BAI Learning & Development Webinar Q&A
TILA-RESPA Integration – Part 2
A New Way to Disclose

1. Does the "intent to proceed" have to be received by all Applicants or just an applicant?

Answer: The regulation is silent on this matter. It states you can obtain the intent to proceed in any manner that the consumer chooses as long as it's documented. The only section that dictates that all consumers primarily liable have to sign is the section on waiving the waiting period prior to consummation.

(i) Imposition of fees on consumer.

(A) Fee restriction. Except as provided in paragraph (e)(2)(i)(B) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (e)(1)(i) of this section before the consumer has received the disclosures required under paragraph (e)(1)(i) of this section and indicated to the creditor an intent to proceed with the transaction described by those disclosures. A consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25.

1. Fees restricted. A creditor or other person may not impose any fee, such as for an application, appraisal, or underwriting, until the consumer has received the disclosures required by § 1026.19(e)(1)(i) and indicated an intent to proceed with the transaction. The only exception to the fee restriction allows the creditor or other person to impose a bona fide and reasonable fee for obtaining a consumer's credit report, pursuant to § 1026.19(e)(2)(i)(B).

2. Intent to proceed. Section 1026.19(e)(2)(i)(A) provides that a consumer may indicate an intent to proceed with a transaction in any manner the consumer chooses, unless a particular manner of communication is required by the creditor. The creditor must document this communication to satisfy the requirements of § 1026.25. For example, oral communication in person immediately upon delivery of the disclosures required by § 1026.19(e)(1)(i) is sufficiently indicative of intent. Oral communication over the phone, written communication via email, or signing a pre-printed form are also sufficiently indicative of intent if such actions occur after receipt of the disclosures required by § 1026.19(e)(1)(i). However, a consumer's silence is not indicative of intent because it cannot be documented to satisfy the requirements of § 1026.25. For example, a creditor or third party may not deliver the disclosures, wait for some period of time for the consumer to respond, and then charge the consumer a fee for an appraisal if the consumer does not respond, even if the creditor or third party disclosed that it would do so.

2. If we allow the borrower to shop – let's say for lender's title insurance – but the borrower does not shop and they want us to select the provider of the lender's title insurance – it is our understanding that this would fall under the 10% tolerance even though we allowed the borrower to shop, but they didn't shop?

Answer: If you allowed them to shop, you wouldn't select the provider. If they indicated they did not want to shop around and you asked if they wanted to use the one on the shopping list and they stated "yes", then it would go in the 10% tolerance section as a service where you allowed them to shop and they selected the provider on your shopping list.

3. The Loan Estimate that must be given within 3 business days, and no later than 7 business days before consummation, are those days concurrent? Or do we wait 3, then an additional 7?

This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply.

(B) Except as set forth in paragraph (e)(1)(iii)(C) of this section, the creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

4. Are we required to re-disclose, after closing, for clerical errors?

Answer: Yes, you have 60 days from consummation to redisclose clerical errors. If you do not re-disclose, it would be considered a violation.

(iv) Changes due to clerical errors. A creditor does not violate paragraph (f)(1)(i) of this section if the disclosures provided under paragraph (f)(1)(i) contain non-numeric clerical errors, provided the creditor delivers or places in the mail corrected disclosures no later than 60 days after consummation.

5. If an error is discovered more than 60 days post-closing then no corrective action is required?

Answer: The regulation does not address this, but it would be considered a violation as the only time it's not a violation is when you send corrected disclosures within 60 days. See regulatory text for #4 above.

6. For purposes of receiving the LE in the mail, why can't you count Saturday (mailing rules - Specific definition) therefore the LE is deemed to be received on Monday the 10th of August?

Answer: In the example I provided from the CFPB, they stated that the financial institution in the example is not open for substantially all of their business functions on Saturdays. Since the general definition of business day applies to the delivery of the Loan Estimate, Saturday would not be a business day in this example. However, if your institution is open for substantially all of its business functions on a Saturday, you could include Saturday as a business day for Loan Estimate delivery.

