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**Regulation Z and Truth-in-Lending
Act Disclosures: Recent and
Proposed Changes**

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I. Introduction

- **Who we are**
- **Format for the Webcast**
- **Materials Presented**
- **Our Efforts to Assist you After the Webcast**

I. Introduction (cont'd)

Topics to Cover:

- I. Background on TILA and Regulation Z Amendments
- II. The Mortgage Disclosure Improvement Act (MDIA)
- III. New Rules adopted regarding “Higher-Priced” and HOEPA Covered Mortgage Loans
- IV. Regulation Z – New Advertising Requirements
- V. Additional New Requirements
- VI. New Rules on Mortgage Transfer Disclosures
- VII. Proposed Rules
- VIII. Effective Dates
- IX. Conclusion
- X. Your Questions, Answered

I. Introduction (cont'd)

Background on TILA

- Applies to consumer credit, including most residential mortgage loans.
 - Disclosure requirements.
 - Right to rescind primary home-secured loans, except purchase money or initial construction loans.
 - Advertising rules.
 - Special limitations and disclosure requirements for loans subject to Home Ownership and Equity Protection Act (HOEPA).
 - Applies if: points and fees exceed greater of 8% of loan or \$579 (for 2010).
 - APR greater than 8 (for first lien loans) or 10 (for junior lien loans) percentage points above the rate for Treasury securities having comparable periods of maturity.
- Different rules apply for closed-end transactions (which include typical mortgage loans) and for open-end transactions (which include HELOCs).
- Timing and disclosure requirements under MDIA

I. Introduction (cont'd)

Recent Amendments to Truth-in-Lending

- **MDIA**
 - Enacted July 30, 2008 as part of the Housing and Economic Recovery Act of 2008 (HERA) to amend the Truth-in-Lending Act.
 - Further amended on October 3, 2008 by the Emergency Economic Stabilization Act of 2008 (EESA).
 - Became effective July 30, 2009.
- **New Rules amending Regulation Z and HOEPA**
 - New rules adopted July 14, 2008 amending Regulation Z.
 - Became effective October 1, 2009 except for escrow requirements, which are effective April 1, 2010 (or October 1, 2010 for manufactured housing).
- **Mortgage Transfer Disclosures**
 - Interim final rules adopted November 20, 2009 under Regulation Z
 - Effective January 19, 2010.

II. MDIA

- **MDIA Coverage**
- **Timing Requirements and Early Disclosures**
- **Fee Restrictions**
- **Waiting Periods**
- **Waiver of Waiting Periods**
- **Bona Fide Financial Emergency**
- **Timeshare Transactions**

II. MDIA (cont'd)

MDIA Coverage

- Extends TILA early disclosure requirements for “any extension of credit secured by the dwelling of a consumer” to:
 - Residential refinance transactions;
 - Home equity transactions; and
 - Financing the purchase or initial construction of a principal dwelling.
- Consumers will be required to receive:
 - Initial TIL disclosures at least seven (7) business days before closing.
 - Final TIL disclosures at least three (3) business days before closing.
- Restriction on imposing fees, other than for credit report, before initial TIL disclosures received.

II. MDIA (cont'd)

Timing Requirements and Early Disclosures

- Early disclosures must be delivered or mailed within three business days of receiving a consumer's loan application.
 - No need to deliver or mail early disclosures if consumer withdraws an application within the three business days
- Early disclosures must be delivered or mailed to the consumer at least seven business days before consummation.
- If the annual percentage rate changes beyond tolerance under TILA, creditor must provide corrected disclosures which the consumer must receive on or before the third business day before consummation of the transaction.
 - Three business day waiting period before consummation may occur.

Practice Tip: Both Regulation Z and RESPA (Regulation X) prohibit a lender from collecting a fee until after the TIL (Regulation Z) or the GFE (Regulation X) have been given (other than the credit report fee). In a wholesale transaction, the GFE must be given within three business days of the application being taken by the broker, but the lender is responsible for seeing that the disclosure was given on a timely basis. Under Regulation Z, the disclosure is required three business days after the application reaches the creditor rather than when it reaches the intermediary or broker.

