REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: **March 2015** **NO: 15-RA-03**

TO: **Federally Insured Credit Unions**

SUBJ: **Preparing to Comply with TILA-RESPA Changes on August 1**

ENCL: **(1) CFPB TILA-RESPA Integrated Disclosure Rule Small Entity Compliance Guide**
(2) CFPB TILA-RESPA Integrated Disclosure Guide to the Loan Estimate and Closing Disclosure Forms

ACTION: **Compliance Required as of August 1, 2015; Update: Compliance Required as of October 3, 2015**

EFFECTIVE DATE UPDATE: The Consumer Financial Protection Bureau has delayed the effective date of the TILA-RESPA Integrated Disclosure Rule from August 1, 2015, until October 3, 2015 through a notice available here. All references to the August 1, 2015, effective date should be read to mean October 3, 2015. Please note the new disclosures may not be used for applications received before the new effective date.

Dear Board of Directors and Chief Executive Officer:

If your credit union originates mortgage loans as a creditor/lender or a mortgage broker, you likely will have to comply starting August 1, 2015 with a Final Rule issued by the Consumer Financial Protection Bureau (CFPB) to establish new disclosure requirements and forms for most closed-end consumer mortgages.[1]

The Final Rule amends Regulation Z, which implements the Truth in Lending Act (TILA), and Regulation X, which implements the Real Estate Settlement Procedures Act (RESPA). The Final Rule combines existing mortgage disclosure requirements, implements new mortgage disclosure requirements, and refines existing disclosure requirements for both mortgage and non-mortgage loans.

[1] *See* Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 78 FR 79730 (Dec. 31, 2013). CFPB recently published amendments to the Final Rule, 80 FR 8767 (Feb. 19, 2015), which are available here. Regulation Z generally uses the term "creditor" while Regulation X generally uses the term "lender," respectively defined in 12 CFR § 1026.2(a)(17) and 12 CFR § 1024.2(b). A person who extended consumer credit 25 or fewer times in the past calendar year, or five or fewer times for transactions secured by a dwelling, does *not* qualify as a "creditor" under Regulation Z and is *not* subject to the integrated disclosure requirements under the Final Rule. However, the person may be a "lender" subject to other disclosure requirements under the Real Estate Settlement Procedures Act.

The purpose of this Regulatory Alert is to notify you of the integrated disclosure requirements and other new disclosure requirements under Regulation Z and Regulation X so you can take action to ensure compliance with CFPB's Final Rule. You must provide the new integrated disclosures for covered mortgage applications received on or after August 1, 2015.[2]

Background

Currently, under TILA and RESPA, creditors provide different sets of disclosure forms to mortgage applicants:

- Good Faith Estimate (GFE) and HUD-1 or HUD-1A settlement statement (HUD-1) under RESPA and Regulation X; and
- Initial TILA disclosures and final TILA disclosures under TILA and Regulation Z.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed CFPB to integrate these disclosures.[3]

CFPB combined the GFE and initial TILA disclosure into a new form: the Loan Estimate disclosure (Loan Estimate). The new Loan Estimate is designed to help consumers understand the key features, costs, and risks of the mortgage loan for which they are applying. **You must provide the Loan Estimate to members within three business days after they submit a mortgage loan application and at least seven business days before consummation.** (*See* **The Loan Estimate** section of this Regulatory Alert for details.)

CFPB also combined the HUD-1 and final TILA disclosure into a new Closing Disclosure. The Closing Disclosure is designed to help consumers understand all the costs of the transaction. **You must provide the Closing Disclosure to members at least three business days before loan consummation.** (*See* **The Closing Disclosure** section of this Regulatory Alert for details.)

Under the Final Rule, you will continue to provide to members a special information booklet required under RESPA. CFPB plans to revise the special information booklet to reflect the new integrated disclosures and new RESPA requirements added by the Dodd-Frank Act. **You must provide the special information booklet within three business days after receiving the member's loan application.** (*See* the **Special Information Booklet** section of this Regulatory Alert for details.)

Also, under the Final Rule, if you allow a member to shop for a settlement service, you must provide the member a written list identifying available providers of these services, which must state the consumer can choose a different provider. **You must provide a list of settlement service providers within three business days after receiving the member's loan application.** (*See* the **Written List of Service Providers** section of this Regulatory Alert for details.)

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[2] This Regulatory Alert is intended to provide general information about the Final Rule, but only the Final Rule and its Official Interpretations can provide complete and definitive information regarding its requirements. Unless specified otherwise, citations provided reflect Regulation Z and Regulation X, as amended effective August 1, 2015.

[3] CFPB's amended disclosure requirements are in accordance with Sections 1098 and 1100A of the Dodd-Frank Act.

