underwriters
- Loan administrators and processors
- Loan closers

In certain circumstances, the bank may need to ensure that employees are trained multiple times to ensure that they fully understand the impact of TRID on the role or function of the particular employee and on the lending process.

Complete Application

Will This Apply to My Institution?

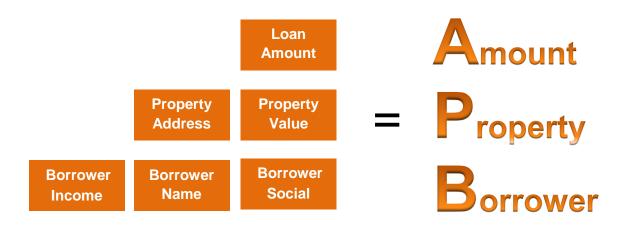
Yes. If your Institution makes closed-end consumer loans secured by real property, then (starting August 1, 2015) you will be subject to the TRID definition of a completed application.

Is This a Change?

Sort of. The rules themselves have not really changed, per se, but the definition of a completed application has become more stringent.

Basic Requirements

For closed-end consumer loans secured by real property, creditors must treat an application as complete, and start the three-day disclosure clock, when the consumer submits six pieces of information, henceforth referred to as the "APB 6," orally, in writing, or both in combination:



This may seem very familiar to anyone currently providing a GFE. These are the same six items that make up an application under RESPA today, except that post TRID creditors no longer have the catch-all, "any other information deemed necessary by the loan originator" which is used to provide some flexibility for banks regarding partial or incomplete applications.

It is important to understand that the CFPB does not state that a bank has to obtain these 6 pieces of information first or in any particular order, or that a bank cannot obtain other information in order to consider an application complete. Rather, the CFPB is stating that once a bank has collected the "APB 6", it can no longer consider the application incomplete.

Given the clear disclosure triggering effect of the "APB 6" items, some banks, where partial or incomplete applications are a common occurrence, may want to reconfigure their application process so that easy-to-provide information, such as a social security number is the *last* APB 6 application item received. This is especially true if your MLOs typically receive application information in an interview style. However, one caveat to reconfiguring the application process to avoid obtaining the sixth piece too soon, is that it cannot be reconfigured so that the sixth piece is not obtained too late in the process either. The reasons for this are two-fold and both directly relate to Fair Lending implications. The first is that the bank may not want to provide their MLOs with time to collect potentially derogatory information and then discourage an applicant from providing a completed application. The second is that a bank which overtly extends its application data collection process for the primary purpose of avoiding the requirement to provide a Loan Estimate would not be necessarily seen as acting in the best interest of the consumer. Unfortunately, the CFPB has not provided any clear guidance on when collecting information would be considered too late, so a bank reconfiguring its application data collection process should tread carefully.

Timing

Identifying the "application date," and when the bank "receives" the six pieces of information, is critical to the foundation of the rest of the bank's TRID compliance. The receipt of a completed application is the key trigger date for the first of the integrated disclosures, the Loan Estimate.

As in the current disclosure environment, banks would not be required to provide the Loan Estimate, the written list of providers or the special information booklet after receiving a completed application if the bank denies the loan or the application is withdrawn by the applicant within three days of receipt. If the consumer amends the application and the bank determines that the amended application can proceed, it must deliver or mail the Loan Estimate within three business days of receiving the amended application.

Compliance Challenge(s)

For applications provided electronically, the bank needs to ensure a process where the application date is consistent with the bank's hours, as receiving the timing requirements for providing the Loan Estimate start when the bank receives a completed application. Most online application portals are open 24 hours a day, but the bank may only be open to actually receive these applications Monday through Friday from 9am to 5pm. This creates a problem for timely provision of the Loan Estimate in two ways. First, the bank's definition of "business day" may be altered to the more inclusive postal definition. Secondly, the bank may already be one "business" day into the disclosure period depending on when the completed application is received, otherwise known as "Day 0." A similar situation can also be created with in person applications where the borrower completes the physical paper application at home subsequent to a brief in person interview with an MLO.

A bank that does not correctly identify when it has received an "APB 6" completed application (Day 0) runs the risk of making a Loan Estimate disclosure outside of the three *business day* timeframe. This could conceivably create a "zero dollar" Loan Estimate. While zero dollar disclosures have always been the stuff of legend in current RESPA, the additional complexity of disclosures provided in good faith under TRID make the possibility of zero dollar Loan Estimates much more likely. A zero dollar Loan Estimate means that the bank would be responsible for all of the loan costs at closing which are subject to variance on the Closing Disclosure.

What Should I be Doing to Comply?

The first thing the bank should do is to review how consumers are allowed to provide applications and the impact it will have on receiving completed applications. As noted, one of the major changes that must be addressed immediately is that the three business day disclosure period begins as soon as the consumer provides the sixth item of information to the bank. Therefore, online applications or applications consumers return to the bank may already be a day into the disclosure period depending on how the bank processes such applications.

Once a bank has reviewed its application process, it should update its policy and procedures as necessary. Many banks, for a myriad of different reasons, have not formally documented an application policy. While there is certainly no regulatory requirement to do so, the TRID rules draw an even more distinct line around the technical definition of a completed application for RESPA purposes relative to the broader definition of completed applications as allowed by the Equal Credit Opportunity Act ("ECOA"), as implemented by Regulation B. As such, we believe it is more prudent than ever for a bank to create a formal application policy and identify the compliance requirements of both TRID and Regulation B.

Finally, the bank should ensure that all employees who are involved in the application process receive training. The training must include the process of obtaining a completed application, documenting the date of the application, and receiving a completed application. It is important to remember that depending on how your bank receives completed applications, Branch staff may also need to be trained on a process for when consumers return paper applications in person, or when one is received in the mail.

Loan Estimate

Will This Apply to My Institution?

Yes. If your bank makes closed-end consumer loans secured by real property, the Loan Estimate is going to apply to your institution, unless, of course, your bank makes less than five closed-end consumer loans secured by real property in a year, or specializes exclusively in reverse mortgages; in those cases, it would not apply.

Is This a Change?

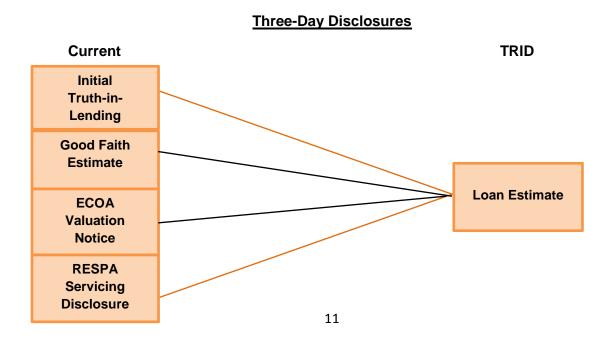
Yes, without a doubt. This is a completely revised disclosure format that the bank will have to use for all closed-end consumer loans secured by real property (except reverse mortgages) that are applied for on or after August 1, 2015, and are not denied or withdrawn within three business days from the receipt of the completed application.

