

REVISED EARLY TIL DISCLOSURE RULES EFFECTIVE JULY 30, 2009

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On May 14th the Federal Reserve Board approved the final revisions to Regulation Z to implement the Mortgage Disclosure Improvement Act (MDIA). The MDIA was the result of two 2008 Congressional actions: the Housing and Economic Recovery Act passed on July 30, 2008 and later, the MDIA was further amended by Congress in October 2008 with the enactment of the Emergency Economic Stabilization Act of 2008. The final revisions to Regulation Z resulting from the MDIA can be found online at <http://edocket.access.gpo.gov/2009/pdf/E9-11567.pdf>.

The revisions to Regulation Z dramatically increase the scope of coverage of loans for which an early Truth-in-Lending (TIL) disclosure must be provided, expand the timing requirements for delivery of the early TIL, impose fee limitations, require redisclosure of the early TIL in certain circumstances and add an additional Fed Box disclosure requirement. If your institution has not started preparing for these changes, time is of the essence as the revisions are effective for all applications received on or after July 30, 2009 — less than 60 short days away.

Covered Loans

Effective July 30, ALL consumer-purpose closed-end loans secured by a consumer's dwelling will be subject to the early TIL disclosure requirement. Prior to July 30th, the early TIL was only required for "residential mortgage transactions covered by RESPA" — that is, owner-occupied, purchase money transactions.

The end result is any consumer purpose loan, whether purchase money, refinance, first lien or subordinate lien, and closed-end home equity loans will be covered transactions. Also important to note is that the definition of "dwelling" is not limited to a consumer's principal dwelling - vacation homes and second homes are also covered.

As in the past, Reg. Z's disclosure rules are triggered by receipt of the consumer's "written application." Creditors can rely on RESPA and its implementing regulation, Reg. X, in deciding whether a written application has been received. In general, Reg. X defines an "application" to mean submission of a borrower's financial information in anticipation of a credit decision relating to a federally-related mortgage loan. An application is received when it reaches the creditor in

any of the ways applications are normally transmitted — by mail, hand delivery, electronically or through an intermediary such as mortgage broker. If an application reaches the creditor through an intermediary agent or broker, it is received when it reaches the creditor rather than when it reaches the intermediary.

An application under Reg. X's revised definition can be fairly "bare bones" and include as little information as the borrower's name, Social Security number, income, property address, estimated property value, loan amount and other information required by the creditor. While Reg. X does allow a creditor to request "other information," it does not allow to a creditor to postpone delivery of the early TIL by requiring a consumer to provide supplemental information to verify application information, such as a paystub to verify income.

New Fee Restriction

Effective July 30, a creditor may not impose a fee in connection with the consumer's application (other than a reasonable credit report fee) until the consumer has "received" the early TIL. If the disclosures are mailed by the creditor, they are not considered to be "received" by the consumer until three business days after they have been mailed. "Business day" for purposes of the fee restriction is defined as all calendar days except Sundays and legal public holidays; the same definition used for rescission purposes.

For illustrative purposes, consider a creditor that receives an application on Monday and mails the early TIL to the applicant on Tuesday. The first date the creditor could impose a fee, such as an application or commitment fee, is Friday — the day the applicant is deemed to have "received" their early TIL.

Again, the creditor can collect a "reasonable" credit report fee at the time of application. If the creditor delivers the early TIL in person at the time of application, the creditor can impose an application fee, appraisal fee or similar fee immediately following delivery of the disclosure if the consumer indicates they want to proceed with the loan application process.

If a third party (such as broker) submits a consumer's written application to a creditor and both the creditor and third party do not collect any

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fee, other than for obtaining the consumer’s credit report, until the consumer receives the early TIL from the creditor, the creditor will be deemed to have complied with the fee restriction rules. Likewise, if a third party submits a consumer’s written application to a second creditor following a prior creditor’s denial of an application made by the same consumer (or following the consumer’s withdrawal), and, if a fee already has been assessed, the new creditor or third party does not collect or impose any additional fee until the consumer receives the early TIL disclosure from the new creditor, the creditor will have met the fee restriction. The key point is the consumer must have the early TIL in hand before the creditor collects anything beyond the credit report fee.

“If a creditor has to redisclose, it could further postpone closing...”

Expanded Timing Requirement

The regulation still requires the early TIL be delivered or placed in the mail not later than three business days after the creditor receives the consumer’s written application. However, a provision was added that now requires the early TIL also be delivered at least seven business days before consummation of the transaction. The goal of the seven-day waiting period is to give the consumer time to study the disclosure, ask questions and shop for credit.

Reg. Z defines “business day” for purposes of the seven-day waiting period to mean all calendar days except Sundays and legal public holidays; the same definition used for rescission purposes. This is a change from the proposed rule to the final rule. The proposal used the “general definition” of business day meaning any day the bank is substantially open for business.

