

Truth in Lending – RESPA Integrated Disclosure (TRID) Readiness: Part 2

Presented by:

Marissa Blundell, J.D. and Margaret Wright, J.D.



Disclaimers

The information contained herein is general in nature and is not intended, and should not be construed, as legal, accounting, or tax advice or opinion provided by CliftonLarsonAllen LLP to the user. The user also is cautioned that this material may not be applicable to, or suitable for, the user's specific circumstances or needs, and may require consideration of non-tax and other tax factors if any action is to be contemplated. The user should contact his or her CliftonLarsonAllen LLP or other tax professional prior to taking any action based upon this information. CliftonLarsonAllen LLP assumes no obligation to inform the user of any changes in tax laws or other factors that could affect the information contained herein.

Housekeeping

- If you are experiencing technical difficulties, please dial: **800-422-3623**
- **Q&A session will be held at the end of the presentation**
 - Your questions can be submitted via the **Questions Function at any time during the presentation**
- The **PowerPoint presentation**, as well as the **webinar recording**, will be sent to you within the next 10 business days
- Please complete our online survey

CPE Requirements

- Answer the polling questions
- If you are participating in a group, complete the CPE sign-in sheet and return within two business days
 - Contact webmaster@CLAconnect.com
- Allow four weeks for receipt of your certificate; it will be sent to you via email

** This webinar, once recorded, has not been developed into a self study course. Therefore, watching the recording will not qualify for CPE credit.*

About Bankers Advisory

A CliftonLarsonAllen LLP Division

- Bankers Advisory was founded in 1986 and is a nationally recognized consulting organization, serving banks, credit unions, thrifts and non-depository institutions throughout the United States
- The firm provides premium services in the following core areas of mortgage lending:
 - Pre- and Post-funding Quality Control
 - Mortgage Servicing QC
 - Fair Lending Assessments
 - State & Federal Compliance
 - HMDA and MERS Compliance
 - Policy Manuals
 - Training

About CliftonLarsonAllen

- A professional services firm with three distinct business lines
 - Wealth Advisory
 - Outsourcing
 - Audit, Tax, and Consulting
- 3,600 employees
- Offices coast to coast
- Serve more than 1,100 financial institutions



Investment advisory services are offered through CliftonLarsonAllen Wealth Advisors, LLC.

Speaker Introductions

- **Marissa Aquila Blundell, J.D., Chief Operating Officer**
Marissa oversees the firm's quality control and compliance assessment services. She serves on the Compliance Committee and co-chairs the Legislative Committee for the Massachusetts Mortgage Bankers Association. She is a graduate of Skidmore College and earned her Juris Doctor at the New England School of Law.
- **Margaret Wright, J.D., VP, Regulatory Compliance Director**
Margaret manages the firm's team of compliance consultants and oversees fair lending assessment and HMDA services. She is a graduate of Stonehill College and earned her Juris Doctor from Suffolk University Law School.

Learning Objectives

At the end of this session, you will be able to:

- Identify the August 1st deadline requirements
- Outline preparation steps to meet the deadline requirements
- Prepare software systems and readiness testing
- Recognize title company and external providers readiness
- Complete a contingency plan

Please note: This presentation is Part 2 and will not cover the material from Part 1. Copies of webinar materials are available upon request.

Recap of Rule and Effective Date

The new Integrated Disclosures must be provided by a creditor or mortgage broker that receives an **application** from a consumer for a closed-end credit transaction secured by real property on or after **August 1, 2015**.

The TILA-RESPA rule includes some new restrictions on certain activity prior to a consumer's receipt of the **Loan Estimate**. These restrictions take effect on the calendar date August 1, 2015, regardless of whether an application has been received on that date. These activities include:

- Imposing fees on a consumer before the consumer has received the **Loan Estimate** and indicated an intent to proceed with the transaction
- Providing written estimates of terms or costs specific to consumers before they receive the **Loan Estimate**

For transactions where the **application** is received **prior to** August 1, 2015, creditors will still need to follow the current disclosure requirements under Regulations X and Z, and use the existing forms (Truth-in-Lending disclosures, GFE, HUD-1).