Basic Requirements

For <u>TRID</u> "Track 1" loans, creditors must provide estimates of credit costs and transaction terms in good faith using the new Loan Estimate. The Loan Estimate integrates and replaces the Initial (or Early/Estimated) Truth in Lending disclosure and the GFE, and like those disclosures, must be mailed or delivered no later than three business days after the application is received. It is important to note that the new Loan Estimate is still meant to be provided to borrowers in good faith, meaning that the costs and terms on the Loan Estimate should be reasonably accurate and within allowable variances (replaces the old tolerances). In addition, just like the old GFE, the fees on the new Loan Estimate cannot be padded on the high side to avoid a variance issue and still be considered made in good faith.

As alluded to in the introduction, the CFPB designed the Loan Estimate "to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage loan for which they are applying." With that in mind, the new Loan Estimate isn't merely a combination of the Initial TIL and GFE disclosures, it also incorporates the ECOA Valuation Notice and the RESPA Servicing Notice.

That's correct! The single Loan Estimate is actually four separate disclosures integrated into one.



The Loan Estimate Layout

The Loan Estimate is a three page disclosure found in <u>Appendix H-24</u> of Regulation Z. When preparing for the new disclosures, the CFPB attempted to address many of the issues banks experienced (and continue to experience) completing the GFE, by providing detailed instructions which banks may rely on when completing each line of the Loan Estimate form. These instructions were taken directly from the Final Rule and the Official Interpretations.

	General Instructions for Completion of the Loan Estimate			
	General Information:			
Page 1:	 Loan Terms Table – loan amount, interest rate, monthly principal and interest, and prepayment penalty and balloon payment, if any Projected Payments Table – an expanding table that can show up to four separate periodic payments or range of payments, together with an estimate of taxes, insurance, and assessments as well as the payments to be made with escrow account funds Costs at Closing Estimated closing costs Cash to close CFPB website Link 			
	Closing Cost Details:			
Page 2:	 An estimate made in good faith of: Loan costs – a breakdown of Origination Charges, services consumer cannot shop for, and services consumers can shop for. "Points" are only fees that actually buy down the loan. Other costs – Taxes and Other government Fees, Prepaid, and initial Escrow Payment (use \$0 if none). Cash to close table Adjustable payment table – for mortgages with adjustable payments* Adjustable interest rate table – for mortgages with adjustable interest* *Because the form is dynamic, these tables should not appear when the mortgage does not have the feature. 			
	Additional Information:			
Page 3:	 Contact information – required for both creditor and mortgage broker (if any) Comparison Table includes: 			
	 Annual Percentage Rate ("APR") Total Interest Percentage ("TIP")* calculation required by Dodd-Frank 			

- Other considerations providing the consumer with a copy of any appraisal obtained, whether or not the loan can be assumed, whether or not the bank will service the loan, and the requirement to obtain homeowner's insurance.
- Signature statement

*The Total Interest Percentage or "TIP" is the total amount of interest a consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended. For example, if a consumer pays \$50,000 in interest over the life of a \$100,000 loan, the TIP is 50%. The new rules contain additional information for calculating the total interest paid by the consumer during Adjustable Rate or Negative Am transactions.

Just as it was with the GFE, banks are required to provide accurate disclosures of all of the information at the time the Loan Estimate is provided. The expectation is that banks will work closely with service providers and, in most situations, should be able to determine the actual costs and fees. In the event that the bank does not have the information necessary to provide an accurate disclosure it must:

- 1. Make the disclosure on the best information reasonably available at the time
- 2. Use due diligence to obtain the information

Mortgage Brokers and the Loan Estimate

Much like in the current rules, when a consumer submits an application through a mortgage broker who is not the loan originator (where loan originator is the term for Bank who gives the consumer the money) either the creditor or the mortgage broker may provide the Loan Estimate to the consumer. If the mortgage broker provides the Loan Estimate, the broker is also required to comply with all of the other rules related to the Loan Estimate, including fee restrictions, providing revised loan estimates only as permitted, and record retention. However, the new rules maintain that no matter who provides the disclosures, the creditor is ultimately responsible for the disclosures being compliant.

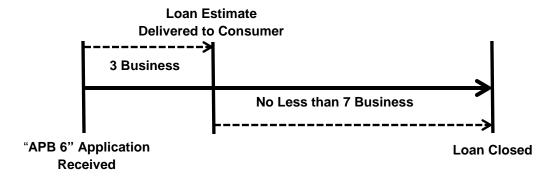
Put simply, a creditor who receives completed applications through a mortgage broker should be aware that as the loan originator, the creditor assumes all compliance liability for the actions of the mortgage broker relative to the Loan Estimate. That means that any disclosure errors, disclosure delays or other compliance violations caused or experienced by the Mortgage Broker will be directly experienced by the creditor as well. This is due in large part to the fact that the TRID rules create an *active* responsibility on the part of the creditor/loan originator to ensure that the Loan Estimate is provided in accordance with the rules.

Timing

The Loan Estimate should be delivered within three business days of receiving an "APB 6" completed application for all applicable loan products.

Once the disclosure has been provided, the bank must wait at least seven business days before consummating the loan. The consumer can waive the seven-day waiting period for a bona fide financial

emergency. An example of such an emergency would be the imminent foreclosure sale of the consumer's home, unless the loan proceeds are made available to the consumer during the waiting period.



Compliance Challenge(s)

At this point, most banks rely almost exclusively on a third party vendor to ensure that they are generating and using compliant disclosures. The Loan Estimate is certainly not likely to be an exception to that rule of thumb; however, at this point many of the large industry vendors have yet to provide compliant documents for testing by banks. This means the biggest compliance challenge for banks relative to the Loan Estimate is not knowing whether they will have a document with which they are able to test and train employees in sufficient time before the August 1, 2015 effective date of the rules.

Additionally, ensuring that the bank continues to provide the Loan Estimate in good faith is certainly something that will pose a significant problem for many banks. The requirement for the Loan Estimate being provided in good faith relative to all the variables that go into making the Loan Estimate in the first place is a daunting challenge. As detailed in the good faith analysis, the bank must constantly review costs and fees provided to consumers on the Loan Estimate against the actual fees charged on the Closing Disclosure. Given that these costs can vary for a variety of factors, a compliant bank will find it necessary to conduct thorough and routine analysis of the Loan Estimates that it has provided to consumers.

What Should I be Doing to Comply?

The bank should first consider the changes that will need to be made in systems and software. For core service providers and other vendors, it needs to know when these new changes are likely to be rolled out and when loan forms will be updated. The bank should already have made calls to its various outside vendors to establish this information, but if for some reason the bank is yet to make such calls, it should be doing so immediately and not merely relying on the fact that the vendor has to be compliant before the effective date.

The next thing the bank should do while it waits for the forms to be provided by its vendor is create a plan for testing the new updates and verifying that new disclosures are filling in and printing correctly once they are available. The timeline for this testing is already truncated so the bank should take a strategic approach to the testing process. RSK recommends that banks start with the new calculations on the Loan Estimate and ensure that the cash to close and Total Interest Percentage (TIP) are calculating correctly. After that, the bank needs to begin testing the "data pull" elements of the Loan Estimate, such as the borrower information, costs, fees and percentage rates that should generate routinely from inputs made directly to the Core or LOS. Any glitches or issues found during testing should immediately be reported to the appropriate vendor and tested again.

