Know Before You Owe, at Least That’s How it’s Supposed to Go:  
A Brief Look at the TILA-RESPA Integrated Disclosure Rule

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I. Introduction

Mandated disclosure laws are a tool state and federal governments commonly use to try to educate consumers before making big purchases, in hope of preventing consumers from making bad decisions. In the mortgage lending industry, mandated disclosure laws have been in place for over 30 years. They require creditors to provide consumers applying for a mortgage loan with forms explaining the loan’s cost and terms, so consumers can compare loan terms across lenders and only commit to loans they can afford. Despite the existence of such disclosure laws, many borrowers in the early- and mid-2000s entered into subprime and near-prime mortgage loans they did not understand and could not afford. The prevalence of subprime and near-prime mortgage lending was one clear contributor to the housing market crash of 2008.¹

In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). Among other provisions, the law sought to improve mandated mortgage disclosures to better explain mortgage terms to consumers.² To that end, Dodd-Frank created the Consumer Financial Protection Bureau ("CFPB") and directed the agency to consolidate the disclosure forms consumers receive when applying for a mortgage loan. In response to this directive, the CFPB promulgated the TILA-RESPA Integrated Disclosure

² Omri Ben-Shahar & Carl E. Schneider, More Than You Wanted to Know: The Failure of Mandated Disclosure 51 (2014).
(“TRID”), or Know Before You Owe rule. TRID, which took effect on October 3, 2015, is designed to simplify the disclosures consumers receive and help them better understand the cost of acquiring a home. While the goal of TRID is worthy, there is cause to be skeptical of the new rule’s ability to address the problems it sets out to correct. This article explains aspects of the new TRID rule and explores some of the ways in which the rule could increase consumer protection or fall short of that goal.

II. Background

For over thirty years, two federal laws, the Truth in Lending Act (“TILA”) and Real Estate Settlement Procedures Act (“RESPA”), have required lenders to provide disclosure forms to consumers applying for a mortgage loan to help borrowers understand the cost and terms of the loan. As a result of these laws, consumers received four different disclosure forms. Two sets of forms, the Good Faith Estimate and Initial Truth-in-Lending (“TIL”) disclosures, were provided to consumers within three business days of the consumer submitting a mortgage loan application. Another two sets, the HUD-1 Settlement Statement and Final TIL disclosures, were given to the consumer just before the loan closing. Although the forms were intended to help consumers understand the cost and terms of their loan, the forms often confused consumers, and for good reason. They were developed by two different federal agencies, and though the information contained in the disclosures was duplicative, it was explained using different language on each form. Even lenders found the forms burdensome to explain. The complexity and disjointedness of the forms frustrated the core purpose of TILA-RESPA disclosures.

The new TRID rule consolidates the old TILA-RESPA disclosures from four forms down to two, and makes changes to the aesthetics and content of the disclosures. More specifically, TRID modifies the time at which consumers receive disclosures, the criteria that trigger a disclosure, and the circumstances under which a lender must re-disclose information. The old Good Faith Estimate and early TIL forms have been supplanted by a new Loan Estimate form, while the HUD-1 Settlement Statement and Final TIL disclosure have been replaced by a new Closing Disclosure form.⁴ The revamped disclosures are aimed at making it simpler for consumers to understand and compare loan terms and costs, and to protect consumers from incurring final terms that are appreciably different from a lender’s initial estimate.

III. The Loan Estimate

a. Form and Substance

The Loan Estimate is a three-page form designed to make it easier for consumers to compare mortgage costs across different lenders. While not all creditors must use the CFPB’s model Loan Estimate form, every disclosure must contain the exact same information, and the headings, content and format used must be substantially similar to the CFPB’s model form (form H-24).⁵ The first page of the Loan Estimate contains general information about the loan, including the name and address of the creditor, the loan terms, projected payments, and costs at closing. The second page discloses the major categories of costs the consumer may incur: loan and other costs; the amount of cash needed at closing; information about how monthly payments

