

| INTERNAL AUDIT: THE TRID FILES

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APRIL 16, 2019

| Agenda

Disclosure requirements from application to post-closing

- Regulation B (ECOA) 12 CFR 1002
- Regulation C (HMDA) 12 CFR 1003
- Interagency Flood Rule 12 CFR 22; 12 CFR 208; 12 CFR 339; 12 CFR 172; 12 CFR 391
- Regulation V (FCRA/FACTA)
- Regulation X (RESPA) 12 CFR 1024
- Regulation Z (TILA) 12 CFR 1026

Regulation G (SAFE Act) – 12 CFR 1007.105

Is the Mortgage Loan Originator's NMLSR ID available to consumers either upon request, before acting as an MLO, and through any initial written communication with the consumer?

- Note: Best practice to provide on any lender specific ads or solicitation material

Don't forget about Reg Z's requirement (12 CFR1026.36(g)) to disclose the mortgage loan originator's NMLSR ID on –

- Application
- Loan Estimate and Closing Disclosure
- Note or Loan Agreement
- Mortgage (security agreement)

What if responsibility changes from application to closing? (more than one LO)

- Reflect the NMLSR ID of the individual with primary responsibility over the transaction at the time the disclosure is provided

| Regulation B (ECOA) – 12 CFR 1002

Application and Evaluation

Did the lender obtain the application in writing? 12 CFR 1002.4(c)

- Required to be “in writing” for applications for the purchase or refinancing of a *dwelling* occupied or to be occupied by the applicant as a principal residence and secured by that dwelling
- 1 – 4 units regardless of real property/dirt (e.g. condominium, mobile homes)

Is it a “joint application” for credit? 12 CFR 1002.7(d)(1)

- Must be evidenced at the time of application (e.g. signature or initials on the application)

Was the application taken online, orally or via telephone? How was joint intent verified from both?

- Intent must still be documented at the time of application
- Train lenders to document who said what
- One party can represent others
- Verify prior to closing

| Regulation B (ECOA) – 12 CFR 1002

Application and Evaluation

If applicable, was information on the applicant's spouse obtained only as permitted? (12 CFR 1002.5(c))

- You may inquire about a spouse only if:
 - The spouse is permitted to use the account
 - Will be contractually liable on the account
 - Spouse's income is relied on for repayment
 - The applicant resides in a community property state or is relying on property located in such a state as the basis for repayment
 - The applicant is relying on alimony, child support, or separate maintenance payments from a spouse (or former spouse) as the basis for repayment

Before “other income” is requested such as alimony or child support, is the applicant provided with the disclosure that it need not be revealed if they do not want it considered? (12 CFR 1002.5(d)(2))

- Typically provided in writing on the application form

| Regulation B (ECOA) – 12 CFR 1002

Application and Evaluation

If the applicant's spouse or other person's signature or initials is on the application, was it obtained only as permitted (e.g. joint applicant)? (12 CFR 1002.7(d))

- Spousal's signature isn't necessary if the applicant qualifies on his or her own, *unless* –
 - Under State law, it is necessary in order to gain access to the collateral securing the loan or relied on in the event of default or death by the applicant (e.g. jointly owned property)
 - The spouse is providing credit support because the primary applicant does not qualify on his or her own
 - You may not require that the support come from a spouse

| Regulation B (ECOA) – 12 CFR 1002

Notification of Credit Decision

Was a notice of the action taken provided in a timely manner? (12 CFR 1002.9)

- **Notice must be provided within –**
 - 30 days after taking action on a completed application
 - 30 days after taking adverse action on an *incomplete application* unless notice of incompleteness is provided
 - 90 days after notifying the applicant of a counter-offer if the applicant does not expressly accept
 - Best practice is to provide a combined AAN/counter-offer

Was a Notice of Incompleteness provided within 30 days of receipt of the (incomplete) application?