One other thing the bank may want to consider when testing the Loan Estimate is whether it is accurate across all loan products offered by the bank. In this instance, product type is not exclusive to the general products like fixed rate mortgages, but rather the more specific products like:

- Cash out refinances
- 1st Lien Home equity loans
- Loans without closing costs
- Loans with certain fees waived
- Any bank specific loan products

The bank should also update policies and procedures for compliance with the Loan Estimate. RSK specifically recommends that the bank ensure that the policy and procedures include reference to an analysis of making the disclosures in good faith relative to providing the Loan Estimate. The bank must update its workflows and processes to address the new requirements, including the bank's timing requirements for "delivering" Loan Estimates. The bank's process should address documenting delivery of disclosures provided in person and those made by being placed in the mail. If the bank provides consumer disclosures in accordance to E-Sign, the bank should also take steps to ensure that the Loan Estimate is reflected in the E-Sign policy and that sufficient procedures exist to ensure that consumers are provided the Loan Estimate in accordance with E-Sign and the timing requirements of TRID.

Lastly, the bank should ensure that appropriate staff is being trained on how to handle <u>"Track 2" non-TRID</u> loans that may still be working their way through the systems after the effective date of August 1, 2015. In addition to this training, the appropriate staff should be trained on the substantive changes of the Loan Estimate, including but not limited to ensuring that the four disclosures being integrated into the Loan Estimate are not also still being provided to consumers.

Written List of Providers

Will This Apply to My Institution?

This will apply only if your institution permits consumers to shop for a settlement service in conjunction with a closed-end loan secured by real property.

Is This a Change?

Big time, but not quite as expected. Essentially under TRID the service being provided is no longer as significant as who provides the service. As such, this change will have a major impact on whether there is allowable variance in the cost provided on the Loan Estimate or not. This significant departure in how services impact the Loan Estimate is masked by the fact that banks have always been required to provide a written list of providers for services that could be shopped for under the rules; however, enforcement of the rule was inconsistent. Under the TRID rules, enforcement will be much more consistent and the provider list is now a critical factor for compliance with the Loan Estimate disclosure and the comparison of costs to the Closing Disclosure.

Basic Requirements

When an institution allows a consumer to shop for a settlement service for a closed-end loan secured by real property, the institution must: 1) identify the service(s) that the consumer is permitted to shop for on the Loan Estimate; and 2) provide a written list identifying at least one available provider for each service. The Written List must be provided separately from the Loan Estimate, but within the same timeframe.

Written List Of Providers And Loan Estimate Interaction					
Is the consumer permitted to shop for any services?	Written List of Providers Loan Estimate				
Yes	 Required Identifying at least 1 available provider for each service identified in Section C of the cost table. 	 List the services the customer is permitted to shop for on Page 2-Loan Cost Table: Section C. Services You Can Shop For List all other services the bank requires in the Loan Cost Table: B. Services You Cannot Shop For 			
No	No service provider list requirement	 List all services the bank requires on the Loan Cost Table: Section B. Services You Cannot Shop For 			

The grouping of service charges into only two categories is an important TRID change impacting the Loan Estimate and distinguishing it from the GFE "Block" method. Moreover, knowing whether a service can be shopped for and whether the service provider selected is from the bank's written list will have a direct impact on the amount of variance between the Loan Estimate and eventual Closing Disclosure.

	Service providers				
	RESPA Tolerance	V. TRID Tole	erance		
	Services	Unlimited Tolerance	10% Tolerance	0% Tolerance	
RESPA	Shopped	Χ			
CEE	Can Shop, but Used provider		X		
GFE Cannot Shop			X		
	Services	Changes Permitted	10% Variance	No Variance (0% Variance)	
TRID	Shopped	X			
16	Can Shop, but used Provider		X		
LE	Cannot Shop			X	

Written List of Providers Disclosure

Creditors that permit consumers to shop for any settlement service must:

- 1. Permit the consumer to shop, which means allowing the consumer to choose the provider, subject only to the bank's reasonable standard for that service.
- 2. Disclose the service(s) for which the consumer may shop on the Loan Estimate
- 3. Provide a written list of providers, which must include at least one provider for each service the consumer is permitted to shop for on the Loan Estimate.
- 4. Identify available providers:
 - a. Identify: the bank must provide sufficient information to contact the provider. This generally includes, name, address and phone number
 - b. Available: Providers on the list must be open for business and provide service to the consumer/property location.
- 5. Include a statement that the consumer may choose a different provider.

Creditors are permitted, but are not required to include the following on the Written List:

- Non-endorsement- A statement that listing a service provider does not constitute an endorsement
 of the services.
- 2. Service providers the consumer cannot shop for Must be clearly and conspicuously distinct from other services.

The Written List is considered a referral whether the consumer uses the provider or not. Banks must provide an affiliate provider notice for any affiliates on the list and the notice must be signed.

In contrast to the requirements of the service provider list, which is hidden in a single line in the instructions to the GFE, the Written List is a prominent TRID requirement. Banks can rely on the model form found in Appendix H-27 (A), (B), (C) Mortgage Loan Transaction—Written List of Providers, for template and example forms.

Timing

The written list of providers is subject to the same timing requirement as the Loan Estimate. The written list must be delivered or placed in the mail no later than three business days after the bank receives an "APB 6" completed application.

Compliance Challenge(s)

In the words of Shakespeare, the compliance challenge is whether banks allow their borrower "to shop or not to shop?" Under TRID, not allowing a customer to shop (and subsequently not needing to provide a written list of providers) comes with a 0% Variance requirement which is significantly different than the 10% Tolerance RESPA allowed for many of those same services. As a result, banks are faced with the decision to either let certain required services be shopped for and give the consumer the written list of providers, or not allow the customers to shop for those services and essentially bind themselves to the costs on the Loan Estimate until the loan closes, barring an acceptable change in circumstance. For example, a bank that doesn't allow a borrower to shop for an Appraiser (and realistically how could it) would be bound to the cost of an appraisal within three business days of receiving an application.

Additionally, while it may seem like an easy choice to let borrowers simply shop for their own services, that means the bank must disclose a written list of at least one service provider per service that can be shopped for. Moreover, the bank would then need to have an auditable process that would ensure the

bank can identify qualified providers for their list as well as a process to manage that list of qualified providers in such a way that it would not involve potential violations of Section 8 rules of RESPA.

What Should I be Doing to Comply?

The first thing a bank should be doing to comply with these rules is identifying which services the bank currently will allow a borrower to shop for, and which ones it will not allow the borrower to shop for and whether it wants to make any changes to that process. Regardless if the bank wants to make a change or not, compliance with the rule will necessitate some additional changes.

If a service is to be shopped for, the bank should create a formal process for vetting and selecting providers for its list. The bank is only required to provide the name of one service provider per required service so a strict vetting process may be in the Bank's best interest. In addition to establishing a process for vetting and selecting providers, the bank must create a process to ensure that, on an ongoing basis, the providers on its list are qualified to perform the service. Lastly, the bank should also ensure that its service provider list is created in such a way that no improprieties or possible preferences would be given to providers that may have an affiliation with the institution or may call into question the integrity of the vetting process – not to mention service providers are still prohibited from providing perks, kickbacks or other below board activities per RESPA section 8 so the bank will need to ensure that the vetting and selection process is not influenced by such activities.

