# Financial Institutions Webinar

## A Review of the TILA-RESPA Integrated Disclosure Rule

February 25, 2016

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# Speakers

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# Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- Offering 1.0 CLE credit in California and New York*
- WebEx customer support: +1 888 447 1119, press 2

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# Agenda

## I. TILA/RESPA and TRID Implementation

- Background of TILA and RESPA
- Dodd-Frank and Introduction of TRID
- CFPB Education and Implementation Efforts

## II. Major TRID Issue Areas

- Good Faith Compliance Efforts
- Liability
- Definition of "Application"
- Vendor Management
- Ability to Reset Tolerances Post-Closing Disclosure
- Seller-Paid Fees
- Record Retention

## III. Compliance Tips

# I. TILA/RESPA and TRID Implementation

**TILA and RESPA – Background**

- Truth in Lending Act (TILA) – 1968
  - Rule-writing authority: The Federal Reserve
- Real Estate Settlement Procedures Act of 1974
  - Rule-writing authority: HUD
- Two agencies, two laws
- Two inconsistent sets of rules, two overlapping forms
  - Confusing for customers
  - Burdensome for lenders and settlement agents

# Dodd-Frank

- Sections 1032(f), 1098 and 1100A Direct the CFPB To Enact Rules That Combine These Disclosures; Dodd-Frank Deferred to the CFPB as to How To Do This
  - Consumer testing
  - Stakeholder outreach
- November 2013 – The CFPB Issued the TILA-RESPA Integrated Disclosure (TRID) Final Rule
  - January 2015 – TRID was amended
  - October 2015 – TRID effective date

# Loan Estimate and Closing Disclosure Forms

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

*Save this Loan Estimate to compare with your Closing Disclosure*

## Loan Estimate

**DATE ISSUED** 2/15/2013
**APPLICANTS** Michael Jones and Mary Stone
123 Anywhere Street
Anytown, ST 12345
**PROPERTY** 456 Somewhere Avenue
Anytown, ST 12345
**SALE PRICE** $180,000

**LOAN TERM** 30 years
**PURPOSE** Purchase
**PRODUCT** Fixed Rate
**LOAN TYPE** ☒ Conventional ☐ FHA ☐ VA ☐ ___________
**LOAN ID #** 123456789
**RATE LOCK** ☐ NO ☒ YES, until 4/16/2013 at 5:00 p.m. EDT
*Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **3/4/2013** at 5:00 p.m. EDT*

| Loan Terms | | Can this amount increase after closing? |
|---|---|---|
| **Loan Amount** | $162,000 | **NO** |
| **Interest Rate** | 3.875% | **NO** |
| **Monthly Principal & Interest** *See Projected Payments below for your Estimated Total Monthly Payment* | $761.78 | **NO** |
| | | **Does the loan have these features?** |
| **Prepayment Penalty** | | **YES** • **As high as $3,240** if you pay off the loan during the first 2 years |
| **Balloon Payment** | | **NO** |

| Projected Payments | | |
|---|---|---|
| **Payment Calculation** | **Years 1-7** | **Years 8-30** |
| Principal & Interest | $761.78 | $761.78 |
| Mortgage Insurance | + 82 | + — |
| Estimated Escrow *Amount can increase over time* | + 206 | + 206 |
| **Estimated Total Monthly Payment** | $1,050 | $968 |

| | | | |
|---|---|---|---|
| **Estimated Taxes, Insurance & Assessments** *Amount can increase over time* | $206 a month | **This estimate includes** ☒ Property Taxes ☒ Homeowner's Insurance ☐ Other: | **In escrow?** YES YES |

*See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*

| Costs at Closing | | |
|---|---|---|
| **Estimated Closing Costs** | $8,054 | Includes $5,672 in Loan Costs + $2,382 in Other Costs – $0 in Lender Credits. *See page 2 for details.* |
| **Estimated Cash to Close** | $16,054 | Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.* |

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

LOAN ESTIMATE PAGE 1 OF 3 • LOAN ID # 123456789

## Closing Disclosure

*This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.*

**Closing Information**
**Date Issued** 4/15/2013
**Closing Date** 4/15/2013
**Disbursement Date** 4/15/2013
**Settlement Agent** Epsilon Title Co.
**File #** 12-3456
**Property** 456 Somewhere Ave
Anytown, ST 12345
**Sale Price** $180,000