- Must specify the information needed to complete the application and a reasonable time period in which it must be provided by the applicant
- May be given orally or in writing
- No response from the applicant requires no further consideration to be given toward the application

| Regulation B (ECOA) – 12 CFR 1002

Monitoring Information Requirements

Was the race and sex monitoring information collected when required and not collected when not required? (12 CFR 1002.13 and 12 CFR 1002.5(a); 12 CFR 1002.13)

- Ethnicity and Race;
- Sex;
- Marital status (married, unmarried, and separated)
- Age
 - Only for those applications for credit for the purchase or refinance of a dwelling occupied or to be occupied by the applicant as his or her primary residence, and secured by that dwelling
 - May only have one primary dwelling at a time (e.g. dwelling being constructed)

| Regulation B (ECOA) – 12 CFR 1002

Appraisal and Evaluation Rule

If the application for credit is to be secured by a 1st lien on a dwelling, was the applicant provided with a notice of the right to receive a copy of any appraisals or evaluations performed within 3 business days of receipt of the application? (12 CFR 1002.14(a))

- Not necessarily a completed application
- Rely on page 3 of the Loan Estimate

If an appraisal or evaluation was performed, did the applicant receive a copy of the report promptly upon completion? (12 CFR 1002.14(a))

- Timing Waiver
- no later than 3 business days prior to close

Dwelling: The term "dwelling" means a residential structure that contains 1 – 4 units whether or not that structure is attached to real property/dirt (e.g. individual condominium or cooperative unit, and a mobile or other manufactured home).

| Regulation C (HMDA) – 12 CFR 1003

Monitoring Information Requirements

If the monitoring information is required to be requested and the application is taken in a face-to-face interview, if the applicant(s) decided not to provide it, did the lender provide it based on visual observation, or, if not, does the application indicate that the application was received in a manner other than face-to-face?

Was the data collected and included on the loan application register (LAR) in a timely manner? (12 CFR 1003.4)

- Quarterly

| Regulation V (FCRA/FACT Act) – FCRA Section 609(f)

General credit score disclosure required in connection with applications for credit by a consumer (individual):

If a credit score was used in evaluating the application for credit, was a credit score disclosure provided to the consumer containing the following information? (FCRA Section 609(f))

- The current credit score of the consumer provided by the CRA (consumer reporting agency)
- The range of possible credit scores
- All of the key factors that adversely affected the credit score (not to exceed 4)
- The date on which the credit score was created
- The name of the agency that provided the credit score

| Regulation V (FCRA/FACT Act) – FCRA Section 609(g)

For consumer loan applications to be secured by a 1 – 4 family property (dwelling):

If a consumer's (individual) credit score was used in making the credit decision, was a credit score notice explaining the use of credit scores and how the consumer may obtain additional information about the score provided?

- Notice to Home Loan Applicant (FCRA Section 609(g))
- Timely? Must provide within a reasonable time after the consumer's credit score was obtained

| Regulation V (FCRA/FACT Act) – FCRA Section 1022

Risk Based Pricing Notice –

If consumer purpose credit is extended on material terms that are less favorable than the most the favorable terms available to a large portion of consumers and those terms are based (in whole or in part) on the information obtained in an individual's credit report, was the appropriate Risk-Based Pricing/Exception Notice provided? (12 CFR 1022.72(a))

If a joint application for credit, was a separate Risk-Based Pricing Notice provided to each individual who's credit report was obtained?

- Separately addressed and mailed

Was the Risk-Based Pricing Notice provided timely? 12 CFR 1022.73(c)(1)(i))

- Before consummation, but not before credit approval is communicated to the consumer.

Regulation V (FCRA/FACT Act) – FCRA Section 1022

Risk Based Pricing/Credit Score Exception Notice – Model Form H-3

Does the Risk-Based Pricing/Exception Notice contain the following information?