The Final Rule adds a new requirement to provide an Escrow Closing Notice before cancelling an escrow account for a closed-end consumer credit transaction secured by a first lien on real property or a dwelling. **If the member requests cancellation, you must provide an Escrow Closing notice at least three business days before cancellation. In other cases, you or the servicer must ensure the member receives the Escrow Closing Notice no later than 30 business days before cancellation.** (*See* the **Escrow Closing Notice** section of this Regulatory Alert for details.)

In addition, the Final Rule amends the requirement to provide mortgage transfer notices when transferring ownership of a mortgage loan to require you to include information related to the policy on making partial payments. (*See* the **Partial Payment Disclosures** section of this Regulatory Alert for details.)

I. Loan Coverage

Which Loans Does the Final Rule Cover?

The Final Rule applies to **most closed-end consumer mortgage transactions secured by real property.** The Final Rule also applies to **construction loans and loans secured by interests in timeshare plans**, although special rules apply.[4]

Most provisions of the Final Rule apply to all covered loans for which an application is received on or after August 1, 2015.[5] **If an application is received *before* August 1, 2015, you must provide all disclosures based on the requirements as they stood *before* August 1, 2015, even for disclosures for that transaction you provide *after* August 1, 2015.**

II. The Loan Estimate

The Loan Estimate—Content

What disclosure provides initial estimates of loan terms?

The **Loan Estimate** provides initial, good faith estimates of loan terms. It replaces the GFE provided under RESPA and the initial disclosure provided under TILA.[6]

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[4] The Final Rule's requirements discussed in this Regulatory Alert also apply to closed-end consumer credit transactions secured by vacant land or by 25 or more acres of land, which transactions previously were subject to TILA but not RESPA. The Final Rule's requirements related to the Loan Estimate, Closing Disclosure, Special Information Booklet, and Written List of Service Providers do *not* apply to home equity lines of credit (HELOCs), reverse mortgages, or chattel dwelling loans, such as loans secured by mobile homes or a dwelling *not* attached to real property. Creditors originating these types of mortgages must continue to use the disclosures currently required by TILA and Regulation Z, and the GFE and HUD-1 forms required under RESPA and Regulation X. Also, an exemption from some integrated disclosure requirements applies to certain no-interest loans secured by subordinate liens made for the purpose of down-payment or similar home-buyer assistance, property rehabilitation, energy efficiency, or foreclosure avoidance and prevention. *See* 12 CFR § 1026.3(h). The Final Rule's requirements related to the Escrow Closing Notice and the Partial Payment Disclosure do not apply to HELOCs or reverse mortgages, but they do apply to chattel dwelling loans.

[5] Certain provisions apply starting August 1, 2015, even if no application has been received, specifically provisions related to: collecting fees before providing the Loan Estimate; disclosures on written estimates provided before the Loan Estimate; and limitations on requiring verification of application information.

[6] A mortgage broker may provide a Loan Estimate, but the creditor must ensure the Loan Estimate is provided in accordance with all requirements. *See* 12 CFR § 1024.2(b) for the definition of "Good faith estimate" and 12 CFR

What form is used to provide the Loan Estimate?
CFPB has provided a standard Loan Estimate form, which you must use for "federally related mortgage loans" subject to RESPA.[7] (*See* **Form H-24** in Appendix H to Regulation Z.)
For *non*-federally related mortgage loans subject to the Final Rule, you are *not* strictly required to use Form H-24. However, the disclosures must contain the exact same information and be made with substantially similar headings, content, and format.

What information does the Loan Estimate provide?
Information the Loan Estimate provides includes:

- On page 1: general information, such as the date issued, the name of the member(s), loan type, and whether there is a rate lock; tables for loan terms; projected payments; costs at closing; and a link to more information on CFPB's website.
- On page 2: details about closing costs, including loan costs and other costs such as taxes and government fees; a table calculating cash needed to close; and, as applicable, information about adjustments to payments and to the interest rate.
- On page 3: contact information for the lender, loan officer, and mortgage broker, if any, and information for comparison purposes about loan costs based on the following factors: (1) if the member were to pay off the principal in five years; (2) the annual percentage rate (APR); and (3) the total interest to be paid, as a percentage of the loan amount.

May the Loan Estimate be adjusted for transactions that have no seller (*e.g.*, refinancings)?
Yes, but the Final Rule specifies the adjustments that you can make. An example of an adjusted form for transactions without a seller is provided in Appendix H-24(G).

The Loan Estimate—Timing

When does an "application" trigger the obligation to provide a Loan Estimate?
An "application" is made when the creditor or mortgage broker has received **all of the following**:

- Member's name;
- Member's income,
- Member's Social Security number to obtain a credit report;
- Property address;
- Estimate of the value of the property; and
- Mortgage loan amount sought.