**Transaction Information**
**Borrower** Michael Jones and Mary Stone
123 Anywhere Street
Anytown, ST 12345
**Seller** Steve Cole and Amy Doe
321 Somewhere Drive
Anytown, ST 12345
**Lender** Ficus Bank

**Loan Information**
**Loan Term** 30 years
**Purpose** Purchase
**Product** Fixed Rate
**Loan Type** ☒ Conventional ☐ FHA ☐ VA ☐ ___________
**Loan ID #** 123456789
**MIC #** 000654321

| Loan Terms | | Can this amount increase after closing? |
|---|---|---|
| **Loan Amount** | $162,000 | **NO** |
| **Interest Rate** | 3.875% | **NO** |
| **Monthly Principal & Interest** *See Projected Payments below for your Estimated Total Monthly Payment* | $761.78 | **NO** |
| | | **Does the loan have these features?** |
| **Prepayment Penalty** | | **YES** • **As high as $3,240** if you pay off the loan during the first 2 years |
| **Balloon Payment** | | **NO** |

| Projected Payments | | |
|---|---|---|
| **Payment Calculation** | **Years 1-7** | **Years 8-30** |
| Principal & Interest | $761.78 | $761.78 |
| Mortgage Insurance | + 82.35 | + — |
| Estimated Escrow *Amount can increase over time* | + 206.13 | + 206.13 |
| **Estimated Total Monthly Payment** | $1,050.26 | $967.91 |

| | | | |
|---|---|---|---|
| **Estimated Taxes, Insurance & Assessments** *Amount can increase over time* *See page 4 for details* | $356.13 a month | **This estimate includes** ☒ Property Taxes ☒ Homeowner's Insurance ☒ Other: Homeowner's Association Dues | **In escrow?** YES YES NO |

*See Escrow Account on page 4 for details. You must pay for other property costs separately.*

| Costs at Closing | | |
|---|---|---|
| **Closing Costs** | $9,712.10 | Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. *See page 2 for details.* |
| **Cash to Close** | $14,147.26 | Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.* |

CLOSING DISCLOSURE PAGE 1 OF 5 • LOAN ID # 123456789

# TRID Rule Overview

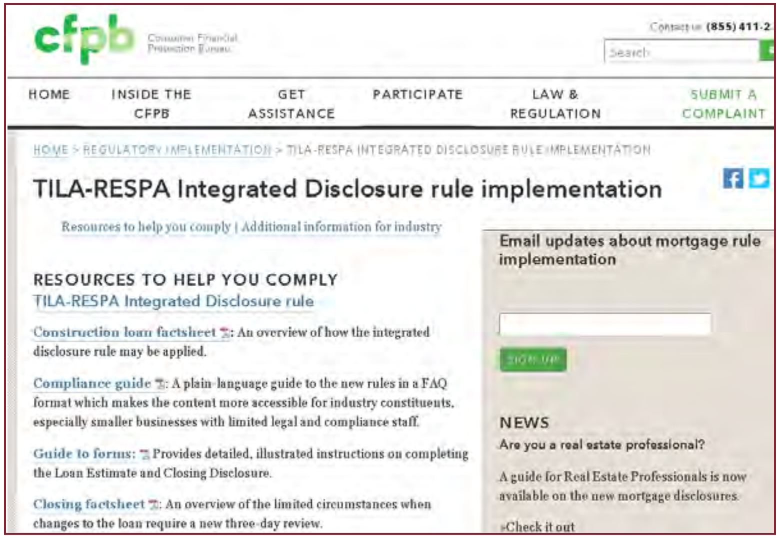
- Loan Estimate
  - Combined the initial TILA disclosure and RESPA's Good Faith Estimate (GFE)
- Closing Disclosure
  - Combined the final TILA disclosure and RESPA's HUD-1
- TRID Includes a Number of New Requirements
  - Timing requirements
  - Tolerance levels for disclosed estimates
  - Pre-disclosure requirements

# TRID – General Scope

- Closed-End Consumer Credit Transactions Secured by Real Estate
  - Does NOT apply to:
    - Reverse mortgages
    - HELOCs
    - Chattel dwelling loans
    - Loans made by a person who makes five or fewer mortgages in a year
    - Certain no-interest loans secured by subordinate liens made for the purpose of down payment or similar reasons