II. MDIA (cont'd)

Fee Restrictions

- Early disclosures must be given before the consumer pays any fee.
 - Exception: A reasonable fee for the cost of obtaining the consumer's credit history may be charged before early disclosures are given.
 - This fee restriction also applies to mortgages secured by a dwelling other than the consumer's principal dwelling.

Practice Tip: Federal Reserve staff has informally indicated that a creditor cannot issue early TIL disclosures if a fee has been assessed without violating Regulation Z. If a fee has been assessed prior to the creditor receiving an application from an intermediary or mortgage broker, or if a loan officer erroneously collects a fee before disclosures are given, the fee would have to be refunded before the creditor could issue early TIL disclosures. Lender would still need to meet the three business day time limit for issuing the disclosure.

II. MDIA (cont'd)

Waiting Periods

- **Seven Day Waiting Period**
 - Seven business day waiting period begins when the creditor delivers or places the early disclosures in the mail, NOT upon consumer receipt
 - Consummation of the transaction may occur at any time ON the seventh business day following the delivery or mailing.
- **Three Day Waiting Period**
 - Three business day waiting period begins when the consumer receives disclosure that the APR has changed.
 - Consummation of the transaction may occur at any time ON the third business day following the consumers receipt of the APR disclosures.
- **Definition of “Business Day”**
 - Precise definition of business day – “all calendar days except Sunday and specified legal public holidays.”

Practice Tip: Note that if a corrected disclosure is required based on a change in the APR, both the seven day waiting period and the three day waiting period must expire before closing.

Practice Tip: The seven day waiting period begins on the date the initial disclosures are mailed, even though, for purposes of the collection of a fee, the disclosures are not deemed to be received until the third business day following mailing. However, if a corrected disclosure is mailed, the three day waiting period does not begin to run until the disclosures are deemed to be received by the borrower. If mailed, the re-disclosure is deemed to be received three business days after they are mailed.

II. MDIA (cont'd)

Waiver of Waiting Periods

- A consumer may shorten or waive both the seven business day or the three business day waiting period after receiving accurate TILA disclosures, if the consumer determines that it is needed to meet a *bona fide* personal financial emergency.
- However, if the APR then increases by more than the specified tolerance, the consumer's previous waiver is no longer effective and a new disclosure must be given.
- After receiving the new disclosure, the consumer may decide whether to request another waiver.

Practice Tip: These requirements are consistent with those for waiver of a rescission period or of the waiting period before consummation of a HOEPA covered loan.

II. MDIA (cont'd)

Bona Fide Personal Financial Emergency

- If a consumer determines that an extension of credit is needed to meet a *bona fide* personal financial emergency, the consumer may shorten or waive the seven business day waiting period or the three business day waiting period after the they receive accurate TILA disclosures reflecting the final costs and terms.
- In order to shorten or waive a waiting period:
 - Consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who will be primarily liable on the legal obligation.
 - Creditors may not use pre-printed forms for this purpose.
- In a transaction where multiple consumers are primarily liable on the legal obligation, a creditor may provide disclosures to one of those consumers rather than to all of them.

II. MDIA (cont'd)

Timeshare Transactions

- Creditors must deliver or place in the mail early disclosures within three business days (using the general definition of “business day”) after the creditor receives the consumer’s application or before the credit is extended, whichever is earlier.
 - General Definition of “business day” – Days in which the creditors offices are open for business.
- Does not apply seven business day and three business day waiting periods before consummation to timeshare transactions.
- However, if the APR stated in the early disclosures changes beyond the specified tolerances, creditor must disclose changed terms no later than consummation or settlement of the transaction.

III. Higher-Priced Mortgage Loans and HOEPA Loans

New Category of Loans Created

- Higher-Priced Mortgaged Loans (Section 35 Loans) Defined
 - Consumer credit transactions secured by a principal dwelling with an APR that exceeds the “average prime offer rate” by:
 - 1.5 percentage points or more for first lien loans.
 - 3.5 percentage points or more for junior lien loans.

