
Bank Examiners Will Be Strict In Enforcing Compliance With New Mortgage Disclosure Rule

By Thomas A. Brooks / Jul 01, 2015

This is an update from [Clark Hill's Consumer Financial Services Regulatory & Compliance Group](#)

In a comprehensive change to its Compliance Examination Manual, the FDIC has released revised interagency examination procedures for the new Truth in Lending Act (TILA)-Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure Rule (TRID). The TRID Rule is the proposal by the Consumer Financial Protection Bureau that will be effective October 3, 2015 and replaces the requirement to provide the RESPA Good Faith Estimate and HUD-1 Settlement Statement and Truth in Lending disclosures for most closed-end mortgage loans with two documents: the Loan Estimate and the Closing Disclosure.

The examination procedures also were updated to reflect changes in the Higher-Priced Mortgage Loans Appraisal Rule, the Ability-to-Repay/Qualified Mortgage Rule and certain mortgage servicing rules relating to small servicers or servicers on behalf of non-profit entities.

It is critical in preparing the Loan Estimate and the Closing Disclosure that the information supplied be accurate and complete, as the new procedures reflect a sharply stepped-up standard of precision. The examiners are charged with reviewing every line of the Loan Estimate and Closing Disclosure to ensure that it complies with the regulatory elements. For example, in reviewing the Loan Terms found on page one of the Loan Estimate, the examiner is directed to "determine whether, under the heading 'Loan Terms' all disclosures are completed and accurate." It then directs the examiner to review the Loan Amount, Interest Rate, Principal and Interest, Prepayment Penalty, Balloon Payment and whether the loan amount, interest rate, or monthly principal and interest can increase after closing.

The explicit direction given to the examiner is to engage in a line-by-line review of the Loan Estimate to ascertain whether there is complete compliance with the requirements of the regulation.

Likewise, the same is true when the examiner reviews the Closing Disclosure. One of the many charges to the examiner is to review on page three of the Closing Disclosure the item titled "Calculating Cash to Close." The examiner is directed to "determine whether the creditor, for each of the following items, accurately includes the amount from the Loan Estimate, compared to the amount disclosed in the 'Final' column, and provide the necessary answer to the question 'Did This Change?'" The examiner will then review the ten items where estimates were given by the creditor compared to the actual amount of the costs incurred.

In summary, the examiner is newly charged to review each item in the Loan Estimate and the Closing Disclosure to determine whether it is in compliance with the provisions of the TRID Rule. This will require precision on the part of the creditor in its implementation of the requirements of the TRID Rule.

The consumer finance laws and regulations are complex and all mortgage lenders that are subject to the new TRID Rule must be cognizant of the changes with which they must comply. Clark Hill attorneys have extensive experience in representing mortgage lenders and insured financial institutions in the development of mortgage lending programs as well as complying with the frequent changes in federal laws and regulations.

The real risk to a mortgage lender is when it fails to comply with the complex and sometimes confusing regulatory requirements. If the examiner finds non-compliance with one or more elements of the TRID Rule, the mortgage lender can be subject to enforcement actions by the regulator ranging from an informal Memorandum of Understanding to a more formal and restrictive action such as a Cease and Desist Order or fine. Should lenders be subjected to any threat of an enforcement action by a federal regulator, Clark Hill attorneys have a successful history in assisting lenders in negotiating a satisfactory resolution of any claim.

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