# CFPB Implementation Efforts

- Implementation Website
  - Small entity compliance guide
  - Guide to forms
  - Sample and annotated forms
  - Factsheets
- eRegulations Tool
- Five-Part CFPB Webinar Series
  - Part 1: Overview of Rule – June 17, 2014
  - Part 2: FAQs – August 26, 2014
  - Part 3: Loan Estimate Form – October 1, 2014
  - Part 4: Closing Disclosure Form – November 18, 2014
  - Part Implementation Challenges – May 26, 2015
- Publications



# II. Major TRID Issue Areas

- Enforcement and Liability
  - Good faith compliance efforts
  - Liability issues and secondary market concerns

- Implementation and Compliance
  - Vendor management
  - “Application” definition
  - Ability to reset tolerances post-closing disclosure
  - Seller-paid fees
  - Record retention

# Good Faith Compliance Efforts

- Guidance from CFPB, OCC, FDIC
- “[E]arly evaluations will be corrective and diagnostic, not punitive” – Richard Cordray, February 23, 2016
- Examination Considerations
  - Implementation plan
  - Updating policies and procedures
  - Training of staff
  - Handling of technical and other implementation issues
- CFPB – Focus on Compliance Management System
  - Similar to January 2014 mortgage rules
  - TRID is one of the CFPB’s four main mortgage origination examination priorities for 2016

# Liability

- Dodd-Frank did not alter TILA/RESPA liability provisions
- TILA provides for private rights of action; RESPA does not
- The CFPB did not specify in regulatory text or official staff commentary which provisions relate to TILA and which to RESPA liability provisions
- TILA allows for a borrower to sue only for violations of requirements imposed under Part B

# Liability – Investor and Market Concerns

MBA
MORTGAGE BANKERS ASSOCIATION

December 21, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

We appreciate the tremendous work the CFPB has undertaken developing, implementing and clarifying the KBYO/TRID regulations. However, lingering misperceptions and technical ambiguities in the regulations have resulted in significant market disruptions in certain channels over the last month. We fear this disruption could develop into significant liquidity issues in the mortgage market without additional clarity conveyed to market participants by the Bureau as soon as possible, ideally this week. In addition we seek a commitment from CFPB to substantively re-engage with industry after the holidays to provide a process for ongoing written regulatory clarifications during the "diagnostic period" to address a range of KBYO interpretation questions that persist amongst lenders. Below, we establish the rationale for why we believe these steps are needed, with a focus on our proposed interim solution we ask you to implement as quickly as possible.

**The Problem Today**

Many MBA members are reporting that some investors have put in place strict KBYO compliance standards that are resulting in very high fail rates on closed loans delivered for sale. Moody's recently reported that approximately 90 percent of one sample of loans did not fully comply with KBYO requirements. MBA is currently surveying our members to get a better sense of the number of errors and the standards being used by private investors and correspondent aggregators and the overall extent to which they are refusing to purchase, or demanding repurchase, of closed loans.

Today, the jumbo loan secondary market appears to be experiencing the most acute disruption, specifically for whole-loan trading[1] (WLT) and private-label securitizations (PLS). The reason is simple. Third party due diligence firms that are assigned by either ratings agencies or the investors themselves to perform quality assurance reviews on loans delivered into WLT, PLS and credit risk transfer (CRT) pools are failing loan deliveries in large quantities. These firms have taken an extremely conservative interpretation of several aspects of the KBYO rule and the physical disclosure display requirements. In addition, because a growing percentage of GSE loans sales are involved in CRTs[2] that require third party

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[1] Whole loan trading is the bulk purchase of a pool of closed loans by an investor from a large aggregator of loans, in this case Jumbo loans.
[2] Credit risk transfers are a key strategic goals for FHFA that involves having private investors take expected losses on Agency MBS while the GSEs retain catastrophic, unexpected losses on the pool.

1919 M STREET NW, 5th FLOOR • WASHINGTON, DC 20036 • MBA.ORG • (202) 557-2700

cfpb Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

December 29, 2015

David Stevens
President and Chief Executive Officer
Mortgage Bankers Association
1919 M Street, N.W., 5th Floor
Washington, D.C. 20036

Dear Mr. Stevens:

Thank you for your letter of December 21, 2015, regarding implementation of the Bureau's Know Before You Owe mortgage disclosure rule. The Bureau greatly appreciates the MBA's continuing constructive engagement in this area and shares the MBA's interest in ensuring a smooth and effective implementation of the rule for all parties.