§ 1024.7 for applicable rules and requirements.

[7] The term "federally related mortgage loan" includes most home mortgage loans secured by residential real property within the United States, other than temporary financings such as construction loans. (*See* 12 CFR § 1024.2(b).) Factors that may make a home mortgage loan a federally related mortgage loan include: being made by a lender regulated by, or whose deposits or accounts are insured by, any agency of the federal government; being made, insured, guaranteed, supplemented, or assisted in any way by any agency of the federal government; being sold to Fannie Mae, Freddie Mac, or Ginnie Mae; and being made by a person who is a "creditor," as defined in Section 103(g) of the Consumer Credit Protection Act (CCPA), and that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. (Section 103(g) of the CCPA is codified at 15 U.S.C. § 1602(g).)

What are the timing and delivery requirements for the Loan Estimate?

Generally, the Loan Estimate must be **delivered or placed in the mail** not later than **the third business day** after the creditor receives the member's application.[8] To determine business days for purposes of this requirement, count days a creditor's offices are open to the public for carrying out substantially all of its business functions.

- If a mortgage broker receives a member's application, either the creditor or the mortgage broker may provide the member with the Loan Estimate.
- If the Loan Estimate is not provided to the member in person, it is **deemed received three business days** (counting days other than Sundays and holidays)[9] after it is delivered or mailed. Of course, you may rely on proof of actual receipt instead.
- The Loan Estimate also must be **delivered or placed in the mail** at least **seven business days** (counting days other than Sundays and holidays) before consummation, unless the member waives this timing requirement based on a bona fide personal financial emergency.[10]

Regulatory Tip: Timing requirements under the Final Rule use **two different definitions of the term "business day."**

Under one definition, a "business day" is a day a creditor's **offices are open to the public for carrying out substantially all of its business functions** ("days open for business"). This definition varies by creditor. Where you see the phrase "days open for business" in this Regulatory Alert, the reference is to this definition.

Under the other definition, a "business day" is **every day except Sundays and federal legal public holidays**. Where you see the phrase "days other than Sundays and holidays" in this Regulatory Alert, the reference is to this definition.

When may a transaction proceed?

A transaction may proceed **once a member indicates intent to proceed by communicating such intent after the Loan Estimate has been delivered**. The member may communicate such intent in any manner the member chooses, unless you require a particular manner of communication. You must document the communication to comply with the Final Rule's record retention requirements.

When may fees be charged?

Consistent with current requirements, the Final Rule prohibits imposing fees on a member in connection with an application before the member has received the Loan Estimate and has indicated an intent to proceed with the transaction. This restriction includes limits on imposing

[8] Special delivery requirements apply when a member withdraws or amends an application after it is submitted or the creditor determines that it cannot approve the application.

[9] Currently, the federal "legal public holidays" specified in 5 U.S.C. 6103(a) are: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; Washington's Birthday, the third Monday in February; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11; Thanksgiving Day, the fourth Thursday in November; and Christmas Day, December 25.

[10] The Final Rule incorporates Regulation Z's definition of "consummation," a legally distinct event from closing or settlement, although they may occur at the same time. "Consummation" occurs when the member becomes contractually obligated on the loan, which depends on applicable state law.

application fees, appraisal fees, and underwriting fees. However, **you may charge a bona fide and reasonable fee for obtaining the member's credit report before the member receives the Loan Estimate**.

You "impose" a fee if you require a member to provide a method of payment, even if payment is not made at that time.[11] **You must obtain the member's consent to collect money after the member indicates an intent to proceed.**

May a creditor or mortgage broker provide written estimates or worksheets containing the terms or costs to members prior to delivering the Loan Estimate?
Yes. You may provide a written estimate or worksheet before delivering the Loan Estimate, but **only if**:

- The written estimate is ***not*** **used as a substitute** for the Loan Estimate;
- The estimate does ***not*** use any headings, content, or format **substantially similar** to the Loan Estimate or the Closing Disclosure; and
- The top of the first page of the written estimate contains a statement that: "**Your actual rate, payment, and costs may be higher. Get an official Loan Estimate before choosing a loan**."

May a creditor require a member to submit documents verifying information related to the application before providing the Loan Estimate?
No. You may not condition providing the Loan Estimate on a member's submitting documents verifying application information.

The Loan Estimate—Accuracy & Modifications

What are the "good faith" and accuracy requirements with respect to the Loan Estimate?
The Loan Estimate figures must be made in good faith and must be consistent with the best information reasonably available to you at the time of disclosure. You must exercise due diligence in obtaining information necessary to complete the Loan Estimate. If you use estimated figures (when certain information is not reasonably available to you at the time the Loan Estimate is made), you must designate such figures as estimates on the Loan Estimate.