Compare to HOEPA Loans

- HOEPA Loans (Section 32 Loans) Defined
 - Consumer credit transaction secured by the consumers principal dwelling which exceeds APR or points and fees thresholds.
 - For loans consummated after October 1, 2002, for a loan to be HOEPA-covered, the APR must exceed the yield on a Treasury security having a comparable maturity by 8 percentage points, or the total points and fees must exceed 8 percent of the total loan amount.
 - For loans consummated prior to October 1, 2002, APR trigger was higher, 10 percentage points.

Practice Tip: Note that these definitions would not apply to a consumers vacation home. If not testing for average prime rates on such loans, make certain you have strong documentation that home will not be the borrowers primary residence.

III. Higher-Priced Mortgage Loans and HOEPA Loans (Cont.)

Requirements for Higher-Priced Mortgage Loans and HOEPA Loans

- **Ability to Repay** – Creditor may not extend a higher-priced mortgage loan or HOEPA loan without considering the borrowers ability to repay the loan based on income and assets.
 - **Presumption of compliance where creditor:**
 - Verifies and documents borrower repayment ability;
 - Determines the repayment ability using the fully-indexed rate and fully amortizing payment; and
 - Assesses the borrowers repayment ability using the total debt-to-income ratio (DTI) or consumer income after other debt obligations.
- **Documentation** – Creditor may not rely on unverified income or assets of the borrower (i.e. no stated income loans).

Practice Tip: The presumption of compliance is not conclusive and can be rebutted. A borrower may rebut with evidence the creditor disregarded repayment ability despite following requirements.

III. Higher-Priced Mortgage Loans and HOEPA Loans (Cont.)

- **Prepayment Penalty Limitations for Higher-Priced Mortgage Loans –** Creditor may not include a prepayment penalty for any higher-priced mortgage loan unless:
 - The penalty is permitted by applicable state law;
 - The penalty will only apply during the first two years after consummation;
 - The penalty will not apply if the source of prepayment funds is a refinancing by the creditor or an affiliate; and
 - The payment amount may not change during the first four years after consummation.
- **New Prepayment Penalty Limitations For HOEPA loans**
 - The penalty is permitted by applicable state law;
 - The penalty will only apply during the first two years after consummation;
 - The penalty will not apply if the source of prepayment funds is a refinancing by the creditor or an affiliate; and
 - The payment amount may not change during the first four years after consummation.
 - At consummation, the consumer's total monthly debt payments (including amounts owed under the mortgage) do not exceed 50% of the consumer's monthly gross income.
- **Escrow Requirements for Higher-Priced Mortgage Loans –** Creditor must establish an escrow account for taxes and insurance on higher-priced loans secured by a first lien on a principal dwelling.

Practice Tip: Note that this statute and regulation do not authorize prepayment penalties. Lender must determine, based on its charter and applicable law, whether the lender is otherwise authorized to charge a prepayment penalty.

III. Higher-Priced Mortgage Loans and HOEPA Loans (Cont.)

What is Average Prime Offer Rate?

- Published on FFIEC website: (<http://www.ffiec.gov/ratespread/newcalc>).
- FFIEC website shows how to select a “comparable rate.”
- Use the most recently published rate on the date the interest rate is set.

Practice Tip: If lender does not offer an interest rate lock in connection with a program, use the Average Prime Offer Rate as of the date documents are prepared.

Practice Tip: If the lender offers a float down option, Average Prime Offer Rate used would be recalculated on the date the interest rate floats down.

IV. New Advertising Requirements

Closed-End Credit – New Advertising Rules

- Clear and Conspicuous Standard for all closed-end advertisements
- New option for television and radio ad using Regulation Z “trigger” terms
 - Lender can provide the additional terms required by Regulation Z (clearly and conspicuously) in the ad; or
 - Provide a clear and conspicuous disclosure of a telephone number along with a reference that the number may be used for obtaining additional cost information.
- For Advertisements (other than television or radio):
 - Disclosure of all rates and payments for the term of the loan and associated time periods
 - If ad states simple interest rate that will apply and more than one rate will apply must also disclose with equal prominence and in close proximity:
 - Each simple annual rate
 - The period of time for each rate
 - The APR for the loan
 - If ad states the amount of any payment, the ad must also state with equal prominence and in close proximity
 - The amount of each payment that will apply over the term of the loan
 - The period of time during which each payment will apply
- Use of term “Fixed”
 - In ad for a variable rate transaction, word “fixed” cannot appear until after use of the words “Adjustable Rate Mortgage,” “Variable Rate Mortgage,” or “ARM.”
 - Equally prominent statement of time period in close proximity.

