



BFO NEWS FLASH!

"The Smallest Details Provide the Greatest Return"

Remember previous emails where I mentioned that 2009 was going to be a year of change? Well, here we are with the beginning of several changes. Truth In Lending disclosures are changing and will require you to stop and think about your loan processes. Below you will find a break down of the 40+ page Federal Reserve Final Rule Commentary and will give you the highlights. For your reading enjoyment, a link at the bottom will take you directly to the Commentary.

(Just try not to think of the song Hokey-Pokey as you read through the following material.)

Loan applications taken after July 30, 2009 will require:

1. An Early TIL Disclosure must be provided on Purchase, Refinance, and Construction loans for both Owner Occupied and 2nd Homes.
2. No fee other than for the credit report can be collected from the Borrower until the TIL disclosure is **RECEIVED** by the Borrower. *(This is an important point for Mortgage Brokers - Although you are not considered to be a creditor and theoretically not required to provide a TIL; it means that before an appraisal fee can be paid by the Borrower TO ANYONE, a TIL disclosure must be provided. If you (Mortgage Broker) do not provide the early TIL, the appraisal fee cannot be collected by you, the appraiser or AMC until the Lender issues the TIL).*
3. If the TIL disclosure is mailed, it is not considered to be received until three (3) business days after it is mailed. *(This means that unless you provide that TIL at the time of the face to face application, you or anyone else cannot collect the appraisal fee until three (3) business days after it has been mailed. For example, if the TIL is mailed on Monday, you can collect the fee Friday. It's just like a Right of Rescission.)*
4. Business Day for the "early" TIL Disclosure is considered to be days on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *(This is important because the definition of business day changes with the next TIL disclosure. - Keep reading!)*
5. If the Early TIL Disclosure is out of tolerance based on the final closing terms, a new or Final TIL must be disclosed and delivered at least seven (7) business days before consummation. *(If the Early TIL matched the closing terms and was within tolerance, that disclosure could also be considered the Final TIL.)*
6. If for some reason the Final TIL falls out of tolerance (for example, a change in loan terms) the Lender is required to "re-disclose" and provide the correct disclosure so that it is received by the Borrower at least three (3) business days BEFORE consummation.
7. Business days for the Final and Re-Disclosed TIL are defined as all calendar days except Sundays and specified legal public holidays. *(Are you hearing the Hokey-Pokey?)*
8. It is possible to ask for a waiver of the seven (7) day waiting period if there is a bona fide personal emergency. The waiver must come directly from the Borrower. It is very similar to the requirement for the waiver of Right of Rescission *(don't hold your breath on having an Investor waive this time period as it could leave the loan vulnerable to being ineligible to be*

sold on the secondary market.)

9. All the TIL disclosures (Early, Final and Re-Disclosures) are to contain the following statement:
` ` ***You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.***"

The above are highlights. The statements you see in blue italics are my own opinions and are not to be interpreted as those of any Industry Association or Federal Agency. As always, I urge you to go to the link provided and read the information in full and form your own opinion and if necessary, obtain legal advice.

Now for the details....

One of the purposes of the Truth in Lending Act (TILA), 15 U.S.C. 1601 et seq., is to promote the informed use of consumer credit by requiring disclosures about its terms and cost.

TILA mandates that the Federal Reserve Board prescribe regulations to carry out the purposes of the act. 15 U.S.C. 1604(a). TILA is implemented by the Federal Reserve Board's Regulation Z, 12 CFR part 226.

Congress enacted the Mortgage Disclosure Improvement Act (MDIA) in 2008 as an amendment to TILA. The MDIA amends TILA's disclosure requirements for closed-end mortgage transactions that are secured by a consumer's dwelling and subject to the Real Estate Settlement Procedures Act (RESPA). In July 2008, the Board revised Regulation Z to expand the number of transactions in which creditors must give a good faith estimate of the required disclosures (early disclosures). Previously, early disclosures were required only for loans made to finance the purchase or initial construction of a consumer's principal dwelling.

On October 3, 2008, the Congress amended the MDIA in connection with its enactment of the Emergency Economic Stabilization Act of 2008 (Stabilization Act). The Federal Reserve Board has now revised Regulation Z to implement the provisions of the MDIA.

TILA Section 128, 15 U.S.C. 1638, requires creditors to make specified disclosures in connection with closed-end consumer credit transactions before the credit is extended.

On July 30, 2008, the Federal Reserve Board published a Final Rule amending Regulation Z (the July 2008 Final Rule) (73 FR 44522). The July 2008 Final Rule requires, among other things, that a creditor provide the early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the consumer's principal dwelling.

Under the July 2008 Final Rule, the early disclosures also must be provided for non-purchase closed-end loans secured by the consumer's principal dwelling (such as a refinance loan).