As you know, the Bureau has been working closely with you and other market participants to monitor the industry's progress toward full implementation since issuance of the rule in November 2013. We have continued to work closely with you and others since the effective date of October 3, 2015. We appreciate the information you have brought to us over the many meetings between our staffs, including multiple discussions with the MBA and its members in the last month, and are committed to continuing to engage with you and your members in robust dialogue, as you suggest. We are also continuing to dedicate significant resources in support of industry's implementation in this area, including provision of guidance to all market participants. We will continue to assess how we can best provide guidance to market participants and acknowledge your ongoing assistance in identifying areas of opportunity for us.

We recognize that the mortgage industry needed to make significant systems and operational changes to adjust to the new requirements and that implementation requires extensive coordination with third parties. We appreciate that the mortgage industry has dedicated substantial resources to understand the rules, adapt systems, and train personnel in a serious effort to get it right. As with any change of this scale, despite the best of efforts, there inevitably will be inadvertent errors in the early days. That is why the Bureau and the other regulators have made clear that our initial examinations for compliance with the rule will be sensitive to the progress industry has made. In particular, our examiners will be squarely focused on whether companies have made good faith efforts to come into compliance with the rule. All of the regulators have indicated that their examinations for compliance in the first few months of implementing the new rule will be corrective and diagnostic, rather than punitive. This position is consistent with our approach to supervision and enforcement of the rules implementing title XIV of the Dodd-Frank Act.

# Liability – Investors and Secondary Market

- Concerns
  - When purchasing a loan with a TRID Error
    - Assignee liability
    - Contractual representations
    - Indemnification/repurchase demand based on “compliance with law” representations
  - HUD and Fannie Mae / Freddie Mac will not initially exercise repurchase rights based on technical non-compliance
    - Presents risk for private rights of actions – False Claims Act and FIRREA

- Curing TRID Violations
  - Prompt corrective action
  - TILA provides options to limit liability, but does TRID?

# Vendor Management

- Using Vendors Can Help with TRID Compliance
  - Data collection, data transfer, document generation, fulfillment and eSign, storage, audits and more
  - Completing loan estimate and closing disclosure (brokers, LOS providers, compliance reviewers, others)
- Flexibility for Creditors/Settlement Agent Relationships
- Director Cordray's Remarks to MBA:

> "Some vendors performed poorly in getting their work done in a timely manner, and they unfairly put many of you on the spot with changes at the last minute or even past the due date.  It may well be that all of the financial regulators, including the Consumer Bureau, need to devote greater attention to the unsatisfactory performance of these vendors and how they are affecting the financial marketplace." – October 19, 2015

# Definition of “Application”

- The “Submission of A Consumer’s Financial Information for the Purposes of Obtaining an Extension of Credit”
  - Six elements: (i) name, (ii) income, (iii) SSN, (iv) property address, (v) estimated value of property and (vi) mortgage loan amount sought
  - Removes catch-all provision in RESPA definition
- Sequencing of Information – Online Applications
- Pre-Qualifications/Pre-Approvals
- Verification of Documentation
- Refinances

# Ability to Reset Tolerances After Closing Disclosure

- Revised Loan Estimates and Closing Disclosures

- Timing Rules for Closing Disclosure Do Not Account for Early Delivery of the Closing Disclosure
  - Risk that a corrected closing disclosure based on a change in circumstance cannot, <u>under any scenario</u>, be relied upon for good faith and resetting applicable tolerances
    - The last chance to reset tolerances may be the initial closing disclosure
  - Uncertainty as to how the CFPB will interpret this issue
    - See August 2014 webinar

# Seller-Paid Fees

- TRID Accounts for *Some* Seller-Paid Fees
- “Seller Credits” Known to Creditor at Time of Delivery of the Loan Estimate Must Be Disclosed
  - Costs the borrower will pay for, is likely to pay for, or has contracted with a person other than the creditor or loan originator to pay at closing
- There Is a Basis To Distinguish between Required and Optional Settlement Services
- Refund/Cure Requirements – TRID is Silent
  - 2010 HUD RESPA Guidance

# Record Retention

- Regulation Z requires that evidence of compliance with the disclosure requirements must be retained for three years
- Creditor must retain copies of the closing disclosure and all documents related to the closing disclosure for five years
- Requirements if creditor sells, transfers or otherwise disposes of its interest in a mortgage and does not service the loan
- Lenders should pay attention to IT infrastructure

# III. Compliance Best Practices

# Questions?

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