Readiness Assessment

If your institution makes closed-end credit transactions secured by real property, you must have policies and procedures that address the following key provisions:

- ❑ The policy identifies covered transactions
- ❑ The policy identifies transactions where you must continue to use “legacy” disclosures after the effective date (existing GFE, initial and final TIL, and HUD-1)
- ❑ The policy defines pre-consummation and post-consummation disclosure requirements and tolerances
- ❑ The policy includes disclosures required by this rule such as:
 - The Loan Estimate
 - The Closing Disclosure
 - Post-consummation escrow cancellation notice (Escrow Closing Notice)
 - Post-consummation mortgage servicing transfer and partial payment notice

Policies must contain all the **relevant disclosures**, in addition to the Loan Estimate and the Closing Disclosure, required by the new rules

- Ensure that you use the model disclosure forms and language contained in the regulatory guidance
 - If not, are your disclosures clearly written in a way that consumers are likely to understand?
 - Are the disclosures presented in a way that is likely to call the consumer's attention to the nature and significance of the information in the notice?
- Ensure that you have established controls to satisfy the timing and method of delivery requirements
- Address retention of copies of the disclosures for each of the applicable time periods as required by the new rules
- Establish a process so that policy and procedures are kept current on regulatory changes
- Designate qualified persons who will be responsible for updating policies

Institutions must ensure that the **Loan Estimate** is in compliance for each of the following items:

- ❑ The form outlines the **six pieces** of information that define an “application”
- ❑ Describes what is necessary for a consumer to indicate an intent to proceed
- ❑ Ensures the Loan Estimate is provided no later than 3 business days* after application and any revised Loan Estimate no later than 4 business days** before consummation (unless the consumer waives the waiting period due to a personal emergency)
 - *Days when your offices are open to the public for carrying out substantially all business functions*
 - **All calendar days except Sundays and legal public holidays*
- ❑ Ensures the Loan Estimate is correct and that allowable errors are within tolerances
- ❑ Provides a separate list of services for which the consumer **may** or **may not** shop and identify at least one provider for each service within 3 business days after receiving the application

Note: For services for which the consumer may shop, the consumer may choose a different provider than what is on the list.

- ❑ The form includes assurances that revisions to the Loan Estimate or issuance of a new Loan Estimate comply with the regulatory requirements such as timing
- ❑ The form provides disclaimers for written estimates prior to application and for advertisements
- ❑ The form lists charges that are only fees permitted prior to providing the Loan Estimate
- ❑ The form assures that if any mortgage broker that provides the Loan Estimate complies with all requirements

- ❑ The Closing Disclosure (CD) assures that the consumer receives the CD at least 3 business days prior to consummation*
**All calendar days except Sundays and legal public holidays*
- ❑ The Closing Disclosure provides corrected CD, if necessary, that complies with the requirements for timing, corrections due to subsequent changes, and new 3-day waiting period
- ❑ The Closing Disclosure implements a process for post-consummation review to ensure that you provide corrected CD for:
 - non-numerical clerical errors
 - Any estimates above allowable thresholds and you will make refunds to consumers within 60 calendar days of consummation



Preparation Steps

At least one month prior to the August 1st requirement, establish a process that includes **testing** that addresses each of the following areas:

- 1) Require that all disclosures reviewed by compliance & audit departments and counsel
- 2) Have policy & procedures reviewed by all appropriate senior management and counsel
 - Were any concerns identified at this level?
 - If yes, have they been resolved?
- 3) Implement a test to confirm that your actual practices conform to the policies
- 4) Implement a test to confirm that automated tools and data are accurate
- 5) Test each business channel, production unit and geographic location, as appropriate

Establish a “vendor readiness” team that would include a representative from each of the following departments in your institution: compliance, production and IT. Establish a process that includes testing of each of the following areas:

- ❑ Obtain updated communication and assurance from all software vendors that they have completed all changes for compliance with new requirements
- ❑ Stay in communication and track progress regarding changes with the software program as well as other updates to comply with revised regulations
- ❑ Set up a test platform and test pipeline to beta test new software, and arrange for appropriate personnel to participate in operating the test platform
- ❑ Create a communication log so that software testers and staff can comment on new software changes and other updates
- ❑ Arrange to run old and new software side by side for a test period in July 2015 to locate any remaining bugs in the software or in TRID and other procedures
- ❑ Update loan checklists as appropriate

Preparation Steps

Title and Escrow Companies

Establish a “title readiness” team that would include your Closing Manager and at least one other representative from compliance, production or IT. Establish a process that addresses each of the following areas:

- ❑ Draft a matrix of approved vendors and their fees for inclusion in the attachment to the initial TRID that will be prepared by:
 - Staff
 - Brokers or Correspondents (if applicable)
- ❑ Develop a policy regarding permitted shopping and approved vendor lists for each settlement service
- ❑ Assign a team member to update this information daily, including the addition of new vendors
- ❑ Ensure the title or escrow company’s software incorporates appropriate changes for compliance with new requirements
- ❑ Engage in on-going testing to ensure compliance

Preparation Steps

State Specific Issues

Establish a “state compliance readiness” team that would include representatives from compliance, production or area managers. Establish a process for each of the following areas:

- ❑ Research State Fee Disclosure issues and create list of fees permitted in each state
- ❑ Establish standard descriptions for the names of fees
- ❑ Ensure that the closing agent is using the same nomenclature in the closing agent’s software as is used in the TRID
- ❑ Determine who is responsible for identifying specific housing costs that are escrowed and are not escrowed, and establish a procedure to identify each of these costs for each loan
- ❑ Draft a list of states that permit and prohibit deficiency judgments; ensure that this information is coded into your LOS (and the LOS of brokers or correspondents)
- ❑ Assign a staff member to track and update state and local legislation changing, limiting or imposing fees and deficiency judgments

Review all forms, policies and procedures that ensures compliance to the new rules for each of the following:

- ❑ Establish a company-wide policy for offering (or not offering) rate locks to applicants
- ❑ Establish a policy for the date, time, and time zone in the TRID rate lock disclosure
- ❑ Prepare staff training materials for offering and collecting rate lock agreements, and issuance of a revised TRID
- ❑ Research state specific requirements for commitment letters
- ❑ Prepare or purchase a written rate lock agreement form that is useable in all states
- ❑ Assign staff member to be gatekeeper for delivery of timely and proper disclosure within three days of borrower execution of lock agreement
- ❑ If applicable, draft procedures for determining that correspondents and brokers are using a consistent policy for disclosing the date, time, and time zone in the TRID rate lock disclosure

Preparation Steps

Accurate Disclosures

- ❑ Implement central processing or central control of processing for retail production, if not currently in place
- ❑ Distinguish which loans require a TRID and which loans use legacy disclosure forms
- ❑ Ensure that brokers and correspondents use centrally controlled processing procedures to minimize errors and coordinate procedures
- ❑ Determine which mortgage brokers will be permitted to complete the initial TRID
- ❑ If the lender takes over the job of preparing loan estimates from the broker (the broker provides the GFE now), determine whether the broker should be paid the same level or a lesser fee because the broker is providing less work.
- ❑ Determine when an “application” for a streamline refinance loan exists for purposes of providing an LE since income information is not needed to process a streamline refinance application



Disclosure Timeline

Disclosure Timeline Example

Assumptions

For the purposes of this example, we have made the following assumptions:

- The Creditor is not open for business on Saturdays.
- The property is located in a State where consummation is the day of closing, or signing of documents, between the Consumer and Seller.
- All parties are targeting a closing date of October 29.
- The Consumer's application is received by the Creditor on Monday, August 3, 2015.

Disclosure Timeline Example

List of Events

The timeline shows the effect of the following events during the course of the origination of the loan:

- Receipt of an addendum to Contract modifying the allocation of transfer taxes between the Consumer and Seller. *(August 28th)*
- Appraisal provides a property value resulting in a loan-to-value ratio higher than 80%, triggering mortgage insurance. *(September 4th)*
- An updated credit report obtained by the Creditor shows a changed credit score, triggering a LLPA. *(September 22nd)*
- A rate lock is requested by the Consumer. *(October 6th)*
- The Consumer decides to obtain an Owner's Title Policy the week prior to consummation. *(October 21st)*
- During a walkthrough two days before consummation, a broken dishwasher is discovered. *(October 27th)*
- The recording fees collected were \$100 more than needed when the documents are presented for recording after consummation. *(October 30th)*

Disclosure Timeline Example

AUGUST 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3 Application received by Creditor. The only fee Creditor may collect before providing the Loan Estimate is for the credit report.	4	5	6 Loan Estimate delivered or placed in mail. Creditor may request verifying information.	7	8
9	10	11 Consumer receives Loan Estimate. Consumer indicates intention to proceed with Application.	12	13 Appraisal ordered by Creditor.	14 7-day waiting period for consummation after delivery of Loan Estimate expired. First day when consummation can occur.	15
16	17	18	19	20	21	22
23	24	25	26	27	28 Receipt of Addendum by Creditor to Contract modifying allocation of transfer taxes between Consumer and Seller. Revised Loan Estimate permitted.	29
30	31					

Disclosure Timeline Example

SEPTEMBER 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2 Last day for creditor to issue revised Loan Estimate for allocation of transfer taxes on Addendum to Contract.	3	4 Appraisal received by Creditor. LTV now exceeds 80%. Revised Loan Estimate permitted.	5
6	7 HOLIDAY LABOR DAY	8	9	10 Last day for Creditor to issue revised Loan Estimate to add mortgage insurance coverage, etc., due to changed circumstance of LTV exceeding 80%.	11	12
13	14	15	16	17	18	19
20	21	22 Updated credit report obtained showing a changed credit score. LLPA triggered. Revised Loan Estimate permitted.	23	24	25 Last day for Creditor to issue revised Loan Estimate for addition of any charge or any other change to terms of loan due to change in credit score.	26
27	28	29	30			