- The consumer's credit score, date it was obtained, and the CRA that provided the score
- A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history
- The fact that the consumer's credit score was used in evaluating the application and establishing the terms of credit (how much the consumer will have to pay for the loan)
- The range of scores obtained and how the score compares to other consumers
- The key factors that adversely affected the credit score, which generally must not exceed four (4 factors)
- The consumer's right to dispute any inaccurate information in the credit report, and the consumer reporting agency to contact if mistakes are discovered by the individual
- How the consumer may obtain a copy of the report and the right to obtain additional information about credit reports by visiting the CFPB's website – www.consumerfinance.gov/learnmore

| Agencies' Flood Insurance Purchase Requirements

Was a flood zone determination made using a Standard Flood Hazard Determination (SFHD) Form? (12 CFR 22.6; 12 CFR 208.25(f); 12 CFR 339.6; 12 CFR 172.6; 12 CFR 391.35)

If the property was located within a flood hazard area (SFHA), was the applicable flood notice provided to the borrower within a reasonable time before closing? (12 CFR 22.9; 12 CFR 208.25(i); 12 CFR 339.9; 12 CFR 172.9; 12 CFR 391.32)

- 10 calendar days

Agencies' Flood Insurance Purchase Requirements

If insurance was required, was a policy in place at closing?

- Exception, construction loans may delay until foundation slab is poured

If flood insurance was required, was the amount of flood insurance adequate?

The lesser of the 3 values is the minimum required amount of coverage:

1. Max under NFIP
2. Insurable value of the property
3. Loan amount

| <u>Property Type</u> | <u>NFIP Limits</u> |
|-----------------------------------|--------------------|
| Residential | \$250,000 |
| Residential – Multi-Family | \$500,000 |
| Commercial | \$500,000 |
| Personal Contents | \$100,000 |
| Commercial Contents | \$500,000 |

If an escrow account was required for taxes, hazard insurance, or other items, was flood insurance included in the escrow account as well? (12 CFR 22.5; 12 CFR 208.25(e); 12 CFR 339.5; 12 CFR 172.5; 12 CFR 391.34)

| Regulation Z (TILA) – 12 CFR 1026

Appraisal and Evaluation Rule (Higher-priced Mortgage Loans)

If the application is for an HPML, was the applicant provided with a notice of the right to receive a copy of any appraisal reports within 3 business days of receipt of the application? (12 CFR 1026.35(C))

- APR exceeds the APOR by 1.5 or more percentage points secured by a first lien; or by 3.5 or more percentage points for loans secured by a subordinate lien on the consumer's dwelling
- Must be secured by the consumer's principal dwelling
- Exclusions: Bridge loans and loans to finance initial construction of a dwelling (12 months or less)

Were all HPML Appraisal Rule requirements followed? (12 CFR 1026.35(c))

- Internal inspection of the property
- No evaluations

If the seller of the dwelling acquired the dwelling within the last 180 days prior to the purchase agreement, was a second appraisal obtained? (12 CFR 1026.35(c)(4))

- Flip Homes

| Regulation Z (TILA) – 12 CFR 1026

Escrow Rule for Higher-priced Mortgage Loans (HPML)

If the application is for an HPML, was an escrow account established for the payment of property taxes and insurance for at least 5 years after consummation on loans unless otherwise excluded? (12 CFR 1026.35)

- Common exclusions:
- Transactions to finance the initial construction of a dwelling
- Temporary or bridge loans with a term of 12 months or less

Small creditor? You're excluded.

- Must have originated at least 1 transaction in a rural and underserved area in the previous year
- Together with affiliates, you did not extend more than 2,000 first-lien covered loans during the preceding calendar year (do not count those kept in portfolio)
- Did not maintain escrows accounts on loans other than for distressed customers

| Regulation Z (TILA) – 12 CFR 1026

Loan Estimate

Was the Loan Estimate disclosure provided within three (3) business days of receipt of the consumer's application? (12 CFR 1026.19(e)(1)(iii))

Is the purpose of the loan on top of page 1 correct? (12 CFR 1026.37(a))

- Purchase
- Construction
- Refinancing
- Home Equity

Is documentation of the consumer's intent to proceed retained in the file including the date in which the consumer provided notice of the intent to proceed with the transaction? (1026.19(e)(2))

- May provide in any manner (e.g. oral, electronic, in person, etc.) unless otherwise specified
- 10 business day period to obtain consent

