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Title: The Black and White of TRID Timing

There are so many ways to violate TRID. Mastering the content requirements (knowing what to put where) is a difficult task for even the most seasoned compliance professional and is the source of numerous violations. Conquering the timing requirements (knowing when to give what) seems to be a much easier assignment but is one that also causes numerous violations. When it comes to what information to include in disclosures, and in which section, there is a lot of gray area, too much, in fact. However, when it comes to when to give the disclosures, the regulations are a lot more black and white.

Let's face it, TRID is difficult. First, even the name is challenging: TRID is an acronym made up of other acronyms. TRID is short for TILA-RESPA Integrated Disclosures. TILA is an acronym for the Truth in Lending Act, and RESPA is an acronym for the Real Estate Settlement Procedures Act. Second, many things related to TRID are conditional: the definition of "application" is very different than most other regulations, there are multiple definitions of "business day," and the regulations do not even address every common scenario, let alone every conceivable scenario. Third, the requirements are spread out: be sure to check the regulation, the commentary, the published guidance, any FAQs, and the occasional final rule preamble if you want to understand a requirement the best you can.

If you've read this far, then you should know that the TRID requirements are largely about giving an applicant two "named" disclosures: the Loan Estimate and the Closing Disclosure. The Loan Estimate is a reliable estimate of costs given early in the process to loan applicants in order to allow them to shop around for the best loan. The Closing Disclosure is a precise listing of costs given just before closing to let the applicant know what the confirmed cost of credit is.

In order for an extension of credit to be subject to the TRID requirements it must be all of the following: 1) closed-end, 2) made to a consumer, 3) for a consumer purpose, and 4) secured by real property. Once you've determined that your extension of credit is subject to the TRID requirements, the clock may have already started.

The Loan Estimate (Contents: 1026.37; Timing 1026.19(e))

The clock on the TRID timing requirements begin as soon as the bank receives an "application," which is defined specifically as the submission of the applicant's name, income, Social Security Number, collateral property address, estimated value of the collateral property and the loan amount requested. Once a bank has received all six pieces of information the clock has started, and the bank is required to send the applicant a copy of the Loan Estimate within three business days. For this purpose, a business day is any day that the bank is open for carrying on substantially all of its business functions. This means some banks will count Saturdays for this window to send the Loan Estimate, and others will not. This is sometimes referred to as the "general definition of business day." The regulations do not require that the initial Loan Estimate be received by any particular number of business days, so any questions of the receipt of the Loan Estimate are almost always in relation to loan closing.

The bank is only required to honor the estimates given on the Loan Estimate for ten business days, after which the Loan Estimate expires and if the applicant decides to proceed after expiration it is up to the bank whether to honor the existing estimates or provide an applicant with a new Loan Estimate with new estimated costs. Expiration is determined using the definition of business day that will include Saturday for some banks and will not for others.

Occasionally a fee will need to be increased due to the information relied on by the bank when issuing the Loan Estimate being inaccurate. This is referred to as a changed circumstance, change in circumstance or change of circumstance. Regardless of what you call it, when this happens, in order for the bank to pass this increase off to the applicant, the bank must send a revised Loan Estimate within three business days of learning of the increase in the fee, using the definition that will include Saturdays for some banks and will not for other banks.

For the purposes of loan closing, any revised Loan Estimate must be received no later than four business days prior to loan closing. This definition of business day includes all calendar days other than Sundays and legal public holidays. This is sometimes called the “specific definition of business day.” However, since this is a receipt requirement and not a sending requirement, it is important to point out that a TRID disclosure is considered to be received three business days after it is sent, using the definition that includes all calendar days other than Sundays and legal public holidays.

The Closing Disclosure (Contents: 1026.38; Timing: 1026.19(f))

Before closing a loan, the bank must send the Closing Disclosure to the applicant. The closing disclosure must be received at least three business days prior to loan closing, using the definition that includes all calendar days other than Sundays and legal public holidays.

If there is a change to the loan such that the APR becomes inaccurate, there is a prepayment penalty added or there is a change in loan product, the bank is required to provide a revised Closing Disclosure to the applicant, which must be received at least three business days prior to closing, using the definition that includes all calendar days other than Sundays and legal public holidays.

After closing a loan, if during the thirty-calendar day period following the loan closing, an event in connection with the loan closing causes the Closing Disclosure to be inaccurate and the inaccuracy results to a change in the amount paid by the consumer, the bank is required to send a copy of the revised Closing Disclosure no later than thirty-calendar days after discovering such inaccuracy.

If the bank discovers a non-numeric clerical error within the sixty-calendar day period following the loan closing, the bank is required to send a copy of the revised Closing Disclosure no later than sixty calendar days after loan closing.

If the amount paid by the consumer exceeds the amount indicated on the Closing Disclosure, the bank is to provide a refund and a revised Closing Disclosure no later than sixty calendar days after the loan closing.



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John S. Berteau serves as Associate General Counsel for Compliance Alliance. He has nearly fifteen years of combined experience in the financial services industry. At Hancock Whitney Bank, he worked in the field of environmental risk management and compliance (CERCLA/RCRA/Wetlands). At Alorica, the nation's fastest-growing BPO, John worked in tandem with some of the largest banks in the U.S., helping to evaluate financial risks. He holds Bachelor's and Master's Degrees in History from the University of New Orleans, a Juris Doctorate from Loyola University New Orleans and is a licensed attorney in the State of Louisiana. In addition to being one of our featured authors, John has recently taken over the editor role for C/A's Access magazine. As a hotline advisor, John helps C/A members with a wide range of regulatory and compliance