Disclosure Timeline Example

OCTOBER 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5 Rate lock requested by Consumer.	6 Rate lock agreement executed by Creditor.	7	8	9 Last day for Creditor to deliver or place in the mail the revised Loan Estimate reflecting the rate lock executed on Tuesday in response to the consumer's request.	10
11	12	13	14	15	16	17
18	19	20	21 Consumer informs Creditor of intent to purchase an enhanced owner's title insurance policy.	22 If delivering Closing Disclosure by mail, Creditor must place Closing Disclosure in mail on this date. Closing Disclosure must reflect information provided by Consumer on 10/21.	23 Creditor sends Closing Disclosure by overnight delivery.	24 Consumer receives and signs for the overnight delivery of the Closing Disclosure. Earliest closing date is 10/28.
25	26 Consumer must receive Closing Disclosure.	27 Walkthrough shows dishwasher is broken. Seller credit for broken dishwasher provided in Addendum to Contract.	28 Creditor required to permit inspection of Closing Disclosure by Consumer on this day.	29 CLOSING DATE Revised Closing Disclosure reflecting seller credit for broken dishwasher provided to Consumer and Seller.	30 Recording office indicates transfer taxes paid by Consumer overpaid by \$100 and refunds amount to Consumer.	31

Disclosure Timeline Example

NOVEMBER 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26 HOLIDAY THANKSGIVING	27	28
29	30 Last day for Creditor to deliver or place in mail corrected Closing Disclosure showing decrease in transfer taxes paid by Consumer.					

Disclosure Timeline Example

DECEMBER 2015

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24 Last day for Creditor to mail refund of any tolerance cure. (Note: other delivery methods can be used so long as the refund is received no later than the 60th day after consummation).	25 HOLIDAY CHRISTMAS	26
27	28 Last day for Creditor to provide refund to Consumer and to deliver or place in the mail a corrected Closing Disclosure reflecting the refund.	29	30	31		

Disclosure Timeline Example

Definitions

- *Contract* refers to the real estate purchase contract between the Consumer and Seller.
- *Application* is defined in Regulation Z § 1026.2(a)(3).
- *LLPA* is a loan level pricing adjustment or any other secondary market risk-based pricing mechanism.
- *Issue* means to deliver or place in the mail the applicable disclosure discussed in the example.
- For purposes of providing the Loan Estimate, or any revised Loan Estimate, a *business day* is a day on which the creditor's offices are open to the public for carrying out substantially all of its business functions.
- For all other purposes, *business day* means all calendar days except Sundays and legal public holidays specified in 5 U.S.C. 6103(a) such as, New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Note: The calendar is not intended to show all of the events that can occur during the course of a real estate sales transaction. Only examples of events that could have an impact on disclosures are described. There may be other events that have an effect on the timing and responsibilities of the Creditor concerning the disclosures.