IV. New Advertising Requirements

Closed-End Credit – New Advertising Rules (cont'd)

- **Payment and rate comparisons between actual and hypothetical loans**
 - **Lender prohibited from making misleading comparisons based on a simple interest rate that will be available for less than the full term of the loan, unless:**
 - **The ad includes a clear and conspicuous comparison of all rates and payments; or**
 - **If ad is for a variable rate transaction, the advertised payment or rate is based on the index and margin that will be used to make subsequent rate or payment adjustments.**
- **No representations that loan is a “government loan program” or “government-supported loan” or is otherwise sponsored or endorsed by any federal, state or local government entity except for FHA, VA or similar loan program.**
- **New disclosures regarding tax implication in connection with loans where the loan amount may exceed the fair market value of the dwelling.**

IV. New Advertising Requirements

Closed-End Credit – New Advertising Rules (cont'd)

- **Additional Prohibitions**
 - **No solicitation letters, that display the name of the consumer's current mortgage lender, unless the advertisement also prominently discloses that the advertisement is from a mortgage lender not affiliated with the consumer's current lender;**
 - **No ads that make claims of debt elimination if the product advertised would merely replace one debt obligation with another;**
 - **No ads that create a false impression that the mortgage broker or lender is a "counselor" for the consumer; and**
 - **No foreign-language advertisements in which certain information, such as a low introductory "teaser" rate, is provided in a foreign language, while required disclosures are provided only in English.**

IV. New Advertising Requirements

Open-End Credit – New Advertising Rules

- **Clear and Conspicuous Standard**
 - Advertisements for open-end credit are subject to a clear and conspicuous standard under Reg Z § 226.5(a)(1).
 - New commentary to Reg Z elaborates on this requirement by stating that disclosures under Reg Z § 226.5(d)(6) about promotional rates or payments in advertisements for open-end credit must be prominent and in close proximity to “triggering terms.”
 - The requirement is satisfied where the disclosures appear immediately next to or directly above or below the “trigger terms.”
- **Advertisements about Premium Rates**
 - If an advertisement for a variable-rate home-equity plan states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments, the advertisement must also state the period of time the initial rate will be in effect, and a reasonably current annual percentage rate that would have been in effect using the index and margin.
 - Disclosures must be stated with equal prominence and in close proximity to the statement of the initial APR.
- **Balloon Payments**
 - Currently, if an advertisement for a home-equity plan contains a statement about any minimum periodic payment, the advertisement must also state, if applicable, that a balloon payment may result.
 - The rule clarifies that only statements of the amount of any minimum periodic payment trigger the required disclosure, and that the disclosure of a balloon payment must be equally prominent and in close proximity to the statement of a minimum periodic payment.

IV. New Advertising Requirements

Open-End Credit – New Advertising Rules (cont'd)

- **Tax Implication Disclosures**
 - Rule requires that the additional tax implication disclosures be given only when an advertisement states that extensions of credit greater than the fair market value of the dwelling are available.
 - The rule does not apply to advertisements that merely imply that extensions of credit greater than the fair market value of the dwelling may occur.
- **Promotional Rates and Payments**
 - Advertisements with promotional rates or payments must use the term “promotional” to describe the rates and/or payments
 - If an APR to be applied is a promotional rate, or if any payment to the applicable plan is a promotional payment, the following must be disclosed in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:
 - The period of time during which the promotional rate or promotional payment will apply;
 - In the case of a promotional rate, any annual percentage rate that will apply under the plan; and
 - In the case of a promotional payment, the amount and time periods of any payments that will apply under the plan.
 - In variable-rate transactions, payments determined based on application of an index and margin to an assumed balance would be required to be disclosed based on a reasonably current index and margin.