Regulation Z (TILA) – 12 CFR 1026

Loan Estimate

Was the notice of intent to proceed with the transaction obtained before any fees or charges were imposed on the consumer (other than a reasonable fee to obtain the credit report)? (12 CFR 1026.19(e)(2))

- no post dated checks or credit card numbers in file

Was the rate reflected as locked on the initial Loan Estimate? (12 CFR 1026.19(e)(3)(iv)(E))

- If so, the “Rate Lock” field must be marked “Yes, until.. (specified date).”
- Must be formal

NO YES, until 4/30/2019 at 5:00 p.m. EDT

*Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **2/16/2013** at 5:00 p.m. EDT*

Regulation Z (TILA) – 12 CFR 1026

Loan Estimate

Was a monthly amount disclosed on page 1 of the Loan Estimate in Taxes, Insurance & Assessments even if no escrow account is established? (12 CFR 1026.37(c)(4))

- Monthly amount for property tax must be based on the taxable value that includes any improvements on the property or to be constructed on the property

| | | This estimate includes | In escrow? |
|---|------------------|---|-------------------|
| Estimated Taxes, Insurance & Assessments <i>Amount Can Increase Over Time</i> | \$533 a month | <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <i>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</i> | YES YES |

| Regulation Z (TILA) – 12 CFR 1026

Loan Estimate and Written List of Shoppable Service Providers

Was the borrower allowed to shop for certain settlement service providers (e.g. Title/closing attorney)? If so, was a separate written list of service providers in which the consumer may shop from provided along with the initial Loan Estimate within three (3) business days of receipt of the application? (12 CFR 1026.19(e)(1)(vi))

- Must disclose at least one (1) provider of each service in which the consumer is permitted to shop for
- Appropriate information to identify the service provider must be included (name, number, address)
- Not required to disclose all ancillary charges that are not required by the creditor (e.g. notary fee)

If the consumer is permitted to shop for certain services, does the fee(s) for services on the Loan Estimate in Section C (Can Shop) correspond to the service provider(s) on the written list?

- Not required to include fee column on the model form (still retain safe harbor)

| Regulation Z (TILA) – 12 CFR 1026

Revised Disclosures – Loan Estimate or Initial Closing Disclosure

Did a changed circumstance occur that prompted a revised disclosure? (12 CFR 1026.19(e))

- Required only when the CC event caused fees to increase more than allowed (zero or 10 percent cumulative)
- Revised LE's for informational purposes (eff. May 2018)
- You may utilize the initial CD instead of providing a revised LE (eff. May 2018)

Was the changed circumstance event properly documented? (12 CFR 1026.19(e)(4))

- Key to compliance

Was the revised Loan Estimate or initial Closing Disclosure provided within three (3) business days of the changed circumstance event? (12 CFR 1026.19(e)(4))

- May not issue the initial CD sooner than your good faith estimate will allow

| Regulation Z (TILA) – 12 CFR 1026

TRID and Disclosing Construction Loans

Whether disclosed as a single transaction or separately, was the timing and amount of advances unknown at closing, therefore, the Appendix D assumption was applied in calculating the periodic payment?

- Appendix D assumption: If timing and amount of advancements (construction funds) are unknown at closing, then you assume that one-half the commitment amount is outstanding for the entire construction phase when calculating the periodic principal and interest payment.

If the answer to this questions is, “YES,” then was the Loan Terms table and the Adjustable Payments (AP) table disclosed properly?