The final rule preamble explains the seven-business-day waiting period begins when the lender delivers or places the early TIL in the mail – not when the consumer receives or is deemed to receive it. So for example, if a lender received an application on Monday, July 6th, mailed the early TIL to the applicant on Tuesday, July 7th, the lender could start counting the seven-day waiting period on Wednesday, July 8th — the day following delivery of early TIL. The earliest date the closing could occur would be on Wednesday, July 15th, the seventh business day following delivery of the early TIL. (See Table 1)

New Redisclosure Requirement

Under current Reg. Z rules, the creditor is required to redisclose if the early TIL is outside certain tolerances, but the final TIL can act as a creditor’s redisclosure. The MDIA amendments to Reg. Z add a redisclosure requirement if the lender adds a

Table 1 — Delivery of Early TIL

SUN	MON	TUE	WED	THU	FRI	SAT
5	6 Credit receives application	7 Creditor mails early TIL	8 Start 7-day waiting period	9 Day 2	10 Day 3	11 Day 4
12	13 Day 5	14 Day 6	15 Day 7- Close today	16	17	18

variable rate feature that was not disclosed on the initial early TIL, or the APR (Annual Percentage Rate) on the early TIL varies by more than 1/8 of one percent for regular transactions or 1/4th of one percent for irregular transactions as compared to the APR on the final TIL. (An irregular transaction is one that includes a multiple advance feature, irregular payment periods, or irregular payment amounts.) Effective July 30, creditors will need to provide a corrected early TIL if the APR on the final TIL provided at consummation varies by more than 1/8th of one percent as compared to the APR on the early TIL or a variable rate feature is added that was not previously disclosed.

The commentary clarifies in instances where corrected disclosures are given the creditor should compare the APR at consummation with the APR in the most recently provided corrected disclosures — not the first set of disclosures provided — to determine whether the creditor must provide another set of corrected disclosures.

If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor is not required to highlight the changed terms. Whereas, if the creditor chooses to disclose only the changed terms, all the new terms must be disclosed. For example, a different APR will almost always produce a different finance charge and often, a new payment schedule.

If a creditor has to redisclose, it could further postpone closing as Reg. Z requires borrowers must receive the corrected early TIL no later than three business days prior to closing. If the revised early TIL is delivered to the borrower in person, closing can occur on the third business day following delivery. If the corrected TIL is delivered electronically (consistent with E-Sign Act) or by overnight courier, the creditor may rely on evidence of actual delivery (e.g., certified mail or overnight mail delivery confirmation) to determine when the three-day waiting period begins.

However, if the corrected TIL is mailed to the borrower, it is considered “received” three business days after it is mailed. “Business day” for pur-

Table 2 — Redisdisclosure of Early TIL (notice delivered in person)

SUN	MON	TUE	WED	THU	FRI	SAT
5	6 Credit receives application	7 Creditor mails early TIL	8 Start 7-day waiting period	9 Day 2	10 Day 3	11 Day 4
12	13 Day 5	14 Day 6 - Deliver corrected TIL in person	15 Start 3-day waiting period	16 Day 2	17 Day 3 - Close today	18

poses of this redisdisclosure provision is all calendar days except Sundays and legal public holidays; the same definition used for rescission purposes.

It is important to note that the additional three-day waiting period will never shorten the original seven-day waiting period. Closing may not occur

Table 3 — Redisdisclosure of early TIL (notice mailed)

SUN	MON	TUE	WED	THU	FRI	SAT
5	6 Credit receives application	7 Creditor mails early TIL	8 Start 7-day waiting period	9 Day 2	10 Day 3	11 Day 4
12	13 Day 5	14 Day 6 - Mailed corrected TIL to borrower	15 Start 3-day mailing period	16 Day 2	17 Day 3 - Borrower 'receives' corrected TIL	18 Start additional 3-day waiting period
19	20 Day 2	21 Day 3 - Close today	22	23	24	25

until both the seven-day waiting period and the three-business day waiting period have expired. For example, assume a creditor delivers the early TIL to the consumer in person or places them in the mail on Tuesday, July 7th, and the creditor then delivers the corrected disclosures in person to the consumer on Wednesday, July 8th. Although Saturday, July 11th is the third business day after the consumer receives the corrected early TIL, consummation may not occur before Wednesday, July 15th, the seventh business day following delivery of the or mailing of the initial early TIL.

Waiving the Waiting Period

If the borrower has a “bona fide personal financial emergency,” he/she may waive both the seven-day and the additional three-day waiting period. To waive the waiting period, the borrower must:

- Provide the lender with a dated, written statement; (Pre-printed forms are not acceptable.)
- Specifically detail in the written statement the personal financial emergency necessitating the waiver request; and

- Obtain the signatures of all primary obligors entitled to receive the corrected TIL.

Whether a “bona fide personal financial emergency” exists is determined by the facts for each individual case. For illustrative purposes, the commentary provides the example of the imminent sale of a consumer’s home at a foreclosure sale during the waiting period as a bona fide financial emergency. The final rule reiterates waiting period waivers should not be used routinely to expedite consummation for reasons of convenience.

New Notice Requirement

The least onerous of the MDIA requirements is a new disclosure that must be added to the early TIL. The following language should be grouped together with the other disclosures required by section 226.19(1) & (2) in the early TIL Fed Box:

“You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.”

Action Steps

The MDIA provisions are effective for covered applications taken on or after July 30, 2009. If you have not started preparing, we suggest these initial action steps:

- Contact your loan software vendor to ensure they are making the necessary adjustments to incorporate the new Fed Box disclosure into your early TIL.
- Update your loan checklists and procedures to add the seven-day waiting period from the time the early TIL is provided until closing.
- Develop and implement training programs for loan personnel. Training will be the most critical component of your preparation. While the TIL disclosure itself has only minor changes, the timing and redisdisclosure rules are complex. Your lenders need to understand when redisdisclosure is required, how to calculate the additional waiting period and most importantly, be able to explain the rules to customers and address objections when your customers do not want to wait an additional period of time to get their loan proceeds!

“...waiting period waivers should not be used routinely to expedite consummation for reasons of convenience.”