Alternatively, if the bank chooses to continue to not allow a borrower to shop for a service, a process must be established which will guarantee that the cost for the service will remain unchanged from Loan Estimate through loan closing with limited exception. For certain services such as flood determinations or credit reports that are currently not shopped for, and typically do not cost a lot, this may not be an issue, but for other services such as appraisals which are rarely shopped for, this may be a significant issue. This process for establishing cost controls should also include whether different products will receive different cost estimates and what criteria will be used to establish any differences in costs by product. Furthermore, the bank should ensure that it has established an effective line of communication between itself and the service provider should the service provider wish to change its own costs by choice or by circumstance unilaterally. It is certainly in the bank's best interest to contact the providers of services which currently cannot be shopped for and have a real dialogue about how best to establish a fixed cost structure for the bank.

Lastly, as with all compliance changes, the right employees should be trained on how the changes will impact their job function.

Limits on Pre-Disclosure Activities

Will This Apply to My Institution?

This will apply only if your institution imposes and collects fees at application, discloses estimates of information about loans informally, or requires verification of application data at the time an application is taken.

Is This a Change?

It certainly is. Under the old way of doing things, the bank was allowed to collect certain fees, like an application fee at the time it received an application. Under the TRID rules, this type of activity is expressly prohibited.

Basic Requirements

The TILA-RESPA rules addressing pre-disclosure activities restrict certain actions by creditors and any other person for closed-end consumer loans secured by real property until the consumer has reached specific milestones related to the Loan Estimate.

Pre-Disclosure Activity Limitations					
Prohibited Activity	The Creditor or any other person	Disclosure Milestone			
Imposition of fees*	May not impose a fee on a consumer in connection with the consumer's application for a mortgage transaction** **Exception – a bona fide and reasonable fee for obtaining the consumer's credit report.	 Prohibited before the consumer receives the Loan Estimate Indicated to the creditor an intent to proceed with the transaction described by those disclosures. 			
Written information provided to consumer	 That provides any written estimate of terms or costs specific to a consumer must include "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan" in the center with at least 12-point font. Written estimates cannot include headings, content, and format that resemble the Loan Estimate or Closing Disclosure. 	Required until the consumer receives the Loan Estimate.			
Verification of information	Shall not require a consumer to submit documents verifying information related to the consumer's application.	Until the Loan Estimate is provided.			

^{*}A fee is imposed at the time a consumer is required to provide a method for payment, even if the payment is not made until after the Loan Estimate is received and the consumer provides intent to proceed.

Intent to Proceed

On or after the date a consumer **receives** the Loan Estimate, the consumer may indicate intent to proceed with the disclosed transaction to the creditor. Consumers are permitted to use any method of communication, unless the bank requires a specific method. To satisfy recordkeeping requirements, the creditor must document the consumer's communication of intent.

Generally satisfactory indications of a consumer's intent to proceed include communicating:

- Verbal Intent, in person at the time the initial disclosures are provided.
- Over the phone, by e-mail, or by signing a preprinted form, so long as it is after the consumer receives the initial disclosures.

A consumer's silence does not communicate the intent to proceed, as it cannot be documented satisfactorily. For example, a bank disclosed as part of the initial disclosures that to avoid delays in the mortgage process, the bank will move forward with the process and order/charge for the appraisal for customers that do not respond within a given timeframe. Under TRID, the appraisal fee would be improperly imposed on the consumer because the borrower did not take action to demonstrate their intent to move forward with this process.

Timing

A consumer cannot notify the creditor of their intent to proceed without first having **received** the Loan Estimate, but should in general also notify the creditor no later than 10 business days after receiving the Loan Estimate.

Compliance Challenge(s)

The biggest compliance challenge with respect to the limits on pre-disclosure activity is determining when the bank can conduct any of the restricted activity. As with most things in TRID, the triggering event is related to either the delivery or receipt of some information or a disclosure, but which activity (delivery or receipt) takes precedence is inconsistent across the various limited activities.

What Should I be Doing to Comply?

The easiest thing to do to comply is to determine whether the bank is actually engaging in any of the predisclosure activities which are limited under TRID. For example, many banks charge an application fee, which they would be unable to collect until the borrower has provided the bank with a clear intent to proceed. If the bank engages in any of these limited activities, such as charging an application fee, it would then be recommended that the bank revise the policy and procedures to reflect the limits of the new rules.

The bank should also set forth a clear policy regarding the Intent to Proceed from customers. The focus of the policy should be on two key questions:

- 1. What are the acceptable forms of disclosure of intent to proceed?
- 2. How will the bank document the intent to proceed?

Additionally, the bank should review and possibly update its loan pipeline or tracking process to ensure that the necessary milestones are met before engaging in a limited pre-disclosure activity. Lastly, the bank should provide training to its MLOs as well as Loan Administrators on the exact activities which are prohibited under TRID to ensure compliance.

Revised Loan Estimate

Will This Apply to My Institution?

That depends. Is your bank comfortable with making a disclosure of estimated costs three business days into the lending process and then being bound by those estimates until the loan closes? If the bank is comfortable, then revised loan estimates are not your primary concern. If the bank, like most banks, is not comfortable with being fixed in to costs so early in the process then the rules on providing revised Loan Estimates are of material importance.

Is This a Change?

The answer is yes, but not quite as expected. The TRID rules surrounding the revised loan estimate are similar to the RESPA rules, but taken at face value, they appear a lot more restrictive. This is to say that

this is a material change for institutions that played fast and loose with the revised GFE, mailing them out when even minor changes occurred during the loan underwriting process. However, for institutions which were conservative in their approach to issuing a revised GFE, the revised Loan Estimate is not that much different.

Basic Requirements

As part of initial disclosures, banks are required to provide an accurate Loan Estimate which will be compared to the fees actually charged to the consumer on the Closing Disclosure as part of the good faith determination.

For good faith determinations, creditors are permitted to rely on a revised estimate of a charge, rather than the charge on the original Loan Estimate when:

- 1. The change is due to one of the six reasons for revision provided under TRID
- 2. The increased fee was caused by the reason for revision
- 3. A revised Loan Estimate is delivered to the consumer within three <u>business days</u> of receiving information sufficient to establish the reason for revision.

Because the original Loan Estimate must be accurate, banks are not permitted to rely on revisions to the Loan Estimate because of technical errors, miscalculations, or underestimations of charges. Additionally, since banks are not *required* to collect all six pieces of information that constitute an application ("APB 6") before providing the Loan Estimate, it is the presumption of the authorities that the act of providing the Loan Estimate is in itself recognition of a completed application. As a result, for purposes of determining whether an estimate is provided in good faith, the bank cannot rely on the collection of any one of the "APB 6" items after disclosure as a changed circumstance.

Changed Circumstance

Within TRID, Changed Circumstances are defined as:

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

Reasons for revision

The reasons for revision to a Loan Estimate are largely similar to RESPA's changed circumstances for issuing a revised GFE. Under TRID the rules break down into six acceptable reasons for revision.