Loan Checklist

Loan Checklist

Yes	No	Initial Disclosure of Loan Estimate (LE)
		Is the LE the correct form and format? <i>(Alternative Calc. Cash to Close table may be used for transactions with no seller)</i>
		Contact Information: discloses the name, NMLS and License ID #'s for the creditor and mortgage; email and/or phone number of the individual loan officer who is the primary contact for the consumer?
		Receipt is confirmed (not mandatory) but if completed, contains correct language?
		"You do not have to accept this loan" statement is provided if Confirm Receipt not used?
		Was LE provided within three business days of receipt of six application items? 1) Borrower Name; 2) Income; 3) SSN; 4) Property Address; 5) Property Value Estimate; 6) Mortgage loan amount sought.
		Are the lender's fees listed in alphabetical order?
		Are the lender's fees rounded to the nearest dollar?
		Does the LE have certification of receipt?
		Does the Projected Payments include the following: P&I, Mortgage Insurance, Estimated Escrow, Estimated total monthly payment; and estimated taxes, insurance and assessments even if not paid with consumer's escrow account funds.
		Is the initial Periodic Payment correct? <i>(e.g. fully indexed rate for ARM loan with no introductory period)</i>
		Are the Subsequent Periodic Payments correct and with a maximum of 4 columns?
		Estimated escrow: is "0" (zero) indicated for escrow accounts that will NOT be established?
		Are the calculation methods the same for both tables? <i>"Costs at Closing" and "Alternative Costs at Closing Table"</i>
		Loan Costs: Are there numeric sub-totals for each of the 3 sub-headings? <i>"Services you can shop for", "Services You cannot shop for" and "Origination Charges"</i>
		Origination Charges is maximum of 13 items? <i>(with remainder disclosed as Additional Charges, max 12 items)</i>
		Services you can shop for is maximum of 14 services?
		When item maximums are exceeded, additional items are totaled, labeled as Additional Items and listed on addendum to the LE?
		Loan origination compensation paid directly by consumer is disclosed?
		Title charges: all related fees include the word "title" at the beginning of the item description?
		Prepaid: does each item reference the applicable time period covered by the amount?
		Total Closing Costs: if the amount paid from the loan is zero or negative, is "0" entered?
		For Variable Rate Mortgages, the index is closed as a (%) percentage and index name easily identified? <i>(e.g. LIBOR)</i>
		Comparison tables include all correct calculations for 5 years, APT and Total Interest Percentage (TIP)?
		Other Considerations: completed correctly and Appraisal statement is provided for Higher Priced Loans?
		Written List of Service Providers
		Was a written list of service providers delivered to the consumer at the same time as the LE?
		Does the written list identify at least one available provider for each service and state that the consumer may choose a different provider?
		Re-disclosure
		<i>Address any of the following specific circumstances requiring re-disclosure:</i>
		Did a valid changed circumstance support the issuance of a Revised LE? <i>(changed circumstances affecting Settlement charges, consumer's eligibility, consumer requested changes)</i>
		The expiration of the LE if the consumer doesn't provide intent to proceed within ten business days
		If there is a delayed settlement on a construction loan where settlement will occur more than 60 days after the initial disclosure of the LE

Loan Checklist

Yes	No	Closing Disclosure (CD)
		Was CD provided to consumer at least three business days prior to consummation?
		Do all definitions match the Loan Estimate?
		Were dollar amounts rounded?
		Are Loan Information items correct ?
		Loan term, loan purpose, product, loan type and creditor's loan Identification number; if applicable mortgage insurance case (MIC) number
		Projected payments and costs and closing (or Alternative Costs) information and descriptions match the LE?
		Items that the consumer "could have shopped for, but did not" are disclosed on the Services Borrower Did Not Shop for?
		Other costs are disclosed as they were on the Loan Estimate and updated properly?
		Prepays and escrows are disclosed properly?
		Lender credits, regardless of the reason or source, are properly included as lender credits? (if applicable, <i>designated as paid by others</i>)
		Calculating Cash to Close is completed accurately and "Did this Change? Is properly explained?
		Increases in total closing costs that exceed legal limits are expressed as dollar amount of excess?
		For excess amounts, consumer is directed to the Lender Credit on page 2?
		Closing costs paid before closing are properly disclosed?
		Closing costs financed and prepays are properly disclosed?
		Summaries of Transactions table (for realty purchases) contain all accurate information?
		Closing costs paid before closing are properly disclosed?
		Seller credits, adjustments to the transaction, paid on behalf of borrower-- all accurate?
		Additional information about this loan is properly completed and matches all other documents?
		Escrow disclosure and other applicable tables (adjustable) correct?
		Contact information is correct and consistent with the Loan Estimate?
		Confirm receipt (not mandatory) includes proper language (or "Loan Acceptance) is properly provided?
		Tolerances
		Were CD charges no higher than the amount disclosed on the LE for the following fees: fees paid to creditor or affiliate, fees for charges for which no shopping was permitted, and transfer taxes?
		For charges subject to the aggregate ten percent tolerance threshold, were any increases in fees permissible?
		If a consumer charge exceed the permissible tolerance threshold was a cure provided within 60 days of settlement?



Questions?

The information contained in this presentation is for informational purposes only and is not legal advice. Bankers Advisory, Inc. is not a law firm. If you require legal or other professional advice about your particular situation you should consult with a licensed professional.

Bankers Advisory, A CliftonLarsonAllen LLP Division, does not warrant or guarantee the information contained in this presentation is current and reserves the right to make changes at any time. Users should not rely on the information contained in this presentation in lieu of advice from a qualified professional.



Thank you!

Bankers Advisory

A CliftonLarsonAllen LLP Division
375 Concord Avenue, Suite 101
Belmont MA 02478
T 617-489-2008 F 617-489-2208



Bankers
ADVISORY
A CliftonLarsonAllen LLP Division



[twitter.com/
CLAconnect](https://twitter.com/CLAconnect)



[facebook.com/
cliftonlarsonallen](https://facebook.com/cliftonlarsonallen)



[linkedin.com/company/
cliftonlarsonallen](https://linkedin.com/company/cliftonlarsonallen)