The July 2008 Final Rule also required these ***disclosures to be given before the consumer pays any fee, other than a bona fide and reasonable fee for obtaining the consumer's credit history.*** The Federal Reserve Board has set an effective date of July 30, 2009 for these fee collection restrictions.

On the same day that the July 2008 Final Rule was published, Congress amended TILA by enacting the Mortgage Disclosure Improvement Act of 2008. The MDIA amends TILA and codifies some of the early disclosure requirements of the July 2008 final rule as well as expand upon the regulatory provisions.

The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, enacted on October 3, 2008. The MDIA was amended by the Emergency Economic Stabilization Act of 2008, Public Law 110-343, enacted on October 3, 2008.

Neither a ***creditor nor any other person may impose a fee* on a consumer in connection with the consumer's application for a mortgage transaction*** before the consumer has received the required disclosures. If the disclosures are mailed to the consumer, the consumer is

considered to have received them three (3) business days **after they are mailed**.

*A creditor or any other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures, provided the fee is bona fide and reasonable in amount.

MDIA requires creditors to make the early disclosures even when the loan is for the purpose of financing the purchase and refinance or initial construction of the consumer's principal dwelling; as well as 2nd Homes. MDIA **prohibits the collection of fees before the consumer receives the disclosures, other than a fee for obtaining a consumer's credit report**. It is MDIA that requires the provisions to be applied to loans secured by a dwelling which is not the consumer's principal dwelling.

Under the MDIA, **creditors must deliver or mail the early disclosures at least seven (7) business days before consummation**. If the APR contained in the early disclosures becomes inaccurate (for example, due to a change in the loan terms), **creditors must "redisclose" and provide corrected disclosures that the consumer must receive at least three (3) business days before consummation**. The disclosures also must inform consumers that they are not obligated to complete the transaction simply because disclosures were provided or because a consumer has applied for a loan. Disclosures shall contain the following statement:

"You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."

The MDIA also contains additional disclosure requirements for variable-rate transactions that are not addressed in this rulemaking. Those provisions of the MDIA will not become effective until January 30, 2011, or any earlier compliance date ultimately established by the Board. The Final Rule released May 8, 2009 does not address those disclosures. The Board anticipates issuing proposed amendments to Regulation Z to implement those provisions of the MDIA later during 2009, in connection with the Board's comprehensive review of closed-end mortgage disclosures that is currently underway.

Changes to various sections of Reg Z

A. Coverage of Section 226.19(a)

The Final Rule applies the early disclosure requirements to loans secured by dwellings other than the consumer's principal dwelling. Under Sec. 226.19(a)(1)(i), creditors must give consumers early disclosures in connection with a dwelling-secured mortgage loan that is subject to RESPA, whether or not the loan is for the purpose of financing the purchase or initial construction of the consumer's principal dwelling. The Final Rule does not revise the disclosure requirements for home equity lines of credit (HELOCs).

If the transaction is a dwelling-secured extension of consumer credit, early disclosures would be required regardless of who occupies the dwelling. However, TILA and Regulation Z do not apply to credit extensions that are primarily for business purposes. 15 U.S.C. 1603(l); 12 CFR 226.3(a)(1). Creditors should determine whether a credit extension is business or consumer credit. The Board believes that credit extended to acquire, improve, or maintain rental property that is not owner-occupied (that is, in which the owner does not expect to live for more than fourteen days during the coming year) is deemed to be for business purposes and is sufficient to determine whether a transaction is subject to TILA.

B. Timing of Delivery of Early Disclosures--Sec. 226.19(a)(1)(i)

Consistent with the MDIA, the Final Rule adopts the requirement that a creditor deliver or mail the early disclosures for all dwelling-secured mortgage loans no later than three (3) business days after the creditor receives a consumer's application.

Regarding written application, Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a "written application" has been received. In general, Regulation X defines "application" to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a Federally related mortgage loan. See 24 CFR 3500.2(b). An application is received when it reaches the creditor in any of the ways applications are normally transmitted--by mail, hand delivery, or through an intermediary agent or broker. If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

Should a loan be denied or withdrawn; within the three-business-day period, the creditor need not make the disclosures. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to Sec. 226.19(a)(1)(i).

The general definition of "business day" (days on which a creditor's offices are open to the public for carrying on substantially all of its business functions) applies for this purpose.

Under the July 2008 Final Rule, the early disclosures also must be provided for non-purchase closed-end loans secured by the consumer's principal dwelling (***such as a refinance loan***) dwellings other than the consumer's principal dwelling (***second home***). The July 2008 Final Rule requires that the disclosures to be given before the consumer pays any fee, other than a bona fide and reasonable fee for obtaining the consumer's credit history. ***The early disclosures and time are effective for covered loans for which the creditor receives an application on or after July 30, 2009.***

The requirement for a creditor to deliver or place in the mail the early disclosures no later than the seventh business day before consummation has been moved to Sec. 226.19(a)(2) and modified. In addition, under the Final Rule, the more precise definition of "business day" will apply for purposes of calculating the seven (7) business day waiting period.