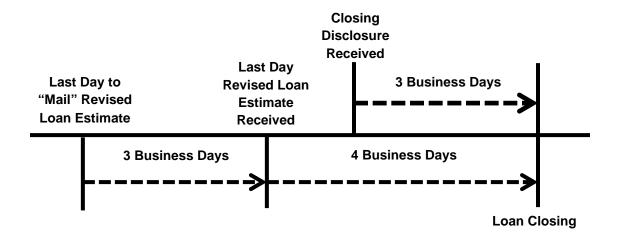
Loan Estimate Revision Reasons			
Cause of Revision	Determination of reasonableness		
Changed Circumstance Related to settlement charges	Change causes the estimated charges to increase beyond the variances permitted under TRID.		
Changed Circumstance impacting the consumer's Eligibility	Make the consumer ineligible for the charges previously disclosed because of creditworthiness or collateral value.		

Customer Requested Revisions	The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.		
Rate Lock	The points or lender credits change because the interest rate was not locked when the Loan Estimate was provided.		
Loan Estimate Expiration	The consumer indicates intent to proceed with the transaction more than ten <i>business days</i> after the Loan Estimate is <i>delivered</i> or placed in the mail.		
Delayed Settlement for Construction Loans	Creditor reasonably expects that settlement will occur more than 60 calendar days after the Loan Estimate is provided, Loan Estimate can be re-disclosed up to 60 calendar days prior to Consummation. Loan Estimate must include clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation.		

Timing

Creditors must <u>deliver</u> the revised Loan Estimate within three business days (banking days) of receiving information sufficient to establish one of the reasons for revision.

A creditor is prohibited from revising the Loan Estimate on or after the consumer *receives* the Closing Disclosure. This means consumers must <u>receive</u> the revised Loan Estimate at least four business days (postal days) prior to consummation.



Compliance Challenge(s)

It is important to understand that there is a direct correlation between the cause of the revision and the determination of reasonableness with respect to providing a revised Loan Estimate. In other words, the reason for revision is equally as important as the determination of its reasonableness in deciding whether the bank should issue a revised Loan Estimate. As such, a compliance complication arises when one considers the number of factors which by rule (as in the TRID rules themselves) and by circumstance may cause a cost to change after only three business days (banking days) of receiving the completed application. However the rules for issuing a revised change circumstance are clear that the revised loan estimate may be revised only when, without revision, the fee would cause the anticipated variance levels to exceed tolerance. As such, the rules are clear that the expectation is to limit the amount of revised Loan Estimates a consumer will receive. This is somewhat different than what was "allowed" under the

RESPA rules where many banks re-disclosed the GFE for reasons, which, while allowable, did not result in a tolerance discrepancy.

It is also important to note that "delivery and receipt" rules for the revised Loan Estimate are not uniform. As such, the bank may easily run afoul of the rules by providing a revised Loan Estimate after the cut off period (depending on delivery method) which would likely guarantee tolerance violations on the Closing Disclosure. Alternatively, the bank may not provide a revised Loan Estimate when it should have due to a misunderstanding of which definition of business day applies to the disclosure.

What Should I be Doing to Comply?

Banks should review their changed circumstances processes and revise policies and procedures to be in compliance with the stricter application of revisions under TRID. Even though the reasons for revisions and changed circumstances have not changed much, the stricter interpretation means banks that often re-disclosed the GFE out of an abundance of caution will be "penalized" for similar re-disclosures under TRID. Included in this revision of policy and procedures, the bank should consider a tracking method for noting when a revised loan estimate was sent and when it will be received (depending on the delivery method). The bank will also need to ensure, at the very least, that the employees responsible for sending out the Closing Disclosure have an auditable method to verify that there are not revised Loan Estimates still in production.

The bank should also begin to develop procedures and train employees on the inter-related nature of the Loan Estimate and the Written List of Providers to better understand when a cost can change and when it cannot. Additionally, the bank will need to train employees responsible for issuing revised Loan Estimates on what documentation is required for compliance purposes. At a minimum, the standard for compliance includes evidence of:

- The original Loan Estimate
- Documentation supporting the reason for revision
- Documentation supporting the increased settlement cost(s)
- The revised Loan Estimate
- Evidence of compliance with time/delivery requirements

Closing Disclosure

Will this Apply to My Institution?

Yes. If your bank makes closed-end consumer loans secured by real property, the Loan Estimate is going to apply to your institution, unless, of course, your bank makes less than five closed-end consumer loans secured by real property in a year, or specializes exclusively in reverse mortgages; in those cases, it would not apply.

Is This a Change?

Yes, without a doubt. This is a completely revised disclosure format that the bank will have to use for all closed-end consumer loans secured by real property (except reverse mortgages) that are applied for on or after August 1, 2015, resulting in a loan origination. Additionally, there are new timing requirements and new expectations associated with this disclosure that did not exist before.

Basic Requirements

For all <u>Track 1 TRID</u> loans, the Closing Disclosure form replaces the current HUD-1/1A Settlement Statement and the revised TIL Disclosure provided at closing. Like the Loan Estimate, the Final Rule and the Official Interpretations contain detailed instructions covering how each line on the Closing Disclosure form should be completed. The Closing Disclosure also integrates the new disclosures required by Dodd-Frank, including the pre-consummation partial payment policy and escrow notices, and a detailed accounting of the settlement transaction.

For closed-end consumer credit transactions secured by real property, banks are generally required to disclose the actual terms of the credit transaction and actual costs of settlement, using the Closing Disclosure, at least, three business days before consummation. If some of the actual terms and costs are not known by the bank, it must make the disclosures in good faith.

A major change made by TRID relates to the responsibility to provide the Closing Disclosure. Under RESPA, settlement agents were technically responsible for providing the HUD-1 to the borrower. Under the new rules, banks are expressly permitted to use settlement agents to complete the Closing Disclosure, but, as with mortgage brokers and the Loan Estimate, they are responsible for the contents and timeliness of the disclosure. TRID unambiguously prohibits any creditor or settlement agent from imposing any fee, as part of the settlement cost, or any other fee or cost for the preparation or delivery of the Closing Disclosure.

It is important to note that the intended effect of this disclosure is that it is nearly 100% accurate and that the accuracy will stand the test of time. This means that the regulators are likely to be critical of any and all errors found on this document, including clerical errors. However, the bank has up to 60 calendar days post-consummation to amend the disclosure due to changes or errors.

The Closing Disclosure Layout

As noted, the HUD-1 and final TIL have been combined into a single new form, the Closing Disclosure, which is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction.

The Closing Disclosure is designed to look similar and generally reflect the same information as the Loan Estimate, in order to make the two documents easier for the borrower to compare. This was certainly an issue between the GFE and the HUD 1, which looked completely dissimilar. With regard to the integration of the GFE and TIL into the Closing Disclosure, the first three pages cover most of the information that was previously subject to RESPA, while the next two pages cover the Truth-in-Lending specific information.