7. If title companies will not issue lender's policy without concurrent issue of owner's policy, is the owner's policy still considered "optional"?

Answer: I have not heard of that scenario. If all title companies in your area issue policies that way, then no it would still go in the "other" section if the creditor doesn't require it, but it wouldn't be labeled as optional. If only some title companies issue policies this way and the consumer can shop for the title company, I think you could still argue it's optional as the consumer selected the title company. If you select the title company, then no it would probably not be considered optional.

8. Is the RESPA 25 acre rule still in place after 8-1-15, I thought it was being eliminated?

Answer: The 25 acre rule is still in place for RESPA covered transactions under Regulation X. Consumer purpose loans secured by property over 25 acres are subject to the new TRID rules under Regulation Z effective 8/1/15. Regulation X is not being eliminated; therefore, any provisions still within Regulation X would not apply to consumer loans secured by land over 25 acres. For example, the requirements for initial and annual escrow disclosures and calculation, the delivery of the initial mortgage servicing disclosure, and the delivery of a mortgage transfer disclosure would not be required for consumer loans secured by more than 25 acres under Regulation X.

9. Is the rescission document still a separate document?

Answer: Yes.

10. If items in the 10% tolerance grouping exceed that max level and the Lender decides to include the excess (corrective amount) as a credit; may that credit amount (previously Lender Cure) be included on the CD at closing? Or Since a 30 day period is allowed, must the 'cure' be made after closing? If at closing, is an itemization of the Lender Credit required, recommended or not allowed due to space or other reason?

Answer: The 10% tolerance refund would be provided at closing unless it's an inaccuracy that occurs after closing, in which case you would have 60 days from consummation for the consumer to receive the refund. An itemization of the lender cure is not required or provided for in the regulation. The only disclosure of the cure is in the lender credit in Section J where you would state $XX for increase above legal limit.

11. Will there be a closing disclosure that is mailed to the customer 3 days prior to closing and a closing disclosure that is signed at closing?

Answer: There is no requirement within Regulation Z to obtain a signature at closing on the Closing Disclosure. The signature is optional. If the creditor wishes to have it signed, it could be provided at closing for signature. In practice, a Closing Disclosure will most likely be provided at closing even if it's the same disclosure provided three business days prior to closing. However, the regulation does not state it has to be provided at closing unless you are making a revision. See below.

> (2) Subsequent changes.
> (i) Changes before consummation not requiring a new waiting period. Except as provided in paragraph (f)(2)(ii), if the disclosures provided under paragraph (f)(1)(i) of this section become inaccurate before consummation, the creditor shall provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. Notwithstanding the requirement to provide corrected disclosures at or before consummation, the creditor shall permit the consumer to inspect the disclosures provided under this paragraph, completed to set forth those items that are known to the creditor at the time of inspection, during the business day immediately preceding consummation, but the creditor may omit from inspection items related only to the seller's transaction.

12. What if any "file number" should be listed for creditor closed loans i.e., refinance? Loan number/ID?

Answer: The regulation is silent on this. If the creditor is the settlement agent, it would seem the creditor could use whatever alpha-numeric number it would like to identify the file, which could be the loan number or any other number the creditor assigns so long as the creditor can use that number to find the transaction.

13. On the closing disclosure on the first page, will the date issued and the closing date be the same, if you are issuing this disclosure 3 days before closing/consummation?

Answer: The Closing Disclosure that you issue three business days prior to closing would not have the same date as the closing date. However, if a corrected closing disclosure is provided at consummation, the dates would be the same.

14. File Number - Does this have to be the Settlement Agent's reference number? Can we use our actual Loan Account number assigned by the Bank?

Answer: Yes. The file number has to be a unique alpha-numeric number used by the settlement agent to identify the transaction. This will be the number that the settlement agent will use to pull the transaction when requested. This would correspond to whatever system is used by the settlement agent to track transactions.