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will change; and information on how the interest rate will change.\(^6\) The third and final page contains additional information including, among other items, the consumer’s total payments over five years, APR, and late fees that may be charged. In addition, page three adds a Total Interest Percentage (“TIP”) figure, a new category of information that must be disclosed to consumers. TIP calculates the total amount of interest a consumer will pay over the loan term as a percentage of the consumer’s loan amount.\(^7\)

The new structure and content of the Loan Estimate could help mitigate the confusion generated by the old Good Faith Estimate and early TIL disclosure forms. There were two main problems with the old forms. First, consumers received two different forms, only to find that both of them contained overlapping information. Second, despite the overlap of the two forms, they would often present consumers with different cost estimates. The new Loan Estimate form addresses both these problems by consolidating and streamlining the information consumers receive and by presenting a single set of estimates. Delivering cost estimates to consumers on one form eliminates the risk of receiving duplicative information and estimates, thereby reducing confusion and making it easier for consumers to meaningfully compare costs across lenders.

Achieving that goal, however, is predicated on the assumption that consumers actually read the disclosures, and that, from a consumer’s perspective, the information on the form has been uncluttered; this is a difficult task. Since TILA was enacted in 1968, Congress has made adjustments to mortgage disclosure forms multiple times because the forms either were not doing enough to protect consumers, were overly complicated and incomprehensible, or were not


\(^7\) *Id.* at 28.
delivered to consumers in a timely and meaningful manner. Given this track record of revision, it seems hard to believe that TRID finally does what all its predecessors could not do: provide easily understandable information to consumers that they actually read, and then rely on to make smart financial decisions. The problem with mortgage disclosures might not be their form and substance; rather, the underlying problem might be that no matter how straightforward the forms may be, consumers will not read them.

b. Delivery of the Disclosure

The Loan Estimate must be delivered to consumers, or put in the mail, within three business days of receiving the consumer’s loan application. This delivery requirement remains unchanged from the old rule. However, the criterion that triggers the disclosure has changed. Before TRID, a loan application was not considered complete until the lender had all the information he or she deemed necessary to process the application. Now, a lender is considered to have received a consumer’s loan application, and must therefore send a Loan Estimate, when the consumer provides the lender with his or her name, income, Social Security number, the address of the property being bought, an estimate of the value of the property, and the amount of the mortgage loan the consumer is seeking. The new rule helps speed receipt of the information by the consumer, potentially giving consumers who read the disclosure a better opportunity to compare costs between creditors.

8 Ben-Shahar & Scheider, supra note 2, at 50-51.
10 CFPB, Guide, supra note 4 at 31.
c. Good Faith Requirement

Similar to the old rules, TRID requires creditors to calculate in good faith the information contained in the Loan Estimate form. Certain costs imposed on the consumer may not exceed the amount originally disclosed on the Loan Estimate. The types of costs included in this “zero tolerance” category are more extensive than under the old rules. Charges that may not exceed the figure included in the Loan Estimate include: fees paid to the creditor, mortgage broker or an affiliate of either, fees paid to an unaffiliated third party if the consumer was not allowed to shop for the third party service, and transfer fees.\(^\text{11}\) Expanding the types of charges that may not increase from the Loan Estimate to the final closing provides more certainty for consumers, allowing them to plan ahead for the total cost of their mortgage loan. Certain other charges may increase by up to 10 percent from the cost listed on the Loan Estimate, while another set of charges may vary by any degree.\(^\text{12}\) However, lenders may only charge consumers more than the amount disclosed when the original estimate was based on the best information available to the creditor at the time of disclosure.\(^\text{13}\)

d. Loan Estimate Revisions

As a general rule, creditors are bound by the terms on the Loan Estimate they provide, even if they later discover a technical error or miscalculation.\(^\text{14}\) However, creditors may send a revised Loan Estimate to consumers under a limited number of special circumstances.\(^\text{15}\) If one of

\(^{11}\) *Id.* at 40.