	General Instructions for Completion of the Closing Disclosure
Page 1:	 General information The terms of the loan - the loan amount, interest rate, and principal and interest payment, and whether the loan has a prepayment penalty or balloon payment Projected payments - includes taxes and assessments Costs at closing - the closing costs, including the loan and other costs, and the cash needed to close
Page 2:	 Closing Cost Details, which corresponds to the information provided in the old HUD-1/1A Settlement Statement style "Loan Costs" - covers loan costs and such services provided for the appraisal and title insurance, breaks down what is paid by the borrower and the seller, and indicates whether the borrower did or did not shop for them. "Other Costs" recording fees and such costs as the escrow and hazard or flood insurance charges.
Page 3:	Calculation of Cash to Close from page 1

	•	Details of the transaction from the borrower's and seller's side, including payoffs and payments. Alternative disclosures where no seller is involved, similar to the HUD-1A Settlement Statement
Page 4:	•	Information about this Loan - whether or not the loan can be assumed, whether or not there is a prepayment penalty, and what the security interest is for the loan. Adjustable rate interest and payment amount tables, and a breakdown of any escrow.
Page 5:	•	Annual percentage rate, finance charge, and total of payments (Old FED BOX) and TIP The consumer's right to a copy of the appraisal and liability after foreclosure. Questions about Loan and Consumer complaint information Bank contact information

Revised/Corrected Closing Disclosures

The CFPB considers a revised or corrected disclosure to only be needed based on three scenarios. However, they take "scenario" to mean whether the disclosure will result in a delay of closing. Further analysis shows that it is really more like six scenarios where a revised or corrected disclosure is required or permitted.

Correcting the Closing Disclosure			
Post Disclosure Trigger Event	Closing Disclosure Corrections	Impact on Loan Closing	
Disclosed APR becomes inaccurate	Correct APR and all other terms that have changed as a result	3 business day waiting period from receipt	
Loan product changes	Correct loan product information and all other terms that have changed as a result	3 business day waiting period from receipt	
Prepayment Penalty added	Correct prepayment penalty provision disclosed as all other terms that have changed as a result	3 business day waiting period from receipt	
Other items, such as fees, costs, terms, or clerical mistakes	Correct all fees, costs, terms or clerical mistakes resulting from a change experienced subsequent to the delivery of the Closing Disclosure	No waiting period required, can be provided day of consummation*	
Post-consummation events that occur within 30 days of closing, including non-clerical, non-numerical errors	Correct all fees, costs, terms, or conditions resulting from a change that occurred post consummation which makes the disclosure inaccurate	No waiting period, but must be delivered within 30 days of the triggering event.	
Post-consummation Good Faith Analysis or Loan File QC identifying non-numerical clerical errors and variance refunds	Correct all non-numerical errors, and refund any variance issues which exceed limits	No waiting period, but must be delivered no later than 60 days from consummation.	

^{*}The customer may still request, and the bank would have to provide, a copy of the Closing Disclosure for review one day prior to closing.

Timing

Unlike the timing requirements for the Loan Estimate, which require it to be mailed or delivered within three business days of receiving the application, the consumer must *receive* the Closing Disclosure at

least three business days prior to consummation. Note: This states three days and not 72 hours, so the "time" of closing is not a relevant factor, but the day of closing is.

The delivery of the Closing Disclosure is based on the consumer receipt of the document. As such, there are three standard ways which a bank can make the delivery, but, in all cases, the bank must be able to show evidence of, or presume, based on time, the receipt of the disclosure by the consumer.

Making the Closing Disclosure on Time					
Disclosure Method*	Days for Disclosure to be "Received"	Disclosure Considered Received	Closing Date Example*		
In Person	0 business days	When provided to customer	Delivered by hand in person on Monday	Received on Monday	Loan can Close on Thursday
By Mail	3 business days	3 postal days after being placed in the mail	Mailed on Monday	Received on Thursday	Loan can Close on following Monday
E-Sign Compliant Electronic Disclosure	Cannot be determined**	When the bank has acceptable confirmation of receipt**	Electronically delivered on Monday	Received when confirmed	3 Postal Days from received confirmation

^{*}If a Federal Holiday occurs between day of delivery and day of closing, add 1 day to the day of closing.

**If the bank does not receive acceptable confirmation of receipt from the borrower, the bank should follow the "By Mail" method for determining receipt.

Compliance Challenge(s)

Similar to the Loan Estimate, most banks, at this point, rely almost exclusively on a third party vendor to ensure that they are generating and using compliant disclosures. However, as it was with the Loan Estimate, the same will occur with the Closing Disclosure and many of the large industry vendors have yet to provide compliant documents for testing by banks. This means that without a doubt the biggest compliance challenge for banks relative to the Closing Disclosure is not knowing whether they will have a document to utilize for testing and training employees, in sufficient time before the August 1, 2015 effective date of the rules.

Complicating this matter is the fact that many banks use outside service providers to complete their current HUD 1 Settlement Statement, so not having the Closing Disclosure ready for testing and training is an even bigger deal. Although, if there is a silver lining to be found in this situation, its that even for the most efficient banks, the Closing Disclosure will not be necessary for at least a few more weeks after the effective date.

Another significant challenge for many banks will be complying with the timing requirement to ensure the customer has received the Closing Disclosure three business days prior to the loan actually closing. The reason this is a significant challenge is that for years now, the completion of the Settlement Statement has been "outsourced" to closing attorneys or title companies. As a result, the industry, and especially the regulators, have grown accustomed to last minute (day of) finalizations of the HUD 1, which despite being technically a violation of RESPA, have been allowed to happen, since the adverse impact of delaying closing for a "paperwork" issue outweighed the benefits of providing the consumer with a completely accurate HUD 1, prior to closing. This advanced disclosure requirement, along with the fact that last minute issues arise in many real estate transactions, creates a scenario that leaves banks exposed to reputation risks, compliance risks and possibly financial risks beyond their control. As such, errors or omissions, or a delayed closing resulting from an unprepared or uninformed third-party will only magnify the impact of these risks.

Lastly, whether the bank relies on third parties for closing or handles the disclosure process internally, the method of delivery and documentation of receipt is undoubtedly a big compliance challenge. Beyond the issues already noted related to completing the disclosure, the ramifications of having to mail, and essentially lock in, the disclosure seven calendar days (eight if there is a Federal Holiday involved) prior to closing is a logistical nightmare. Moreover, the alternatives to mailing the disclosure are not logistically better options either. Imagine having to hand-deliver the closing disclosure to every consumer or justify the expense of paying for an overnight courier, just to ensure that the bank can provide the Closing Disclosure three or four days later. Even electronic delivery, which one would think is the best alternative, is actually more challenging, logistically speaking, because of the requirement to have evidence of *actual* receipt of the disclosure.

What Should I be Doing to Comply?

First things first, the bank should be chiding, prodding, nudging or, otherwise, hounding their compliance document providers to get them the Closing Disclosure for testing.

The bank should also begin preparations for testing the Closing Disclosures. Similar to the <u>compliance</u> <u>recommendations found in the Loan Estimate section</u> the bank should have a plan of attack in place for testing the documents when they are ready.

