



REALTORS® ASSOCIATION OF NEW MEXICO TILA AND RESPA INTEGRATED DISCLOSURES (TRID) INFORMATION SHEET

Effective October 3, 2015, lenders will begin using two new disclosures; the Loan Estimate, which will be issued once the buyer has made application for the loan and the Closing Disclosure, which will be provided before settlement. The Loan Estimate replaces the initial Truth In Lending Act (TILA) disclosures and the Good Faith Estimate. The Closing Disclosure replaces the final TILA disclosures and the HUD-1. **NOTE: For transactions in which the lender receives a loan application prior to October 3, 2015, the HUD-1 Settlement Statement will still be used at close of escrow, even if the closing takes place after October 3, 2015.**

LOAN ESTIMATE

TIMING. The Loan Estimate provides a summary of key terms and estimated loan and closing costs. The lender must deliver or place the Loan Estimate in the mail within *three business days* of the buyer making an application for the loan and must ensure that the buyer receives the revised Loan Estimate no later than *four business days* prior to “consummation”. Consummation occurs when the buyer becomes contractually obligated to the lender on the loan, which generally occurs on what is referred to in the RANM Purchase Agreement as the “Settlement/Signing Date.” For purposes of the Loan Estimate, a business day is defined as any day on which the lender’s offices are open to the public to carry on substantially all of its business functions.

To be considered an “application”, the buyer must provide six pieces of information to the lender: 1) the buyer's name; 2) the buyer's income; 3) the buyer’s Social Security number (or other unique identifier if the buyer has no Social Security number); 4) the property address; 5) an estimate of the value of the property; and 6) the mortgage loan amount sought. **NOTE: Lenders cannot issue a Loan Estimate without all six pieces of information, which means the buyer will have to have a specific property in mind when making an application.**

UPFRONT FEES. The lender is prohibited from charging any fees, with the exception of a fee for the credit report, until the Loan Estimate is delivered to the buyer and the buyer expresses an “intent to proceed.” Unless otherwise indicated by the lender, the buyer may indicate his/her intent to proceed through oral communication in person or over the phone, by written communication via email or by signing a pre-printed form after receipt of the Loan Estimate. **NOTE: A buyer should determine how his/her lender wishes for him/her to communicate his/her intent to proceed.**

Lenders are responsible for ensuring that the figures stated in the Loan Estimate are made in good faith and consistent with the best information reasonably available to the lender at the time they are disclosed. Generally, if the charge paid by or imposed on the buyer exceeds the amount originally disclosed on the Loan Estimate, the estimate was *not* made in good faith and if the charge paid or imposed is less than the amount originally disclosed, the estimate was made in good faith.

TOLERANCES. Charges on the Loan Estimate and Closing Disclosure fall into one of three categories: those that may *not* increase (zero tolerance); those that may increase, but by no more than 10 percent *cumulatively* (10% tolerance); and those that can increase without limitation.

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For zero-tolerance charges, lenders are not permitted to charge buyers more than the amount disclosed on the Loan Estimate under any circumstances other than changed circumstances that permit a revised Loan Estimate. The following charges are “zero-tolerance” charges: fees paid to the lender, mortgage broker or an affiliate of either; fees paid to an unaffiliated third party if the lender did not permit the buyer to shop for a third-party service provider for a settlement service; and transfer taxes.

For the 10%-tolerance charges, the lender may charge the consumer more than the amount disclosed on the Loan Estimate for any of these charges, so long as the *total sum* of the charges added together does not exceed the sum of all such charges disclosed on the Loan Estimate by more than 10%. The following charges fall into the 10% tolerance category: recording fees; charges for third-party services where the charge is not paid to the lender or the lender’s affiliate; and charges for which the buyer is permitted to shop for the third-party service and the buyer selects a third-party service provider on the lender’s written list of service providers.

The following charges may increase without any limitation: prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account; and charges for services required by the lender if the lender permits the buyer to “shop” and the buyer selects a third-party service provider not on the lender’s written list of service providers.

SHOPPING. If the buyer is permitted to shop for a settlement service, the lender must provide the buyer with a written list of services for which the buyer may shop no later than three business days after the lender receives the buyer’s application. The list must identify at least one available settlement service provider for each service and state that the buyer may choose a different provider of that service.