V. Additional New Requirements

The following new requirements apply to all consumer credit transactions secured by a consumer's principal dwelling:

- Appraisals
 - Creditors, mortgage brokers and their affiliates may not coerce, pressure or otherwise encourage appraisers to misstate or misrepresent a dwelling's value.
 - Examples of coercion:
 - Implying that future retention is based on meeting minimum value;
 - Restriction future assignment based on failure to meet minimum value;
 - Stating to appraiser a minimum value needed;
 - Withholding compensation to appraiser based on the failure to meet certain value; or
 - Conditioning compensation on loan consummation.

V. Additional New Requirements

The following new requirements apply to all consumer credit transactions secured by a consumer's principal dwelling:

- Appraisals
 - Examples that are not coercion:
 - Asking appraiser to consider additional information or provide additional information on the basis for evaluation;
 - Requesting correction of factual errors;
 - Obtaining multiple appraisals provided lender selects the most reliable appraisal and not the one with the highest value;
 - Withholding compensation based on breach of contract or substandard performance; or
 - Taking action permitted by federal or state law or regulation or agency requirements.
 - Creditors may not extend credit if they know of a violation, unless the creditor uses reasonable diligence to determine that the appraisal was accurate, or obtains a separate appraisal on which to base the credit extension.

Practice Tip: The final rule does not contain an explicit provision for liability where lender has “reason to know” of violation (like the proposed rule originally did), but the preamble clarifies that creditors may not extend credit in willful disregard of facts that evidence a violation of rule.

V. Additional New Requirements

The following new requirements apply to all consumer credit transactions secured by a consumer's principal dwelling:

Loan Administration/Servicing

- Servicers of closed-end consumer credit transactions secured by a consumer's principal dwelling are prohibited from:
 - Failing to credit a consumer's periodic payment as of the date received unless delay in crediting does not result in any charge to consumer or reporting of negative information to credit reporting agency.
 - Creditors are not required to credit partial payments – whether a payment is a full or partial payment is governed by the loan agreement or promissory note.
 - Creditors should credit based on the terms of the loan agreement or promissory note (but see requirement re: imposing late charges below).
 - For checks, date of receipt is the date the check reaches the creditor not the date the check is deposited or cleared.
 - Creditors can set *reasonable* payment requirements (e.g. specify an address for sending payments, set a cut of time for receipt or require payment in US dollars) but if creditor accepts payment that does not follow set requirements it must still credit within five (5) days (assume calendar days).
 - Imposing a late fee or delinquency charge where the only basis is consumer's failure to include in a current payment a delinquency charge imposed on earlier payments.
 - Failing to provide accurate payoff statement within reasonable time after request.

Practice Tip: Receipt by a Lock Box agent will likely be deemed to be receipt by the creditor. Have you reviewed policies of lock box agents to insure that they are complying with this requirement?

V. Additional New Requirements

Loan Administration/Servicing

Practice Tip: Note that late charge provision can be contrary to application of payment rules set forth in loan agreements or promissory note.

Practice Tip: Example of impermissible imposition of late charge:

Payment of \$100 due on 1st day of each month
Late charge is imposed on 15th of month

1. Borrower fails to make a payment on January 1. Late charge is imposed on January 15. Borrower makes payment of \$100 on January 20. \$5 late fee remains unpaid.
2. Borrower makes payment of \$100 dollars on February 1. Lender applies \$5 to late fee in accordance with the terms of the note and then \$95 to interest and principal. On February 15, the loan system shows that the borrower is \$5 short and imposes a late fee.

VI. Mortgage Transfer Disclosures

New Disclosure on Mortgage Transfers

- Implements Section 131(g) of TILA, which was enacted on May 20, 2009 in Section 404(a) of the Helping Families Save Their Homes Act.
- Requires the purchaser or assignee of a mortgage loan to mail or deliver required disclosures, in writing, and no later than 30 days after transfer of such mortgage loan, by sale, assignment or other transfer.
- Applies to both closed-end AND open-end consumer credit transactions secured by the principal dwelling of the consumer.
- Disclosures must identify the acquired/transferred loan and must contain:
 - (1) the identity, address, and telephone number of the covered person that owns the mortgage loan;
 - (2) the date of the acquisition or transfer;
 - (3) contact information that the consumer can use to reach an agent or party having authority to act on behalf of the covered person; and
 - (4) the location of the place where the transfer of the ownership of the debt is recorded.