It is also imperative that the bank begin to review its loan closing process to determine how it can meet the logistical requirements of the new rules. Below are a few questions and suggestions that should help the bank sort through this process:

- Does the bank rely heavily (almost exclusively) on third parties to complete the current Settlement Statement and other closing documents or disclosures?
 - If the answer is "Yes", the bank will need to develop a strong compliance quality control check of all closing disclosures, and the sooner the better, since it will benefit the bank even in the current environment to do so.
 - ➤ The bank may also want to have a designated person who will oversee the closing process and serve as liaison between the bank, consumer, and the third party service provider.
- How many third parties do we have (or that we allow) to help us complete the current Settlement Statement and other closing documents or disclosures?
 - o If the answer is "too many", the bank should make some decisions relative to reducing the number of third parties.
 - Does the bank want to continue allowing a third party provider who has a reputation of being inefficient or sloppy to continue having an influence over such a time sensitive and critical disclosure?
- Have we met with our third parties to determine where they are in terms of knowledge, understanding and efforts to be in compliance with TRID?
 - o If the answer is "No", the bank should certainly "Trust, but verify" that the provider is knowledgeable.

- Do we want to require that third parties responsible for closing documents provide us with their training certifications for the TRID changes?
 - If the bank will allow third parties to have control over the process, it should establish a minimum standard of training for those providers or even conduct the training themselves to ensure a minimum standard of training.
- Do we want to internalize the closing process, even for an interim period?
 - Many banks have already put a plan in place to internalize much of the closing process for an interim period as a way to mitigate the risks while they establish trust, and or conduct due diligence on their third party service providers.

In addition to the issues surrounding the actual preparation of the Closing Disclosure, the bank will need to determine which delivery method it will use for the disclosure. The bank should set a clear policy for this disclosure process and ensure that all employees are aware of the policy and its implications. It is important not simply from a compliance standpoint, but so that the bank can instruct the borrowers on the loan closing process. It may be important to the reputation of the bank to share with the consumer that there is a mandated waiting period between providing the disclosure and loan closing and that certain redisclosures may also take time. This is especially true for non-first time home buyers who have experience with the lending process "the old way."

The bank will also need to review its post-closing compliance quality control process. Post-consummation changes, clerical errors and variance related issues will all need to be addressed during any post-closing reviews. Additionally, because of the expectations of accuracy of the Closing Disclosure, a compliant bank will have a process to review every loan (a 100% sample of loans) subject to TRID rules; this may mean the use of additional resources or increased staffing. It is important to note that this is not a requirement of TRID per se, and a bank may choose to use a sampling methodology similar to secondary market guidelines, but the bank still assumes all risk.

Lastly and as always, the details are very important and need to be shared with relevant employees. The bank should identify which staff members will require training, specifically any staff member who will be involved in the credit process leading to the closing. It is important to keep in mind that incorporating the Closing Disclosure to the bank's processes and procedures will not be simple updates or changes, and training may be difficult to discuss in terms of differences between the current requirements and the new requirements. The Closing Disclosure is an entirely new document, with its own unique requirements.

Staff members should have an understanding not merely of the technical requirements of what amount should be entered on what line or when the Closing Disclosure should be provided, but also the reasons behind the disclosure and the purpose it serves. In particular, MLOs and other customer facing roles will need training and practice to effectively present the Closing Disclosure to the bank's applicants. For example:

- The first number consumers will see for the Monthly Payment Disclosure is principal and interest only. MLOs will need to guide the consumer to look at the full payment amount when PMI and escrow are added in, rather than working off the smaller number.
- New terminology may need to be explained. Many changes amount to new uses of terms that
 have long been in use. "Prepaids" no longer means prepaid finance charges, unless you are
 calculating the Amount Financed, but rather settlement costs that the borrower pays in advance
 of the first scheduled payment of the loan, whether or not it is a cost of credit or a non-credit
 settlement service fee
- Since not all of the costs that are called "prepaids" are actually finance charges, the "prepaid" disclosure must be maintained separate from the TILA prepaid calculation to avoid mistakes.

The disclosure of costs at closing using such terms as "loan costs," "other costs," and "lender credits" may also require additional explanation. The components of "other costs" are not a distinction between finance charges and settlement costs. "Loan costs" will include charges that are not finance charges. "Other costs" may include charges that are finance charges.

Good Faith Analysis

Will This Apply to My Institution?

Yes. If your bank makes closed-end consumer loans secured by real property, the Loan Estimate, Closing Disclosure and Good Faith Analysis is going to apply to your institution, unless, of course, your bank makes less than five closed-end consumer loans secured by real property in a year, or specializes exclusively in reverse mortgages; in those cases it would not apply.

Is This a Change?

Not entirely. The Good Faith Analysis is essentially the same concept as the Comparison Tables on Page 3 of the HUD 1 Settlement Statement; however, the implications of the analysis are much more significant.

Basic Requirements

After TRID takes effect, the bank will have an obligation to provide disclosures that are highly accurate, given the "known" information at the time the disclosure is made. This obligation is expressed (repeatedly) in the TRID rules as making disclosures in good faith. The obligation applies to all TRID disclosures but applies mostly to the Loan Estimate and the Closing Disclosure. In general, a bank will be deemed to have provided a Loan Estimate in good faith when the amount paid or imposed on the consumer at loan consummation does not exceed the amount disclosed on the Loan Estimate beyond any allowable variance.

Good Faith Analysis Variance Factors Fees paid to the creditor, mortgage broker, or an affiliate of either No Change Fees paid to an unaffiliated third party if the creditor did not permit the consumer to Allowed shop for a third party service provider for a settlement service 0% Variance Transfer taxes **Some Change** • Third-party service providers selected by the consumer that are on the Written List of Providers that are not paid to the creditor or an affiliate of the creditor Allowed 10% Variance* Recording Fees Prepaid interest Property insurance premiums Changes • Amounts placed into an escrow, impound, reserve, or similar account Allowed 100% • Charges paid to third-party service providers selected by the consumer that are not Variance on the Written List of Providers · Charges paid to third-party services not required by the creditor. These charges may be paid to affiliates of the creditor

*In aggregate of the total of all costs subject to this variance level (e.g., if the sum of all costs subject to 10% Variance is \$1,000 the total of those same costs cannot exceed \$1,100 at closing)

Additional considerations related to variance and good faith analysis:

- 1. Even though certain fees are required to be rounded on the Loan Estimate and Closing Disclosure, the bank should use the unrounded numbers for the good faith analysis.
- 2. When a charge is disclosed on the Loan Estimate, but the service is not performed, the bank should not include the charge in the good faith analysis (No padding the variance factor with services not performed).
- 3. The bank is allowed to add previously undisclosed fees at closing, provided those fees do not exceed the variance factor.

Timing

If the amount paid by the consumer exceeds the permitted variance, the Loan Estimate will still comply with the good faith requirements if the bank provides a refund of any excess to the customer no later than 60 calendar days after consummation. The creditor must also provide a corrected Closing Disclosure within the 60-day timeframe.

Compliance Challenge(s)

The biggest challenge is ensuring that the bank has an end-to-end process in place which ensures that all closing costs subject to variance on every loan estimate issued on a particular loan are accurate reflections of the known information about the loan at the time the disclosure is made. Put even more succinctly, the biggest challenge is ensuring that the Loan Estimate is accurate every time it is sent out the door. Errors or issues related to the closing costs subject to variance and disclosed on the Loan Estimate will be reviewed against the closing costs subject to variance and disclosed on the Closing Disclosure. If errors exist, they must be corrected within 60 days of loan consummation or it may lead to the Loan Estimate being considered not made in good faith. The ramifications of this "not in good faith" distinction are not known at this time. However, there is a good chance that a bank which consistently makes Loan Estimates "not in good faith" will face some sort of consumer protection related enforcement action.