\(^{14}\) CFPB, *Guide*, *supra* note 4 at 42.

the statutory special circumstances arises, the creditor must deliver, or put in the mail, the revised Loan Estimate within three business days of the event that establishes the valid statutory reason for revision.\textsuperscript{16}

With this provision, the onus is on creditors to make sure they provide borrowers with accurate and complete information from the very beginning of the loan process. By limiting re-disclosures, yet requiring lenders to send revised disclosures as soon as the information is available, the new TRID rule could help ensure that consumers are provided with the most accurate information available, even as that information changes.

\textbf{IV. The Closing Disclosure}

\textbf{a. Form and Substance}

The Closing Disclosure is a five-page form provided to consumers before they close on a loan. It provides consumers with the actual terms of their loan in a uniform and consistent layout. As with the Loan Estimate, not all creditors have to use the CFPB’s model Closing Disclosure form; however, every final disclosure must contain the exact same information, and the headings, content and format used must be substantially similar to the CFPB’s model form (form H-25).\textsuperscript{17}

The first page of the Closing Disclosure contains nearly identical information to the Loan Estimate. It discloses the same terms and mortgage costs, but includes additional information about the players involved in the transaction.\textsuperscript{18} The second and third pages itemize the closing and other costs, track any changes in cost from the Loan Estimate, and summarize the

\textsuperscript{18} CFPB, Guide, \textit{supra} note 4 at 55.
transaction.\(^\text{19}\) The fourth and fifth pages provide the consumer with information regarding total payments, finance charges, the amount financed, APR, and TIP, and make certain disclaimers, such as whether the lender will accept partial payments or charge fees for late payments.\(^\text{20}\)

Creditors must provide the Closing Disclosure no later than three business days before they become contractually obligated to the creditor under the loan.\(^\text{21}\) This is a change from the old law, where final disclosures were due at different points in time under TILA and RESPA. Establishing one consistent closing disclosure deadline will potentially decrease consumer confusion and provide consumers with enough time to meaningfully review the terms of their loan before becoming bound by them.

The Closing Disclosure’s easier-to-read design and new timing requirements could help consumers better understand the terms and final cost of their loan. But again, this is only true if consumers actually read the disclosure, and there is no guarantee that they will. When borrowers reach a loan closing, they receive more than just TRID disclosures. In fact, consumers receive nearly fifty other disclosures at closing, which relate to issues ranging from insurance and tax, to privacy and fraud.\(^\text{22}\) The benefits of the sleek new Closing Disclosure design could be outweighed by the mountain of other documents consumers are expected to read and understand before closing on their loan.

\(^{19}\) *Id.* at 56-58.

\(^{20}\) *Id.* at 60-61.


b. Revisions to the Closing Disclosure

If the creditor makes certain changes to the terms of the loan between the time the Closing Disclosure form is delivered and the actual closing, a new disclosure must be provided to the consumer, and the three business day waiting period resets. The following changes trigger a new disclosure and waiting period: the previously disclosed APR was incorrect (meaning it increased by more than 1/8 of a percent for fixed-rate loans or by 1/4 of a percent for adjustable loans), the loan product becomes inaccurate, or a prepayment penalty is added to the loan.23

V. Conclusion

TRID’s goals are laudable, but the new disclosures, like their predecessors, may be ill-suited to correct the problems they attempt to address. Many consumers overlook disclosures, consciously ignore them, or misinterpret the information they contain.24 What’s more, even when consumers do read them, disclosures often do not provide consumers with the level of understanding they need to make smart decisions reflecting their best interests.25 The recent housing crash is illustrative of that point: despite receiving disclosures, consumers did not have the information and acumen they needed to understand the terms of their loans and avoid those they could not afford. Giving disclosure forms yet another makeover may not correct the underlying problems of disclosure laws or be able to overcome consumers’ unwillingness to read the documents provided them. While TRID takes steps to increase consumer protection, it is unlikely they outweigh the deeper problems with disclosure laws, and thus may fail to prevent

24 Ben-Shahar & Schneider, supra note 2 at 67.
25 Id. at 54.
consumers from making misguided borrowing decisions. It will be important for Congress and the CFPB to closely monitor the effectiveness of the new forms. If the latest changes prove ineffective, Congress should be ready to consider enacting substantive changes to the law – rather than revamping disclosure laws – that may better served the goal of protecting consumers.