C. Waiting Periods After Early Disclosures and Corrected Disclosures--Sec. 226.19(a)(2)

Currently, when a creditor provides early TILA disclosures and the APR subsequently changes beyond the specified tolerance, the creditor must re-disclose the APR and other changed terms no later than consummation or settlement. Effective with loan applications taken after July 30, 2009, creditors are required ***issue corrected disclosures so that consumers receive them no later than the third (3rd) business day before consummation.*** Consummation may occur any time on the third (3rd) business day ***after the consumer receives the corrected disclosure.***

Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers corrected disclosures in person to the consumer on Wednesday, June 3. Although Saturday, June 6 is the third business day after the consumer received the corrected disclosures, consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

If the corrected disclosures are mailed, the consumer is considered to receive the disclosures three (3) business days after mailing. This is important for determining when fees may be imposed on the consumer. Again, three-business-day waiting period before consummation begins when the disclosures are ***RECEIVED*** by the consumer and ***not when they are mailed.***

Regarding the seven (7) business day waiting period and the three (3) day redisclosure waiting period for corrected disclosures; a more precise definition of "business day" (all calendar days except Sundays and specified legal public holidays) has been provided.

This same "business day" definition will be used for purposes of both the seven (7) business day waiting period and the three (3) business-day waiting period for corrected disclosures. ***When corrected disclosures are required; consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired.***

It is important to understand that the seven (7) business-day waiting period for Final disclosure waiting period begins when the creditor **delivers or places the Final disclosures in the mail**-- not when the consumer receives or is deemed to receive the early disclosures.

The Final Rule applies the more precise definition of "business day" to the seven (7) business day waiting period.

When corrected disclosures are required, a three (3) business day waiting period is required. In this case, consummation of the loan may not occur until three (3) business days after the consumer **RECEIVES** corrected disclosures as required by Sec. 226.19(a)(2)(ii) of Reg Z. This is consistent with the MDIA and is also consistent with the three-business-day waiting period in Sec. 226.31(c)(1) for high-cost mortgages described in Sec. 226.32(a) (HOEPA loans).

A more precise definition of "business day" (all calendar days except Sundays and specified legal public holidays) is applied to the seven (7) business day and three (3) business day requirements.

It is very important to note that if a creditor places corrected disclosures in the mail, the consumer is not deemed to have received the corrected disclosures until three (3) business days **AFTER** they are mailed. For those creditors that use a courier other than the postal service may also follow this approach; the creditor may presume that the consumer has received the disclosure **three (3) business days after deposited with the courier**.

If a creditor delivers corrected disclosures electronically consistent with the E-Sign Act or delivers disclosures by overnight courier, the creditor may rely on evidence of actual delivery (such as documentation that the mortgage loan disclosure was delivered by certified mail or overnight delivery or e-mail (if similar documentation is available) to determine when the three-business-day waiting period begins.

The rules for corrected disclosures are contained in new Sec. 226.19(a)(2)(ii) Reg Z.

APR accuracy for corrected disclosures.

The creditor should compare the APR at consummation with the APR in the most recently provided corrected disclosures (not the first set of disclosures provided) to determine whether the creditor must provide another set of corrected disclosures. Redislosure is required if the APR in the final TIL varies from the APR disclosed earlier by more than .125 or 1/8th of 1 percentage point in a regular transaction, or more than .25 or 1/4th of 1 percentage point in an irregular transaction.

It has been determined that corrected disclosures are not required when the APR previously disclosed is considered accurate under the tolerances in Sec. 226.22.

D. Definition of "Business Day"--Sec. 226.2(a)(6)

"Business Day means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under Sec. Sec. 226.15 and 226.23, and for purposes of Sec. 226.19(a)(1)(ii), Sec. 226.19(a)(2), and Sec. 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day."

The Final Rule requires that creditors use the general definition of "business day" to calculate the three (3) business-day period for providing the early disclosures. Both TILA and RESPA require creditors to provide disclosures within three business days after the creditor receives the consumer's application. Using the general definition of "business day" (a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions) will maintain consistency between the TILA and RESPA requirements.

