

Mortgage Disclosure Improvement Act

Summary

1. No fees other than “reasonable” credit report may be collected until 3 business days after mailing the initial Respa documents. This includes collection of borrower’s credit card information for appraisal ordering.
2. The appraisal report cannot be ordered until after the three day waiting period after initial disclosures.
3. Borrower must wait 7 business days from when initial Respa documents are mailed to close.
4. If the APR increases by .125% or greater a revised TIL must be delivered to the borrower. Closing cannot occur until three business days have elapsed from re-disclosure date.
5. Borrower must be provided with a copy of his or her appraisal a minimum of 3 business days prior to closing. The appraisal is considered “received” 3 business days after mailing.
6. Initial disclosures and subsequent disclosures must contain a clear notice stating "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application"

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Written by Richard Triplett, CMB

Effective on July 30, 2009, some of the provisions in the final rule for revisions to the Truth-in-Lending Act (TILA) become effective - 2 months earlier than the original date of October 1, 2009. The specific provisions effective by this "new" rule implement the Mortgage Disclosure Improvement Act (MDIA).

How did this happen? The final rule issued by the Federal Reserve Board on July 30, 2008 regarding the Truth-in-Lending Act and Home Ownership Equity Protection Act has an effective date of October 1, 2009. On July 30, 2008, Congress enacted the Housing and Economic Recovery Act which included provisions regarding MDIA. On October 3, 2008, Congress enacted the Emergency Economic Stabilization Act which amended MDIA. On May 8, 2009 the Federal Reserve Board approved final rules to implement the provisions of MDIA, as amended by the Emergency Economic Stabilization Act and applied an effective date of July 30, 2009. MDIA amends TILA, codifies early disclosure requirements and expands regulatory provisions. Confused yet?

The requirements that become effective for all loan applications received on or after July 30, 2009 are detailed below. These requirements are not applicable, and there have been no changes at this time to Home Equity Lines of Credit requirements. Additionally, MDIA requires additional language for adjustable-rate loans; however, this provision is still forthcoming by the Federal Reserve.

Initial Fee Restrictions - collection of fees from a mortgage applicant are limited to a reasonable credit report fee prior to the issuance of early disclosures. Although the industry was preparing for this requirement due to TILA changes effective October 1, and the RESPA final rule, it is being applied early based on MDIA. This is one of the fairly significant changes of MDIA that will require a change in policy and potentially revisions to advance fee disclosures for lenders and brokers.

Early Disclosures - though nothing is changed in terms of initial timing of the disclosure (3 business days from application), the issuance of the initial TIL Statement now extends to "any extension of credit secured by the dwelling of a consumer". It has been my experience that for the most part, lenders and broker alike have generally been issuing the TIL Statement in accordance with this requirement already. However, there are new requirements in terms of disclosure timing versus consummation, covered below. Keep in mind that "business days" referenced for early disclosures is based on a general definition of business days, which is a day in which the creditor's offices are open to the public for carrying on substantially all of its business functions. The business day definition differs on the requirements for the waiting periods prior to consummation.

No Requirement to Complete Statement - early disclosures and subsequent disclosures must contain a clear notice stating "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application". This language is already required on high-cost loan disclosures, but now applies to any extension of credit secured by the dwelling of a consumer.

Seven Business Days Prior to Consummation - MDIA requires a seven business day waiting period prior to consummation from delivery or mailing of the TIL Statement to the consumer prior to consummation. This timing begins when a creditor mails or otherwise delivers the TIL Statement to the consumer. It is not based on receipt date or assumed receipt date by the consumer but rather mailing or delivery by the creditor. For purposes of both this seven-day waiting period and the three-day waiting period (indicated below), "business day" is defined as meaning all calendar days except Sundays and legal holidays. This is a significant change particularly for wholesale lenders. As a wholesale lender, I would recommend you review your processes and procedures to determine whether (based on the way you do business) the mortgage brokers in which you do business will or will not meet the definition of creditor under TILA. Remember the timing starts from the issuance of the TIL Statement by the creditor. This is likewise a significant change due to MDIA requirements.

Three Business Days Prior to Consummation - Although creditors are already required to re-disclose the TIL Statement to a consumer when the APR is out of tolerance under TILA, it is typically done at the time of consummation. MDIA now changes this to a three business day time period prior to consummation using the definition of business day the same as the seven day waiting period. In this case, the consumer must receive the re-disclosed TIL Statement prior to consummation. Additionally, in this case, until you have receipt of a TIL Statement within this three-day time period prior to consummation by the consumer that is not out of tolerance, you must re-disclose until this requirement is met. This is also a significant change to the issuance of the TIL Statement.

Time Shares - for time share transactions, the early disclosure requirements apply but the seven-day and three-day waiting periods do not apply. The timing on early disclosures for time shares is applicable based on the receipt of the consumer's application or before the credit is extended. Subsequent changes to terms beyond tolerance for time shares can be disclosed no later than consummation.

Waiver of Seven and Three-Day Waiting Periods - both the seven-day and three-day waiting periods regarding TIL Statement disclosure can be shortened or waived if the extension of credit is necessary to meet a bona fide personal financial emergency. If subsequent to this waiver the TIL Statement is again out of tolerance, the waiver is no longer effective. Once the TIL Statement is re-disclosed again, if necessary, a waiver must be requested again. In order to request this waiver, a pre-printed form cannot be used. The consumer must prepare a dated written statement, signed by each consumer that will be legally obligated and entitled to receive the TIL Statement, detailing the specific emergency and specifies that request for waiver of the waiting period. This waiver should follow the regulatory requirements for waiving rescission rights and waiving a waiting period prior to consummation of a high cost loan under HOEPA.

The Board of the Federal Reserve has also indicated a future proposal containing model disclosures and clauses regarding closed-end credit.