



Countdown with Stewart Title

The impact of the TILA-RESPA Integrated Disclosure rule on the relocation industry.

Overview:

The TILA-RESPA Integrated Disclosure rule (TRID) is a 1,888 page regulation issued by the Consumer Financial Protection Bureau® (CFPB) that will take effect on October 3, 2015. It replaces a number of existing disclosures received during the mortgage and closing process with two new forms – the Loan Estimate (LE) and Closing Disclosure (CD).

The LE will be provided three business days after loan application, similar to current timelines for upfront disclosures, but the CD must be received by the borrower at least three business days before closing, a significant development since many of the items it discloses are currently not finalized until the day of closing. In many instances, the CD will actually be provided six or more business days before closing, requiring all interested parties, including relocation stakeholders, to provide information and review or approve fees far earlier in the process.

Changes to the CD will require re-disclosure of the form, but certain changes will also trigger a new three business day waiting period, potentially resulting in delayed closings. Lenders will be responsible for compliance with all requirements and timelines relating to the LE and CD, so guidelines regarding many aspects of the closing process may vary depending on which lender is utilized.

Key Issues:

Content of disclosures:

1. CD will inaccurately disclose the cost of title insurance when a simultaneous issue rate is applied for purchase of both loan and owner's policies. Will likely require supplemental forms, such as the ALTA® Settlement Statement or state-promulgated disclosures, to identify actual amounts charged and review policies to ensure they set clear guidelines on what is covered and how it is to be documented.

2. Some lenders will be moving away from “origination charges”, which in whole or part reduce the interest rate to “origination fees” or similar, which cover services performed in the origination process. Review policies to ensure appropriate language is used to carry out its intent – some policies do not cover discount points but will cover “origination charges”.
3. The buyer and seller will generally receive separate CDs with only the charges imposed on the respective party. Many homesale programs require a copy of the buyer's HUD-1 Settlement Statement, which may be challenging if the lender prohibits providing the buyer's CD to the seller, generally citing privacy concerns. A number of industry associations are currently in the process of developing forms to authorize release of the Closing Disclosure.
4. Similarly, the CD does not include signatures of the parties. To the extent a mobility program requires the signatures of the parties on final closing documents, it will need to obtain an addendum to the CD or use an alternative document.

Timing of Disclosures:

1. The CD must be received by the borrower at least three business days before closing (specifically “consummation”, when the borrower becomes contractually obligated to the debt, which may not be the same as traditional “closing”). If not physically hand-delivered, it may be deemed received three business days after delivery. Therefore, many lenders will be delivering the CD at least six business days before closing, at least during the initial months. Internal timelines will need revision to ensure direct bill credits and other review and approvals are finalized in time for the lender to deliver the CD.

2. New variables must be accounted for, particularly on home sale transactions where the requirements regarding delivery, documentation and revisions will be set forth by the outside buyer's lender. Early outreach should occur to ensure all stakeholders understand the particular requirements of each transaction.
3. If the CD changes after initial delivery, it must be revised and accurate by closing. This will require constant communication with the lender to prevent delays, particularly when negotiating walkthrough credits.
4. Certain changes (change of loan product, addition of prepayment penalty, APR increase beyond threshold) will trigger a new three business day waiting period before closing can occur. Transferees should be counseled against changing their loan product shortly before closing, and stakeholders should determine (preferably with advice of counsel) which steps may be taken to prevent additional carrying costs associated with delays caused by outside buyers.

Positive items of note:

1. Transferees will be more informed about the terms, features and costs of their mortgage and transactions. The new forms were thoroughly tested with consumers to ensure they perform better at understanding their obligations versus current forms.
2. Transferees will have three business days to review the CD, ask questions, and feel confident in their upcoming closing, ideally increasing overall satisfaction.
3. Fees will be available far in advance of closing to allow review and approval on both home purchase and home sale transactions, minimizing the 11th hour nature of the current closing process.

Highlighted Response and Education Efforts by Worldwide ERC® and Stewart

Nov 2012 – WERC issued a five page comment letter to the CFPB in response to their Proposed Rule, highlighting key concerns of the mobility industry

Mar 2014 – *Tax and Legal Update* webinar with guest presenter and Stewart counsel Eric Arnold regarding the Final Rule

Apr 2014 – Peggy Smith introduction at Stewart/Citibank *Countdown to August 1st* Tour event in Washington, D.C.

Jul 2014 – *Mobility* article, “Are You Ready for the CFPB?” by John Brennan

May 2015 – NRC Session – Know Before You Owe

Jun 2015 – *Mobility* article “Industry Insights”, by Jay Hershman

Jul 2015 – *Mobility* article, “Countdown to August 1st”, by Stewart counsel Eric Arnold

Jul 2015 – *Learning Zone* webinar, Countdown to October 3rd, with Tristan North and Stewart counsel Eric Arnold

For more information and links to these and additional resources, please visit stewart.com/relo/cfpb.