

# PUBLICATION

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## TRID's Closing Disclosure

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On October 3, 2015, the new TILA-RESPA Integrated Disclosures Rule (TRID) went into effect. The rule sought to streamline and clarify some of the overlapping and confusing language on the two different disclosure forms lenders are required to give to consumers applying for a mortgage, under two separate federal laws, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). Other stated purposes of the TRID regulations include clarifying the exact amount a loan will cost the consumer up front and allowing consumers time to fully review their loan documents in advance rather than at the closing table, which consumers often find intimidating, making them feel rushed and unable to ask questions about terms they do not understand. While these regulations may be well intended, the implementation process will be difficult for lenders who will have to revise their systems and will expose the unprepared lender to new liability.

One of the biggest changes is that the Closing Disclosure, formerly known as the Truth in Lending Disclosure & HUD-1 Settlement Statement, must be received by the borrowers at least three business days before the consummation. 12 C.F.R. § 1026.19(f)(1)(ii)(A). This three-day "waiting period" has some obvious advantages for both lenders and consumers. The consumers will now have the opportunity to comprehensively review the Closing Disclosure from the comfort of their own home or office, which will allow them to become familiar with the terms, discover any errors and raise any questions that need to be addressed. Additionally, because the Closing Disclosure contains all the information a consumer needs to analyze the terms of the loan and how much the loan will cost them, this three-day waiting period allows consumers to properly analyze whether they can truly afford the loan being offered. See generally 12 C.F.R. § 1026.38. Because consumers now have the ability to analyze this information for three days before consummation of the loan transaction without the pressure that some consumers feel when they are at the closing table, they will have one last clear chance to realize they cannot afford a loan, which, in theory, should reduce the number of defaulted loans, a benefit to both the consumers and the lenders.

As beneficial as the new three-day waiting period may seem, it is not without its downsides. As is the case with any new requirement, lenders will need to implement systems to comply with these requirements, and the three-day waiting period is mandatory. Consummation must be postponed if the Closing Disclosure is not timely provided, unless the consumer modifies or waives the three-business-day waiting period due to a bona fide personal financial emergency. 12 C.F.R. § 1026.19(f)(1)(iv). However, as situations that give rise to a bona fide personal financial emergency are anticipated to be rare, a lender's being unable to meet the three-day requirement to provide a Closing Disclosure will result in many delayed closings, which is obviously bad for business.

There will be some situations in which changes to a Closing Disclosure will be necessary. If information used in creating the Closing Disclosure subsequently becomes inaccurate before consummation of the loan transaction, a creditor is required to provide corrected disclosures reflecting any changed terms to the consumer at or before consummation. 12 C.F.R. § 1026.19(f)(2)(i). While the revised Closing Disclosure must be provided at or before consummation, most changes will not require a new three-day waiting period. Only three changes will require a new three-day waiting period: changes to the loan's APR; changes to the loan product; and/or the addition of a prepayment penalty. 12 C.F.R. § 1026.19(f)(2)(ii)(A)–(C). This example is but one of the many nuanced points of the new TRID regulations.

Although the new TRID rules may eventually streamline the consummation process and offer long-term benefits to borrowers and lenders alike, they also present new areas of liability for lenders. The Consumer Financial Protection Bureau has recognized the difficulties in implementation by announcing a hold-harmless period under which lenders who act in good faith to implement the TRID regulations will face diagnostic rather than punitive enforcement by the CFPB. However, as should be obvious, those lenders who can get their systems in place the quickest will have a distinct advantage over those who languish behind. Due to the extensive and complex nature of the rules, it is important to consult counsel who can comprehensively analyze the new requirements for each lender's specific needs.