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Regulations X and Z - Integrated Mortgage Disclosures – **Part 1** Applicability & Loan Estimates

The Consumer Financial Protection Bureau (CFPB) has amended Regulations X and Z, establishing new rules in connection with integrated mortgage disclosure requirements. This Alert is focused on general rule changes and the new “Loan Estimate” disclosure.

Updated Alert Date: July 23, 2015
Status: Effective October 3, 2015
Links: [Final Rule - 11/20/2013](#)
[Final Rule - 02/19/2015](#)
[Final Rule - 07/20/2015](#)

In November 2013, pursuant to the Dodd-Frank Act, the CFPB issued a final rule amending Regulations X and Z. This rule revises those regulations to establish new requirements and forms under Regulation Z for certain mortgage loans. As this rule combines certain disclosures that are currently provided under Regulation X and Regulation Z, these are referred to as Integrated Mortgage Disclosures. This Alert is focused on scope and applicability amendments and the new **Loan Estimate**.

Since the initial rule was published, two subsequent related rules were issued. A February 2015 rule extends the timing requirement for revised Loan Estimates when a consumer locks a rate or extends a rate lock after the Loan Estimate is provided and permits certain language related to construction loans on the Loan Estimate. A July 2015 rule delays the effective date until October 3, 2015, (previously August 1, 2015) and makes other technical amendments and corrections.

What is a Loan Estimate?

At a high level, currently-used initial Truth-in-Lending Disclosures and RESPA’s Good Faith Estimates are being combined into a new Loan Estimate form, which will be required on *most* closed-end mortgage loans when this rule takes effect. From a compliance perspective, the rule covering the Loan Estimate will be found in Regulation Z. The purpose of the Loan Estimate is to provide consumers with a good faith estimate of credit costs and transaction terms.

What Applications are Covered by this Rule?

The integrated mortgage disclosure rule applies to most closed-end consumer credit transactions secured by real property. However the following specific categories of loans are excluded from the rule, as follows:

- Home Equity Lines of Credit
- Reverse Mortgages
- Mortgages Secured by a Mobile Home or by a Dwelling that is not attached to real property.

NOTE: Creditors that originate HELOCs and other types of mortgages not covered by this rule will continue to use existing good faith estimates, settlement statements and Truth in Lending disclosures as covered under current rules.

A Loan Estimate will need to be provided for covered applications that are **received on or after October 3, 2015**. A creditor is prohibited from using the new disclosures on applications received prior to October 3, 2015.

What are the Requirements for Providing Loan Estimates?

When effective, Regulation Z requires that creditors provide a Loan Estimate for covered applications. The Loan Estimate must be in writing and contain specific information in a prescribed format.

The Loan Estimate must be provided either by hand delivery or placing it in the mail, no later than **3 business days** after the receipt of an application, unless the creditor determines it cannot approve it or it is withdrawn within that period. Generally, the creditor shall deliver or place in the mail the Loan Estimate, not later than the 7th business day before closing. An **application** is considered received when the consumer provides the following information:

- Name
- Income
- Social Security Number
- Address of Property
- Estimation of Value of the Property, and
- Loan Amount being Requested.

It is important to note that the “catch-all” element of “any other information deemed necessary” that is included in Regulation X’s definition of application currently is not included in the bulleted list of information.

Can a Loan Estimate be Revised?

Yes. When certain changed circumstances occur after a Loan Estimate has been provided, a creditor may revise the Loan Estimate within **3 business days** after receiving information related to the changed circumstances. Revised estimates must be provided when the rate is locked.

NOTE: Restrictions apply in instances where the creditor has provided a Closing Disclosure. Closing Disclosures are discussed in a separate Compliance Alert.

What Information Must Be Included on the Loan Estimate?

The Loan Estimate is comprised of 3 pages. Regulation Z contains model form Loan Estimates in Appendix H, in English and Spanish, as well as an alternative form that may be used in transactions that do not involve a seller. The appendix also provides various samples that help illustrate disclosures in a variety of situations.

- The **1st page** of the Loan Estimate contains general information that discloses the date, applicant names, property identification, loan type, term and purpose. It also discloses certain loan terms, such as: amount, rate, payments, and whether the loan features a prepayment penalty or a balloon payment. It also contains a specific section on projected payments that itemize principal and interest, any mortgage insurance, estimated escrow amounts, as well as information on estimated taxes, insurance and assessments. Lastly, it will also disclose estimated closing costs and estimated cash to close.
- The **2nd page** of the Loan Estimate contains more detailed information on loan costs. Loan costs are to be categorized by origination charges, services you cannot shop for and services you can shop for. Other costs related to taxes and government fees, prepaids and initial escrow at closing will also be disclosed, as well as any lender or seller credits.
- The **3rd page** of the Loan Estimate contains contact information for the creditor and loan officer. It also contains a comparison chart that a consumer would likely use to compare with other loan offers. It requires disclosure of amounts that would have been paid in 5 years, the annual percentage rate and the total interest percentage. Lastly, this page also provides various other information the consumer would find helpful, such as whether an assumption is allowed, late payment fees and the creditor's intention of servicing the loan or transferring the servicing.
Note: The total interest percentage (TIP) represents a new calculation for disclosure. It expresses the total amount of interest that a consumer will pay over the loan term, as a percentage of the loan amount.

