Final regulations revising disclosure requirements for mortgage loans under Regulation Z (Truth in Lending) were approved by the Board of Governors of the Federal Reserve on Friday, May 8th. These revisions implement the Mortgage Disclosure Improvement Act (MDIA), enacted in July 2008 as an amendment to the Truth in Lending Act (TILA). Under MDIA, creditors must comply with the new provisions on July 30, 2009. The Board's implementing regulations will therefore apply to dwelling-secured consumer loans for which a creditor receives an application on or after July 30, 2009.

MDIA Changes

Under the changes to TILA set forth by MDIA, creditors are required to give good faith estimates of mortgage loan costs ("early disclosures") within three business days after receiving a consumer's application for a mortgage loan and before any fees are collected from the consumer, other than a reasonable fee for obtaining the consumer's credit history. MDIA broadens existing Regulation Z requirements by also requiring early disclosures for loans secured by dwellings other than the consumer's principal dwelling, such as a second home. The Board’s rules implementing these changes are set forth below.

Coverage

Final rule applies to all RESPA-covered loans secured by the dwelling of a consumer, thus covering home purchase loans, home refinance loans, and home equity loans. (§ 226.19(a)(1)(i)).

- Final rule does not revise HELOC requirements.
- Under Comment 3(a)-3, credit extended to acquire, improve, or maintain rental property that is not owner-occupied (that is, in which the owner does not expect to live for more than fourteen days during the coming year) is deemed to be for “business purposes,” and thus exempt from the rule.

Delivery of Early Disclosures

The final rule requires that creditors deliver early disclosures for all dwelling-secured mortgage loans within three business days of application, and at least 7 business days before consummation.

- Creditor must deliver or place the early disclosures in the mail no later than the seventh business day before consummation. (§ 226.19(a)(2)).
- The seven-business-day waiting period begins when the creditor delivers or places the early disclosures in the mail—not when the consumer receives or is deemed to receive the early disclosures. (Comment 19(a)(2)(i)-1)).
  - The general definition of “business day” (days on which a creditor’s offices are open to the public for carrying on substantially all of its business functions) applies for purposes of the calculating the period for providing the early disclosures after application. (This retains consistency between TILA and RESPA.) (§ 226.2(a)(6))
  - The more precise definition of “business day” (all calendar days except Sundays and specified federal legal public holidays) is used for purposes of the requirements that creditors deliver or mail the early disclosures no later than the seventh business day.
before consummation and that consumers receive corrected disclosures (if applicable) no later than the third business day before consummation. ($\S\ 226.2(a)(6))

- Disclosures must be delivered before the consumer pays any fee, other than a “bona fide” and reasonable fee for obtaining consumer’s credit history.
  - The more precise definition of “business day” is used for purposes of this prohibition against collection of a fee (other than for obtaining credit history) before consumer receives early disclosures.
- If the consumer is denied credit, or withdraws the loan application, within three business days after creditor receives it, the early disclosures need not be given. (Comment 19(a)(1)(i)-4).

**Re-Disclosure**

Where creditors provide early TILA disclosures and the APR subsequently changes beyond the specified tolerance, creditors are required to re-disclose APR and other changed terms no later than the third day before consummation. Consumption may occur at any time on the third business day after the consumer receives the corrected disclosure.