What Should I be Doing to Comply?

In order to ensure compliance, the first thing the bank should be doing is instituting procedures for a Loan Estimate double check to be performed before each Loan Estimate (including revised Loan Estimates) is delivered to a consumer. Any such procedure should include a sign-off by the person(s) responsible for the preparation of the Loan Estimate indicating that it is accurate based on the available information about the loan. It is important to note that the bank may need to determine what "available information about the loan" truly means as certain costs (such as Prepaid Interest) are typically estimated based on bank practice rather that the loan itself. Additionally, the bank should have a process in place which reviews the Closing Disclosure for fees subject to variance limits against the disclosed fees on the Loan Estimate. This review function is critical given the fact that the TRID rules specifically note that costs subject to variance limits are only subject to those variance limits if disclosed on the Loan Estimate in good faith to begin with. Therefore the Closing Disclosure review should take place both prior to and after loan consummation to ensure total compliance. Lastly, the bank should create a mechanism to track errors or issues related to cost estimates subject to variance and work to identify the root cause of the variance issue. The bank should ensure that this process enables it to determine whether there was a special feature of the loan, the borrower, or any combination of the two which caused the variance violation so that the violation can be prevented in the future.

In addition to the policy and procedural changes, the bank will need to ensure that sufficient training takes place relative to performing the good faith analysis. As it is with other parts of TRID, the good faith analysis will require a great deal of nuance and skill to perform accurately and in accordance with the expectations of the examiners. At a minimum, the training should include any employee responsible for the completion or review of the Loan Estimate(s), revised Loan Estimates, and/or the Closing Disclosure.

The training should cover the importance of reviewing the disclosures as well as the process for how to accurately perform a good faith analysis.

Post Closing Notices

Will this Apply to My Institution?

Whether the notices apply to your institution or not depends on two factors:

- Does your Institution establish escrow accounts for closed-end consumer credit transactions secured by a first lien on real property or a dwelling? If so, you must provide the Escrow Closing Notice prior to canceling these escrow accounts.
- 2. Will your Institution acquire mortgage loans that require mortgage transfer disclosures (Hello/Goodbye Letters)? If so, you must also disclose your partial payment policy for any closed-end consumer credit transactions secured by a dwelling or real property.

Is this a change?

In both instances, there will be a change. The Escrow Notice is a completely new form which replaces a much less informative form. The Mortgage Transfer/Partial Payment Disclosure is a change because the partial payment language was never previously included with the Mortgage Transfer disclosure.

Basic Requirements

Escrow Closing Notice

The Escrow Closing Notice must be provided to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except for reverse mortgages, prior to cancelling an escrow account. The prior notice requirement is significantly shorter when the closing is requested by the borrower.

Creditors and servicers are not required to provide the notice:

- If the escrow account was established solely in connection with the consumer's delinquency or default on the underlying debt obligation.
- When the underlying debt obligation for which an escrow account was established is terminated. This includes repayment, refinancing, rescission, and foreclosure.

TILA-RESPA provided specific requirements relating to the disclosures made in the Escrow Closing Notice. The rules cover the content of the disclosure, including specific word choice and headings, and establish formatting requirements. To ensure compliance, banks can and should utilize the new Escrow Cancellation Notice Model Form found in Appendix H-29.

While banks should refer to the rules or Model Form for specifics, the Escrow Closing Notice generally includes:

- · The date the account will be closed
- The reason why the escrow account will be closed
- The fact that the consumer must now pay all property costs directly

- An itemization of any fees imposed on the consumer for closing the account
- The consequences if the consumer fails to pay property costs
- A telephone number for additional information about the cancellation of the escrow account
- Whether there is an option keep the escrow account open
- Whether there is a cut-off date for the consumer to request that the account be kept open

Mortgage Transfer Partial Payment Disclosure

TILA-RESPA does not alter the current mortgage transfer disclosure requirements of Regulation Z, but rather incorporates a requirement to state the Institution's policy on partial payment in the disclosure. The amendment mirrors the requirement to provide the partial payment policy in the Closing Disclosure.

The partial payment disclosure section in the mortgage transfer disclosure must include the heading "Partial Payment," and then state which policy will be followed when the Institution receives a payment less than the amount due. Using the prescribed language, banks should state:

- Lender may accept partial payments and apply such payments to the consumer's loan
- Lender may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer's loan
- Lender does not accept any partial payments

The disclosure must also include the statement: If the loan is sold, the new lender may have a different policy.

Timing

Escrow Closing Notice

Escrow Cancellation and Timely Disclosure			
Reason for Cancelling Escrow	Disclosure Requirement		
At consumer's request	Received 3 business days prior to closing the		
·	account		
Any other reason	Received 30 business days prior to closing the		
Any other reason	account		

Mortgage Transfer Partial Payment Disclosure

TRID does not modify the current mortgage transfer disclosure timing requirement to mail or deliver the disclosures to the consumer on or before the 30th calendar day following the date of transfer. The regulation contains certain exceptions to the 30 calendar day requirement, including subsequent transfers within the 30 days, a repurchase agreement with the transferor, and the acquisition of only a partial interest in the loan.

Compliance Challenge(s)

With respect to the post consummation disclosures, the most significant compliance challenge is ensuring that the bank can identify the reason for canceling an escrow account. The fact that a consumer requested cancelation requires the disclosure to be made within a different timeframe than all other reasons for canceling an escrow account means the bank will need to have a two-pronged compliance process. Anytime there is not uniformity with disclosure timeframes, the bank always runs the risk of not making the disclosure within the "right" timeframe for the given scenario. This is especially true for

disclosures such as the Escrow Cancellation Notice, which are not made on a high frequency basis by most institutions.

What Should I be Doing to Comply?

With respect to the post consummation disclosures, the bank should establish policies and procedures to ensure compliance with each necessary disclosure. For example, most institutions would find it rare that they would be issuing a Mortgage Transfer Partial Payment Disclosure to consumers, as acquiring loans is not a common practice for most banks. However, it is important for banks to note within their policies and procedures when this disclosure is required, such as when the bank acquires another institution.

Similarly, the bank may find it uncommon for a borrower to request a cancelation of their escrow account. As such, it is important for the bank to create a process for identifying the reason an escrow account is being canceled. Such a process will ensure that the bank provides the Escrow Closing Disclosure according to the correct timeframe.

The bank should test the disclosures when they are available to ensure that they are in substantial compliance. Specifically, the bank should verify that the Escrow Cancellation Disclosure matches the model form and any allowable optional disclosures are accurate. It is also important that the bank review the Mortgage Transfer Partial Payment Disclosure for accuracy and ensure that it matches the bank's partial payment policy as it is described on the Closing Disclosure.

Lastly, despite the fact that these two disclosures may rarely be used by many institutions, it is still important that the employees responsible for making these disclosures are aware of the changes. As a result, the bank should ensure that training is provided to the employees responsible for loan servicing and managing loan escrow accounts.