Are There Tolerance Limits?

Yes. Loan Estimates are to represent a good faith determination of costs, which means the consumer's payment of a certain fee does not exceed what is disclosed, with certain exceptions. The rules allow for either limited increases or variations without limitation, depending on the type of charge. For example, charges for third-party services and recording fees paid by or imposed are grouped together and subject to a 10% cumulative tolerance. Also, charges that may increase without any tolerance limitation would include prepaid interest, amounts placed into escrow or fees for required services that the consumer may shop for in which the consumer selects a third-party provider that is not on the written list of providers. Details regarding tolerance rules are contained in 12 CFR 1026.19.

What Else Should I Know?

You should be aware of some additional issues related to the application phase of a covered application.

- **Written List of Providers** – If the consumer is permitted to shop for a settlement service, the creditor must provide a written list of services for which they may shop. The list must identify at least one provider for each service and state that the consumer may choose a different provider.
- **Fee Restrictions** – No fees may be imposed before the consumer has received the Loan Estimate and indicated intent to proceed, with the exception of a credit report fee.
- **Other Written Estimates of Terms or Costs** – If an institution provides an early estimation of costs to a consumer before they receive an actual Loan Estimate, certain rules must be followed:
 - The 1st page of that early estimation must contain a statement at the top of “*Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before closing a loan.*”
 - The early estimation may not be substantially similar to the Loan Estimate form with regard to headings, content and format. It must be in a font size no smaller than 12-point font.
- **Verification Documents** – The consumer may not be required to submit verifying documents related to the application before being provided the Loan Estimate.

- **Special Information Booklet** – Under Regulation Z, the consumer must generally be provided with this booklet within 3 business days of the application. However, it is not required for refinances, subordinate liens or reverse mortgages.

Can You Describe How This Is Approached in the Regulations?

Yes. Understanding how the regulations were amended by this rule and how applicability is being revised, can help institutions adjust their policies and procedures for the new rules.

- **Regulation X** –
 - This rule removes the exemption for loans on properties of 25 acres or more.
 - This rule also provides a “*partial exemption for certain mortgage loans.*” At a high level, this partial exemption states that for certain mortgages that are covered by the new integrated mortgage disclosures in Regulation Z, a creditor is exempt from providing (under RESPA) the settlement cost booklet, good faith estimate, settlement statement and application servicing disclosure. (12 CFR 1024.5)
- **Regulation Z** –
 - While Regulation Z does not currently include a definition of “application”, it will upon the effective date of this rule. As mentioned above, it will differ slightly from the definition of application in Regulation X.
 - This rule amends the requirements to provide disclosures pursuant to 12 CFR 1026.18 (i.e. the “early TILA”). Regulation Z currently requires these in “mortgage transactions subject to RESPA.” However, when effective, the requirement will apply to “reverse mortgages subject to RESPA”.
 - The rule also provides for a “*partial exemption for certain mortgage loans.*” At a high level, this partial exemption states that the special disclosures (Loan Estimate, Closing Disclosure and Special Information Booklet) are not required in certain transactions that meet several criteria. (12 CFR 1026.3)
 - This final rule also provides clarifying commentary regarding the exemption for business, commercial, agricultural or organizational credit. The revisions are largely focused on lending to trusts, and in what instances the credit may be considered as being extended to a natural person.
 - The record retention requirements of Regulation Z were also amended to encompass the new integrated disclosures.

Recommendations for Next Steps

By October 3, 2015:

1. Review your RESPA, Truth in Lending and/or mortgage-related policies as they relate to applicability and early disclosures. Revise information as needed, based on amendments and the level of detail included in the policy.
 - a. With regard to Regulation X, ensure the policy is updated to reflect revised exemptions.
 - b. With regard to Regulation Z, ensure the policy is updated to reflect the new definition of application and the revised exemptions and clarifying commentary.
 - c. As needed, update any Record Retention policy to encompass the new integrated disclosures.
2. Review mortgage-related procedures related to initial disclosures and update to address the new requirements. Make certain applicable procedures ensure:
 - a. Proper identification of covered applications.
 - b. Any early estimation of costs, provided prior to a Loan Estimate, contains the required disclaimer and is not substantially similar to the Loan Estimate.
 - c. Required Loan Estimate (or any revisions), Written List of Providers and Special Information Booklet are provided when required.
 - d. The content of a Loan Estimate (or any revisions) is compiled in accordance with requirements.
 - e. The content of any Written List of Providers is compiled in accordance with requirements.
 - f. Compliance with fee and verification restrictions.
3. Train applicable staff on the new requirements and revised procedures. Ensure training covers required disclosures, permitted revisions, as well as fee and verification restrictions.
4. As needed, work with vendors and platform providers that will be involved in this process. Ensure processes support compliance with the new requirements to produce and provide Loan Estimates.
5. As needed, update any internal documentation checklists or control points to encompass the new requirements.