15. Is there a private right of action under TRID for not completing unimportant lines of information?

Answer: The TRID requirements fall under Regulation Z. The same liability and enforcement allowed under Regulation Z also applies to TRID. The provisions are listed below. Some seem to apply to any requirement of TILA, while others focus on finance charges and APR.

Effective August 1, 2015, paragraph (e) is amended to read as follows:

(e) Enforcement and liability. Section 108 of the Truth in Lending Act contains the administrative enforcement provisions for that Act. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the Truth in Lending Act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Pub. L. 100-86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the Truth in Lending Act. Section 19 of the Real Estate Settlement Procedures Act contains the administrative enforcement provisions for that Act.

From the OCC Examination Manual

Civil Liability—TILA Sections 129B, 129C, 130, and 131
If a creditor fails to comply with any requirements of TILA, other than with the advertising provisions of chapter 3, it may be held liable to the consumer for

- actual damages, and
- the cost of any successful legal action together with reasonable attorney's fees.

The creditor also may be held liable for any of the following:

- In an individual action, twice the amount of the finance charge involved.
- In an individual action relating to an open-end credit transaction that is not secured by real property or a dwelling, twice the amount of the finance charge involved, with a minimum of $500 and a maximum of $5,000 or such higher amount as may be appropriate in the case of an established pattern or practice of such failure.
- In an individual action relating to a closed-end credit transaction secured by real property or a dwelling, not less than $400 and not more than $4,000.
- In a class action, such amount as the court may allow (with no minimum recovery for each class member). The total amount of recovery in any class actions arising out of the same failure to comply by the same creditor, however, cannot be more than $1 million or 1 percent of the creditor's net worth, whichever is less.

In specified circumstances, the creditor or assignee has no liability if it corrects identified errors within 60 days of discovering the errors and before the institution of a civil action or the receipt of written notice of the error from the obligor. Additionally, a creditor and assignee will not be liable for bona fide errors that occurred despite the maintenance of procedures reasonably adapted to avoid any such error.

Moreover, TILA also provides consumers with the right to assert a violation of TILA's anti-steering provisions or the ability-to-repay standards for residential mortgage loan requirements "as a matter of defense by recoupment or setoff" against a foreclosure action. In general, the amount of recoupment or setoff shall be equal to the amount that the consumer would be entitled to generally under 15 USC 1640(a) for a valid claim, plus the cost to the consumer of the action (including reasonable attorney's fees). Refer to sections 129B, 129C, 130, and 131 of TILA for more information.

Criminal Liability—TILA Section 112
Anyone who willingly and knowingly fails to comply with any requirement of TILA will be fined not more than $5,000 or imprisoned not more than one year, or both.

Administrative Actions—TILA Section 108
TILA authorizes federal regulatory agencies to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance. That authorization extends to unintentional errors, including isolated violations (e.g., an error that occurred only once or errors, often without a common cause, that occurred infrequently and randomly).

Under certain circumstances, TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when understatement of the APR or finance charge involves

- patterns or practices of violations (e.g., errors that occurred, often with a common cause, consistently or frequently, reflecting a pattern with a specific type or types of consumer credit);
- gross negligence; or
- willful noncompliance intended to mislead the person to whom the credit was extended.

Any proceeding that may be brought by a regulatory agency against a creditor may be maintained against any assignee of the creditor if the violation is apparent on the face of the disclosure statement or other documents assigned, except when the assignment was involuntary under section 131 (15 USC 1641).

16. What is the consideration, or appropriate measures to be taken, for providing a copy of the buyer's CD to the Seller and the reverse sharing?

Answer: Often both transactions are on the same disclosure. Privacy should be considered, but practices vary by geographic regions of the country. In addition state law may prohibit the sharing of the information.

17. Are components of Title Service Fees required to be individually itemized? (such as title examination, rundown and record, etc.) ?

Answer: Yes, it appears it should be individually itemized. The regulation states "an itemization of each amount.".