- 2017 amendments to TRID clarified this requirement (effective for applications on or after Oct 2018)
- Applies whether the transaction is fixed or variable rate

Regulation Z (TILA) – 12 CFR 1026

TRID and Disclosing Construction Loans

Loan Terms Table (page 1) – Monthly Principal and Interest Payment:

- Disclose “YES” as the answer to “Can this amount increase after closing?”
- May use “months” or “years” regarding the frequency in the change - For example, 12-month construction loan –
 - 1st bullet may state “Adjusts every mo. starting in mo. 1”
 - 2nd bullet may state “Can go as high as \$(Max possible P & I payment) in year 1”
 - Max possible P & I payment is based on max possible amount of funds that could be outstanding (full loan amount)

| Loan Terms | Can this amount increase after closing? | |
|---|---|--|
| Monthly Principal & Interest <i>See Projected Payments Below for Your Total Monthly Payment</i> | \$769.27 | YES <ul style="list-style-type: none"> • Adjusts every mo. starting in mo. 1 • Can go as high as \$1,622 in year 1 • Includes only interest and no principal until year 2 • See AP table on page 2 for details |

Regulation Z (TILA) – 12 CFR 1026

TRID and Disclosing Construction Loans

The AP Table must include the following:

- Under the “Monthly Principal and Interest Payments” disclosure, the “First Change/Amount” must disclose the timing of the first change (e.g. 1st payment) but the “Amount” may be left blank

Adjustable Payment (AP) Table

| | |
|--|---------------------------------|
| Interest Only Payments? | YES for your first "X" payments |
| Optional Payments? | NO |
| Step Payments? | NO |
| Seasonal Payments? | NO |
| Monthly Principal and Interest Payments | |
| First Change/Amount | 1st payment |
| Subsequent Changes | |
| Maximum Payment | |

| Regulation Z (TILA) – 12 CFR 1026

Closing Disclosure

Was the closing consumer received by the consumer no later than 3 business days prior to closing? (12 CFR 1026.19(f))

- You may include Saturday in the 3-business day count

Does the top of page 1 of the CD reflect the accurate date issued, closing date, and disbursement date? (12 CFR 1026.38(a))

- Important to determine whether timing requirements were met

Closing Disclosure

Closing Information

Date Issued 4/8/2019 - *Monday*
Closing Date 4/11/2019 - *Thursday*
Disbursement Date 4/16/2019 - *\$\$ Tuesday \$\$*

| Regulation Z (TILA) – 12 CFR 1026

Closing Disclosure

If rescission applies, does the disbursement date disclosed at the top of page 1 reflect a date at least 3 business days *after* the closing date?

- May not disburse funds until after midnight of 3rd business day
- Include Saturday in the 3-business day count
- Each consumer with rescission rights must receive a copy of the notice and CD (e.g. non-borrowers)
- Non-compliance extends rescission period for 3 years from the date of consummation.

Rescission runs for three (3) business days from the last of the 3 events:

- A. Consummation of the transaction
- B. Delivery of all material disclosures (Closing Disclosure)
- C. Delivery to the consumer of the required rescission notice

Regulation Z (TILA) – 12 CFR 1026

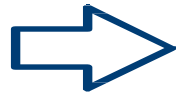
Closing Disclosure

Are the required services for which the borrower “Did” or “Did Not Shop For” properly disclosed in Section B or C of the Closing Disclosure in comparison to the LE? (12 CFR 1026.38(f))

- If the consumer selected a service provider from your written list, then he/she Did Not Shop
- The consumer Did Shop if the service provider selected was not on your written list or providers

B. Services You Cannot Shop For

Appraisal Fee
Credit Report Fee
Flood Determination Fee



C. Services You Can Shop For

Pest Inspection Fee
Survey Fee
Title – Lender’s Title Policy
Title – Settlement Agent Fee
Title – Title Search

B. Services Borrower Did Not Shop For

| | | |
|----|-------------------------|-------------------------------|
| 01 | Appraisal Fee | to John Smith Appraisers Inc. |
| 02 | Credit Report Fee | to Information Inc. |
| 03 | Flood Determination Fee | to Info Co. |
| 04 | | |
| 05 | | |
| 06 | | |
| 07 | | |
| 08 | | |
| 09 | | |
| 10 | | |