*Note: This rule is an interim final rule. We have been informally advised by the Federal Reserve Board staff that a final rule is forthcoming that may contain amendments to the interim final rule provisions. We expect this within 60 - 90 days.

Practice Tip: The servicer of a mortgage loan is not treated as the owner under § 226.39 of Regulation Z if the servicer holds legal title to the loan as a result of the assignment of the obligation to the servicer solely for administrative convenience in servicing the obligation.

VII. Proposed Rules

Federal Reserve has proposed major changes to Open-End and Closed End Disclosures

- **Published in Federal Register August 26, 2009**
- **Comments were due December 28, 2009**

VII. Proposed Rules

Major Changes Proposed for Open-End Credit (HELOCs)

- New application disclosures—reduced to one page
- New early transaction specific disclosures to be given within three days of receiving application—tabular format
- New disclosures at account opening is same format as early transaction specific disclosures
- Enhanced disclosures for periodic statements
- 45 days advanced notice of change in terms (for the very limited situations in which a lender can change terms)
- Limitation on terminating an account for delinquency
- New rules surrounding suspension or reductions in credit limits including right to request reinstatement

VII. Proposed Rules

Major Changes Proposed for Closed-End Mortgage Transactions

- **Changes to the definition of Finance Charge to include most fees including title services, appraisal, credit report, credit insurance, and attorney or settlement agent fees**
- **Application disclosures**
 - **New one page disclosure with key questions or all applications**
 - **New ARM program disclosure document**
- **Substantially revised early transaction specific disclosures**
- **Additional changes beyond APR would trigger a re-disclosure and three day waiting period**
- **New rules on notification of borrowers regarding changes in monthly payments**
- **New monthly statement requirements regarding payments options for loans with those options**

VII. Proposed Rules

Limitations on Loan Originator Compensation

- **Alternative One**
 - No compensation based on loan transactions terms or conditions and loan amount is deemed a term or condition of loan.
- **Alternative Two**
 - No compensation based on loan transactions terms or conditions and loan amount is not deemed a term or condition of loan.
- **Prohibition on Steering**
 - Loan originator prohibited from steering consumers to a certain creditor solely in the interest of increasing compensation.

VII. Proposed Rules

Limitations on Loan Originator Compensation (cont'd)

- **Loan Originator Defined**
 - Anyone who for compensation or other monetary gain arranges, negotiates, or otherwise obtains an extension of credit for another person.
- **Compensation**
 - Includes more than just commissions—salary, annual or periodic bonus, awards of merchandise, services, trips or similar prizes.

Steering—Safe Harbor

- Loan originators have a “safe harbor” against allegation of steering by presenting at least three loans to the borrower of each type (fixed or variable).
 - The loan with the lowest interest rate
 - The loan with the second lowest interest rate
 - The loan with the lowest total dollar amount for origination points or fees and discount points, as offered by the various lenders.

VIII. Effective Dates

- **MDIA became effective July 30, 2009**
- **Amendments to Regulation Z under HOEPA became effective October 1, 2009**
 - **Escrow requirements effective April 1, 2010**
 - **Escrow requirements for manufactured housing effective October 1, 2010**
- **Amendments to Regulation Z regarding Mortgage Transfer Disclosures became effective January 19, 2010**
 - **Possible amendments to interim final rule Spring 2010**

IX. Conclusion

- **Changes to MDIA**
- **Changes for Higher-Priced Mortgage Loans**
- **New Advertising Rules**
- **Mortgage Transfer Disclosures**
- **Newly Proposed Rules with major possible impact**

X. WBSK TILA Hotline

- **We are here for YOU!**
- **Call (202) 557-3555 to speak directly with one of us!**
- **We will be available on the following dates from 9 a.m. – 5 p.m. (eastern) to answer your TILA questions:**
 - **February 8 – 12 and 16 – 19.**
- **If your call is not picked up, please leave a detailed message and we will call you back as soon as possible.**