A second or more precise definition of "business day" (all calendar days except Sundays and specified Federal legal public holidays) is used for purposes of the requirements that creditors deliver or mail the early disclosures no later than the seventh (7th) business day before consummation and that consumers receive corrected disclosures (if applicable) no later than the third (3rd) business day before consummation. The more precise definition of "business day" also is used for purposes of the rule prohibiting the collection of a fee (other than a fee for obtaining a consumer's credit history) before the consumer receives the early disclosures. This is consistent with HUD's Regulation X (24 CFR 3500.7(a)(4) and 3500.7(b)(4)), which provides that if a creditor or broker mails good faith estimates of settlement costs, a consumer is considered to receive them three calendar days after they are mailed, not including Sundays and specified legal public holidays.

The Board believes that it is appropriate to use the more precise definition of "business day" for purposes of both the seven (7) business day waiting period and the three-business-day waiting period, for several reasons. It is easier for a creditor to determine how to meet timing requirements using the more precise definition, especially a creditor with multiple offices that are not open on the same days.

Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers corrected disclosures in person to the consumer on Wednesday, June 3. Although Saturday, June 6 is the third business day after the consumer received the corrected disclosures, consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

E. Consumer's Waiver of Waiting Period Before Consummation--Sec. 226.19(a)(3)

The Board has adopted Sec. 226.19(a)(3) Reg Z substantially as proposed, which is consistent with Regulation Z's existing provisions for waiving the three-business-day right of rescission for certain mortgage transactions. If a consumer determines that an extension of credit is needed to **meet a bona fide personal financial emergency**, the consumer may shorten or waive the seven (7) business-day waiting period or the three (3) business-day waiting period required by Sec. 226.19(a)(2) after receipt of an accurate TILA disclosures that reflects the final costs and terms. To shorten or waive a waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of **ALL** the consumers who will be primarily liable on the legal obligation. **Creditors may not use pre-printed forms for this purpose.**

The consumer is allowed to waive either the seven (7) business-day or the three (3) business-day waiting period and thus recognizes that a bona fide personal financial emergency could occur at any time, including after the consumer receives the initial early disclosures. For example, a consumer might receive the initial early disclosures with the expectation of closing the loan within 60 days. However, the consumer's financial circumstances might change in the interim, creating a need to consummate the loan immediately. Under the Final Rule, if the APR stated in the early disclosures is no longer accurate, after receiving a corrected disclosure the consumer can provide a signed statement describing the financial emergency in order to waive the three (3) business-day waiting period and close the loan.

Under the MDIA, consumers may waive or modify the timing requirements (and thus the waiting periods) for the disclosures required under TILA Section 128(b)(2)(A). The Board interprets this provision in the MDIA to apply to the "good faith estimates" provided under section 128(b)(2)(A)--whether they are the creditor's initial early disclosures or a corrected version provided subsequently. The requirement in TILA Section 128(b)(2)(D) for a creditor to provide a corrected disclosure is essentially a requirement for the creditor to provide an additional set of the early disclosures required by TILA Section 128(b)(2)(A).

The MDIA seeks to ensure that a consumer's decision to waive the waiting period and immediately consummate the loan is informed by an accurate "final" TILA disclosure. There is no indication, however, that the Congress intended to make the rate or other terms stated in the disclosures binding on the parties. Although creditors must provide an accurate "final" disclosure before the

consumer waives the seven (7) business-day waiting period and consummates the loan, providing such a disclosure by itself does not assure that the APR (or other loan terms) cannot change. Thus, if the APR subsequently increases by more than the specified tolerance, the consumer's previous waiver is no longer effective and a new "final" disclosure must be given. After receiving the new "final" disclosure, a consumer may decide whether to provide another signed waiver statement.

Waiver procedures and conditions.

The Final Rule requires that waivers be written, not pre-printed, consistent with regulatory requirements for waiver of a rescission period or of the waiting period before consummation of a HOEPA loan. Each consumer who will be primarily liable on the legal obligation must sign the written statement, in order for a waiver to be effective. The MDIA states that a waiver statement "shall bear the signature of all consumers entitled to receive the disclosures required by" TILA Section 128(b), 15 U.S.C. 1638(b). However, in a transaction where multiple consumers are primarily liable on the legal obligation, a creditor may provide disclosures to one of those consumers rather than to all of them.

Whether credit must be extended before a waiting period expires, in order to meet a bona fide personal financial emergency, is determined based on the facts associated with individual situations. The Board believes waivers should not be used routinely to expedite consummation for reasons of convenience. A waiver statement must be written by the consumer. The Final Rule prohibits the use of pre-printed forms to further protect against routine modification or waiver of the waiting periods.

And now....



***You put your right foot in, You put your right foot out;
You put your right foot in, And you shake it all about.
You do the Hokey-Pokey, And you turn yourself around.
That's what it's all about!***

[Truth In Lending Board of Governor Federal Reserve System Final Rule Official Commentary](#)

If you have found this information to be beneficial and you want to stay ahead without having to worry about being vulnerable, let's talk. You will be amazed at the peace of mind you can gain.

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