

CFPB Provides Answers to FAQs Related to TILA-RESPA Integrated Disclosure Rule

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The Consumer Financial Protection Bureau recently posted responses to four frequently asked questions related to the TILA-RESPA Integrated Disclosure Rule ("TRID Rule"). The CFPB's FAQs address:

- What types of changes to the initial Closing Disclosure require a corrected Closing Disclosure at least three business days before consummation;
- Whether an APR decrease requires a corrected Closing Disclosure at least three business days before consummation;
- Whether the "No Wait for Lower Mortgage Rate" amendment changed requirements for the timing of corrected Closing Disclosures; and
- Whether the model forms still provide a safe harbor despite not including recent TRID amendments.

What Types of Changes to the Initial Closing Disclosure Require a Corrected Closing Disclosure at Least Three Business Days Before Consummation?

Under the TRID Rule, a creditor must provide a consumer with an initial Closing Disclosure at least three business days before consummation and, if there are any changes to that disclosure, a corrected Closing Disclosure. Whether the creditor must provide the corrected Closing Disclosure at least three business days before consummation, or merely at or before consummation, depends on the type of change.

The CFPB responds that only three types of changes require a consumer to receive a corrected Closing Disclosure at least three business days before consummation:

- If the APR becomes inaccurate (as defined in 12 CFR § 1026.22);
- If the disclosed loan product information changes (e.g., the loan changes from a fixed- to an adjustable-rate or from a 5/1 ARM to a 3/1 ARM); or
- A prepayment penalty is added to the transaction.

For all other types of changes, the provision of a corrected Closing Disclosure at or before consummation is sufficient.

Does an APR Decrease Require a Corrected Closing Disclosure at Least Three Days Before Consummation?

The TRID Rule requires disclosure of an accurate APR. Regulation Z, however, provides certain tolerances to determine whether a disclosed APR is sufficiently accurate. These tolerances vary depending on the type of transaction, and in some cases, the reason for the inaccuracy. For example, for a "regular" mortgage transaction, if the APR disclosure is within 1/8th of 1 percentage point of the true APR, the disclosure is considered accurate under Regulation Z. See 12 C.F.R. § 1026.22(a)(2).

The CFPB responds that whether a corrected Closing Disclosure must be provided at least three business days before consummation depends on whether or not the initial Closing Disclosure included an accurate APR disclosure (i.e., an APR disclosure that remains within tolerances under Regulation Z). For mortgage transactions where the APR decreases, the CFPB points out that if the decrease in the APR is directly attributable to a decrease in the finance charge, then the originally-disclosed APR is still considered legally accurate and a new three-business day waiting period is not required. The reason for this is that an overstated finance charge is accurate and disclosures affected by the overstated finance charge (including the APR) are also considered accurate. See 12 C.F.R. § 1026.22(a)(4) and 12 C.F.R. § 1026.38(o)(2)(ii).

As a result, a creditor must determine whether the APR disclosure is accurate under Regulation Z before concluding whether or not a corrected Closing Disclosure must be provided at least three business days before consummation.

Did the "No Wait for Lower Mortgage Rate" Amendment Change Requirements for the Timing of Corrected Closing Disclosures?

In 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act became law. That Act included a section titled "No Wait for Lower Mortgage Rates," which provides:

If a creditor extends to a consumer a second offer of credit with a lower annual percentage rate, the transaction may be consummated without regard to the period specified in [15 U.S.C. § 1639(b)(1)] with respect to the second offer.

The CFPB's response points out that section 1639 addresses when a creditor must provide certain disclosures for *high cost mortgages*. As a result, the amendment to section 1639 does not change the Closing Disclosure timing requirements discussed in responses to the prior questions.

Do the Model Forms Still Provide a Safe Harbor Despite Not Including Recent TRID Amendments?

Yes. In 2017, the CFPB finalized changes to the TRID Rule and commentary. At that time, the CFPB noted that a creditor was deemed to be in compliance with the disclosure

requirements associated with the Loan Estimate and Closing Disclosure if the creditor used the appropriate model form and properly completed it with accurate content. However, certain model forms do not reflect the changes to the regulatory text and commentary.

In response to the FAQ, the CFPB provides the following example:

The regulatory text provides that the percentage amount required to be disclosed on the Loan Estimate line labeled "Prepaid Interest (___ per day for __ days @__ %)" is disclosed by rounding the exact amount to three decimal places and then dropping any trailing zeros that occur to the right of the decimal point. 12 CFR 1026.37(g)(2)(iii) and (o)(4)(ii). However, on page 2 of model form H-24(C), section F, the interest rate disclosed on the line for prepaid interest includes two trailing zeros that occur to the right of the decimal point.

The CFPB notes in its response that a creditor could claim the safe harbor by including two trailing zeros or could comply with the text of section 1026.37 by rounding the exact amount to three decimal places and dropping any trailing zeros that occur to the right of the decimal point.

As a result, the model forms still provide a safe harbor.

FAQs

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

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