18. If transfer tax is split between county and state, do both have to be listed? Would Property Taxes paid to the county at closing be considered Non-shoppable Third Party Fees?

Answer: An itemization of all transfer taxes paid should be listed.

Property taxes would generally be disclosed in the Prepaid Section.

> 2. Transfer taxes – itemization. The creditor may itemize the transfer taxes paid on as many lines as necessary pursuant to § 1026.38(g)(1) in order to disclose all of the transfer taxes paid as part of the transaction. The taxes should be allocated in the applicable columns as borrower-paid at or before closing, seller-paid at or before closing, or paid by others, as provided by State or local law, the terms of the legal obligation, or the real estate purchase contract.
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> Prepaids. Under the subheading "Prepaids," an itemization of the amounts to be paid by the consumer in advance of the first scheduled payment, and the subtotal of all such amounts, as follows
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> (iv) On the fourth line, the number of months for which property taxes are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such taxes, labeled "Property Taxes (__ months)."

19. Check boxes for why you will not have an escrow account - how to answer if doing a second mortgage and the escrow is already included in the existing first mortgage?

Answer: The regulation is not clear, but the logical answer for the two options would be that the lender does not offer one.

20. Do you have to list a phone and email in the contact information? Or is one acceptable?

Answer: The directions to this section within Regulation Z state both are required.

> 4. Email address and phone number. Section 1026.37(k)(3) requires disclosure of the loan officer's email address and phone number. Disclosure of a general number or email address for the loan officer's lender or mortgage broker, as applicable, satisfies this requirement if no such information is generally available for such person.

21. Is the Settlement Costs Booklet being revised? If so, is it already available for purchase?

Answer: The CFPB recently posted the revised booklet, now called the Toolkit. http://www.consumerfinance.gov/newsroom/cfpb-announces-new-know-before-you-owe-mortgage-shopping-toolkit.

22. Does the escrow closing notice apply when the PMI automatically drops off at 78%?

Answer: If your question is, if the only item being escrowed is PMI and escrow terminates at 78%, would you have to provide the escrow closing notice, the regulation is silent on this. However, the only exception given to providing the notice is when the underlying obligation is terminated or if the escrow was established due to delinquency or default. Since the termination of PMI is not the termination of the underlying debt obligation, I think you would provide the notice.

23. What if the escrow account is closed due to an overdraft balance? Is the escrow cancellation notice required?

Answer: Yes, unless it was only set up due to delinquency or default. There is an exception for escrows established due to delinquency or default.

24. If the loan is a wholesale loan, does there have to be a Loan Officer for the lender also or do we only need to provide the broker's Loan officer name?

Answer: Both would be provided.

> (k) Contact information. Under the master heading, "Additional Information About This Loan," the following information:
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> (1) The name and Nationwide Mortgage Licensing System and Registry identification number (NMLSR ID) (labeled "NMLS ID/License ID ") for the creditor (labeled "Lender") and the mortgage broker (labeled "Mortgage Broker"), if any. In the event the creditor or the mortgage broker has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered shall be disclosed, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any;
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> (2) The name and NMLSR ID of the individual loan officer (labeled "Loan Officer" and "NMLS ID/License ID," respectively) of the creditor and the mortgage broker, if any, who is the primary contact for the consumer. In the event the individual loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the loan officer is licensed and/or registered shall be disclosed with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word "License" in the label, if any; and
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> (3) The email address and telephone number of the loan officer (labeled "Email" and "Phone," respectively).

25. Regarding inaccurate APR, can the change decrease without redisclosing? Also, where would Principal Reductions be shown on the CD?

Answer: The rules state to follow 12 CFR 1026.22 regarding when an APR is outside of tolerance. 1026.22 says a decrease in an APR is not a violation unless it is caused by something other than a finance charge.

Principal reductions are not addressed in the regulation, but looking at the form, I think it might go in the Amounts Due From Borrower section of the Borrower Summaries of Transaction table.