REVISED LOAN ESTIMATES. Lenders may not issue revisions to Loan Estimates because they later discover technical errors, miscalculations, or underestimations of charges. However, they are permitted to issue a revised Loan Estimates under specific circumstances: 1) if circumstances change after the Loan Estimate is provided to the buyer which cause estimated settlement charges to increase more than is permitted or affect the buyer’s eligibility for the terms for which the buyer applied or the value of the security for the loan; 2) if revisions to the credit terms or the settlement are requested by the buyer; 3) if the interest rate was not locked when the Loan Estimate was provided, and locking the rate causes the points or lender credits disclosed on the Loan Estimate to change; 4) if the buyer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate was originally provided; or 5) if the loan is a new construction loan, and settlement is delayed by more than 60 calendar days, if the original Loan Estimate states clearly and conspicuously that at any time prior to 60 calendar days before consummation that the lender may issue revised disclosures. When lenders revise Loan Estimates for these reasons, the revised Loan Estimate may reflect increased charges only to the extent actually justified by the reason for the revision.

For purposes of issuance of a revised Loan Estimate, a changed circumstance is defined as follows: an extraordinary event beyond the control of any interested party or other unexpected event specific to the buyer or transaction; a situation where information specific to the buyer or transaction that the lender relied upon when providing the Loan Estimate was either inaccurate when provided or changed after the disclosure was provided; or a situation where the lender learns of new information specific to the buyer or transaction that the lender did not rely on when providing the Loan Estimate.

For a copy of a Sample the Loan Estimate, visit: http://files.buyerfinance.gov/f/201311_cfbp_kbyo_loan-estimate.pdf

CLOSING DISCLOSURE

TIMING. Lenders must provide a Closing Disclosure in a manner that provides that the buyer will receive the Closing Disclosure no later than *three business days* before consummation. For purposes of the Closing Disclosure, the term “business days” is defined to include all calendar days except Sunday and certain federal holidays.

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This three-day period does NOT apply to sellers. The settlement agent is responsible for providing the seller with the Closing Disclosure and must do so no later than *the day of consummation*. While the settlement agent may comply with this requirement by providing the seller with a copy of the Closing Disclosure provided to the buyer, the settlement agent may also satisfy the requirement by providing the seller with a separate disclosure, including only the information applicable to the seller's transaction from the Closing Disclosure.

Buyers may waive or modify the three-business-day waiting period when the extension of credit is needed to meet a bona fide personal financial emergency if the buyer has received the Closing Disclosure and the buyer gives the lender a dated written statement that describes the emergency, specifically modifies or waives the waiting period and bears the signature of all buyers who are primarily liable on the legal obligation. An example of a "bona fide financial emergency" is the imminent sale of the buyer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the buyer during the waiting period. By law, lenders may not provide buyers with pre-printed waiver forms.

METHOD OF DELIVERY. Lenders may deliver the Closing Disclosure to the buyer in person, by mail or by other delivery methods, which may include email. If the Closing Disclosure is mailed or delivered electronically, the buyer is considered to have received it three business days after it is delivered or placed in the mail. However, if the lender has evidence that the buyer received the Closing Disclosure earlier than three business days after it was mailed or delivered, the lender may rely on that evidence and consider it to be received on that date.

RE-DISCLOSURE AND TRIGGERING OF A NEW 3-DAY WAITING PERIOD. Lenders must re-disclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate. There are three categories of changes that require a corrected Closing Disclosure containing all changed terms: changes that occur before consummation that require a new three-business-day waiting period; changes that occur before consummation and do not require a new three-business-day waiting period; and changes that occur after consummation.

The circumstances where a reissuance of the Closing Disclosure would "trigger" an additional three-business-day waiting period requirement *are limited to the following three*: 1) if the APR previously disclosed becomes inaccurate by more than 1/8 of one percentage point above the disclosed APR; 2) if the loan product changes, for example, from an adjustable rate to a fixed rate; and 3) if a prepayment penalty is added to the transaction. For any other changes before consummation that do not fall under the three categories above, the lender still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the buyer receives it at or before consummation. However, for these changes, there is **NO** additional three-business-day waiting period required.

If the amounts paid by the buyer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, the lender must refund the excess to the buyer no later than 60 calendar days after consummation. Lenders also must provide a revised Closing Disclosure to correct non-numerical clerical errors no later than 60 calendar days after consummation. In addition, lenders must provide a corrected Closing Disclosure if an event in connection with the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed.

For a copy of a Sample the Closing Disclosure, visit: http://files.consumerfinance.gov/f/201311_cfpb_kbyo_closing-disclosure.pdf