C. Services Borrower Did Shop For

| | | |
|----|----------------------------------|----------------------|
| 01 | Pest Inspection Fee | to Pests Co. |
| 02 | Survey Fee | to Surveys Co. |
| 03 | Title – Insurance Binder | to Epsilon Title Co. |
| 04 | Title – Lender’s Title Insurance | to Epsilon Title Co. |
| 05 | Title – Settlement Agent Fee | to Epsilon Title Co. |
| 06 | Title – Title Search | to Epsilon Title Co. |

| Regulation Z (TILA) – 12 CFR 1026

Closing Disclosure

Were the following calculations accurately disclosed on page 5? (12 CFR 1026.38(o))

- Annual Percentage Rate (APR); Finance Charge; Amount Financed; Total of Payments; and Total of Interest Percentage (TIP)
- As of May 2018, Total of Payments is accurate (same as FC) if –
 - It is understated by no more than \$100; or
 - Is greater than the amount required to be disclosed

If the APR was discovered to be inaccurate, was a revised CD provided triggering a new 3 business day waiting period prior to closing? (12 CFR 1026.19(f)(2))

- Compare initial CD to revised CD, if applicable
- 1/8 of 1 percentage point for regular transactions; 1/4 of 1 percentage point for irregular transactions (e.g. multiple advance construction loans)

| Regulation Z (TILA) – 12 CFR 1026

Revised Closing Disclosures - Pre-closing

Was a revised Closing Disclosure issued before closing due to a changed circumstance event that caused settlement fees to increase by more than permitted? (12 CFR 1026.19(f))

If so, was the revised CD issued within 3 business days of the changed circumstance event?

- Timeliness is key to capturing the ability to reset the tolerance threshold
- Ability established by the 2018 amendment

| Regulation Z (TILA) – 12 CFR 1026

Revised Closing Disclosures – Post-closing

During the 30-day period after consummation, did any event occur in connection with settlement that causes the CD to become inaccurate, and such inaccuracy causes an amount actually paid by the consumer to differ from the amount disclosed? (12 CFR 1026.19(f)(2))

If so, then was a revised Closing Disclosure placed in the mail within 30 days after closing?

Did the inaccuracy result in a refund to the consumer?

If so, was a refund including a corrected Closing Disclosure reflecting the refund provided within 60 days of consummation?

Clerical errors trigger a revised Closing Disclosure to be provided within 60 days of consummation

- Does not effect a numerical disclosure or impact delivery of the disclosure (e.g. incorrect settlement service provider reference)

| Regulation X (RESPA) – 12 CFR 1024

Affiliated Business Arrangement Disclosure

If the applicant was referred to an affiliate for any settlement service, was the applicant provided with an affiliated business arrangement disclosure given to the applicant at the time of the referral? (12 CFR 1024.15(b)(1))

- Written shoppable providers list and affiliates

Affiliate: one entity has effective control over another (e.g. partnership or other agreement) or under common control with the other via a third party corporation.

Control means that a person is a partner, officer, director, employer of another person (entity); directly or indirectly owns, has the power to vote more than 20 percent of the voting interests of another entity; has influence in the election of directors; OR has contributed more than 20 percent in capital in the other company

| Regulation X (RESPA) – 12 CFR 1024

Homeownership Counseling List

Did the applicant receive a list of homeownership counseling organizations within three (3) business days of receipt of the consumer's application? (12 CFR 1024.20(a))

- Must be relative to the applicant's location
- Applies to all federally related mortgage loans

Federally related mortgages include consumer purpose loans secured by real property on which a 1 – 4 residential property (dwelling) is located or will be located for occupancy (e.g. manufactured homes)

| Regulation X (RESPA) – 12 CFR 1024

Mortgage Servicing Transfer

If the servicing of the mortgage loan was transferred, was a mortgage servicing transfer disclosure sent at least 15 days prior to effective date of the transfer by the transferor? Did the transferee also provide notice not more than 15 days after the effective date of the transfer? (12 CFR 1024.33))

- Hello/Goodbye Letters
- The transferor and transferee may provide a single combined notice no less than 15 days before the effective date of the transfer of the servicing of the mortgage loan

If the transferor incorrectly received a timely payment during the 60-day period after the transfer, was a late fee not imposed and the payment not treated as late? (12 CFR 1024.33(c))

Thank You

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