- If corrected disclosures are mailed, the consumer is deemed to have received the disclosures three business days after mailing. (Comment 19(a)(2)(ii)).
  - The Board is not adopting separate rules or presumptions regarding the delivery of disclosures by overnight courier, electronic transmission, or other means.
  - Note: Creditors that use e-mail or courier other than postal service may follow the presumption approach, but are not required to do so. Thus, if creditor delivers corrected disclosures electronically (consistent with the E-Sign Act) or employs overnight courier, the creditor may rely on evidence of actual delivery (such as documentation that the mortgage loan disclosure was delivered by certified mail or overnight delivery or e-mail (if similar documentation is available)) to determine when the three-business-day waiting period begins.
- Where corrected disclosures are required, consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired. (Comment 19(a)(2)-2).
- In cases where corrected disclosures are delivered and subsequently change, the appropriate methodology to determine tolerances, and therefore determine whether the creditor must provide another set of corrected disclosures, is to compare APR at consummation with the APR in the most recently provided corrected disclosures (not the first set of disclosures provided). (Comment 19(a)(2)-4).
- In instances where the disclosed APR overstates the actual APR, Comment 19(a)(2)(ii)-1 provides that corrected disclosures are not required where the APR previously disclosed is considered accurate under the tolerances in $\S\ 226.22.$
- The final rule applies the more precise definition of “business day” (all calendar days except Sundays and specified legal public holidays) to the three-business-day waiting period.
Waiver of Waiting Period

Under the final rule, consumers may expedite consummation of a mortgage transaction by modifying or waiving the timing requirements for early disclosures in instances where the consumer determines that the credit extension is needed to meet a “bona fide personal financial emergency.” The rule permits a consumer to shorten or waive either the seven-business-day period (required by § 226.19(a)(1)(i)) or the three business-day waiting period (required by § 226.19(a)(2)). (§ 226.19(a)(3)).

- The consumer must receive the early disclosures at or before the time of the consumer’s modification or waiver.
  - If the APR stated in the early disclosures is no longer accurate, a waiver may occur only after receiving a corrected disclosure.
- The consumer must give creditor a dated written statement describing the emergency and specifically modifying or waiving the waiting period(s). The use of pre-printed forms is prohibited.
- Where multiple consumers are primarily liable on the legal obligation, then each consumer must receive and sign the disclosure statement. (Comment 19(a)(3)-1).
- Whether a “bona fide personal financial emergency” exists is to be determined by the facts surrounding individual situations.
  - Note: The Board did not adopt a comment stating that the existence of a consumer’s waiver insulates a creditor from liability in connection with such waiver.
  - The Board’s preamble states that waivers should not be used routinely to expedite consummation for reasons of convenience.
  - The imminent sale of the consumer’s home at foreclosure during the three-business-day waiting period is provided as an example.

Required Notice

Under the final rules, early disclosures must include a clear and conspicuous notice setting forth the following statement: “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.” This requirement is set forth under a new section—§ 226.19(a)(4)—for the early disclosures required by § 226.19(a)(1)(i), as well as corrected disclosures required by § 226.19(a)(2).

- The statement required by § 226.19(a)(4) must be grouped together with the other disclosures required by § 226.19(a)(1) and § 226.19(a)(2).
- To facilitate compliance, the Board is allowing disclosures to be grouped together. Thus, for creditors that use the same form for the initial disclosures and final disclosures, new comment 17(a)(1)-5(xvi) clarifies that creditors may also include the notice described in § 226.19(a)(4) on the disclosures provided at consummation and may group the notice together with the disclosures required by § 226.18 (generally requiring that creditors disclose identity of creditor, amount financed, itemization of amount financed, APR, other).
Timeshare Transactions

For timeshare transactions, creditors must continue to make good faith estimates of the disclosures required by § 226.18 that must be delivered or placed in the mail within three business days after the creditor receives the consumer’s application or before the credit is extended, whichever is earlier. (§ 226.19(a)(5)). The seven-business-day waiting period and three-business-day waiting period before consummation contained in § 226.19(a)(2) do not, however, apply to timeshare transactions.

- For these transactions, if the APR stated in the early disclosures changes beyond the specified tolerance, creditors would have to disclose all the changed terms no later than consummation or settlement of the transaction, consistent with existing rules for residential mortgage transactions in § 226.19(a)(2). (See § 226.19(a)(5)(iii)).
- For timeshare transactions, the general definition of “business day” (days the creditor’s offices are open to the public for carrying on substantially all of its business functions) is used for purposes of § 226.19(a)(5)(ii), as proposed.