Whether or not a Loan Estimate was made in good faith is determined by looking at the difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the member. In some cases, regardless of whether you later discover a technical error, miscalculation, or underestimation of a charge, **if the charge paid by or imposed on the member exceeds the amount originally disclosed on the Loan Estimate, the disclosure is *not* considered made in good faith.** That is, there is "zero tolerance" for changes in these cases (unless the creditor charges less than the amount disclosed).

However, the amount disclosed and the amount charged *may vary in certain circumstances*, such as the three permissible variations discussed below.

[11] You may *not* hold checks for later deposit or record credit card information for later charge. You may *not* obtain a member's credit card information for the credit report and then simply charge the same card once the member communicates an intent to proceed.

When may a creditor charge more than the amount disclosed in the Loan Estimate?
You may charge the member more than the amount disclosed in the Loan Estimate in the following circumstances: 1) if the **Final Rule expressly allows a variation** for the particular charge; 2) if the variation falls within a **10 percent "tolerance" threshold** permitted for certain charges; or 3) if specified "**changed circumstances**" have occurred.

What is a "tolerance"?
A tolerance is a **permissible variation** between the amount disclosed and the amount charged.

Regardless of any applicable tolerance, to be made in "good faith," Loan Estimate information must be collected and disclosed on the basis of the best information reasonably available to the creditor at the time.

What charges may change without regard to a tolerance limitation?
The following charges may exceed the amount disclosed on the Loan Estimate, provided each charge is consistent with the best information reasonably available to you at the time it is disclosed:

- **Prepaid interest**;
- **Property insurance premiums**;
- Amounts placed into an **escrow**, impound, reserve, or similar account;
- Services you require if you permit the member to "shop" and the member selects a third-party service provider *not* on the written list of service providers; and
- Charges paid to third-party service providers for services *not required* by the creditor (which may be paid to affiliates of the creditor).

What charges are subject to a 10 percent cumulative tolerance?
Charges subject to a 10 percent cumulative tolerance – meaning that the total sum of the actual charges added together may exceed the sum of all such charges disclosed on the Loan Estimate by no more than 10 percent – are:

- **Recording fees**; and
- Charges for **third-party services** where:
    - The charge is *not* paid to the creditor or the creditor's affiliate; and
    - The consumer is permitted by the creditor to shop for the third-party service, and the consumer selects a third-party service provider on the creditor's written list of service providers.

Regulatory Tip: A charge is "paid to" a creditor, mortgage broker, or affiliate of either if the charge is retained by that entity and not passed on to an unaffiliated third party.

What charges are subject to zero tolerance?
Charges subject to zero tolerance—meaning you may not charge more than the estimated amounts except under specified changed circumstances that permit a revised Loan Estimate—include:

- Fees paid to the creditor, mortgage broker, or an affiliate of either;
- Fees paid to unaffiliated third party service providers if you did *not* permit the member to "shop" (*see* **Written List of Service Providers** section below); and
- Transfer taxes.

If the amounts the member pays at closing exceed the amounts disclosed on the Loan Estimate beyond any applicable threshold, must the member receive a refund?
Yes. If the amounts paid by the member at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance threshold, **you must refund the excess to the member no later than 60 calendar days after consummation**, and deliver or place in the mail a corrected Closing Disclosure that reflects the refund no later than 60 days after consummation.

When may Loan Estimates be corrected or revised?
In general, you are bound by the Loan Estimate and may not issue revisions because you later discover technical errors, miscalculations, or underestimations of charges. You may provide to the member revised Loan Estimates (and use them to compare estimated amounts to amounts actually charged for purposes of determining good faith) only in certain circumstances:

- "**Changed circumstances**" occur after the Loan Estimate is provided to the member that increase settlement charges by more than permitted by the Final Rule (the meaning of "changed circumstances" is described below);
- "Changed circumstances" occur after the Loan Estimate is provided to the member that affect the member's eligibility for the terms for which the member applied or the value of the security for the loan;
- The **member requests revisions** to the loan terms or settlement that cause the estimated charge to increase;
- The **interest rate was *not* locked** when the Loan Estimate was provided, and locking the rate causes the points or lender credits disclosed on the Loan Estimate to change;
- The **Loan Estimate "expires"** because the member indicates an intent to proceed with the transaction more than ten business days (counting days you are open for business) after the Loan Estimate was originally delivered or placed in the mail; or
- A loan involves **new construction** and you reasonably expect settlement to occur more than 60 days after the Loan Estimate is provided to the member, if the original Loan Estimate clearly and conspicuously states that you may issue revised disclosures at any time prior to 60 days before consummation.

Regulatory Tip: If any of these exceptions lead to an increase in a settlement charge only to an extent that does *not* exceed an applicable tolerance, the original Loan Estimate is still deemed to be in good faith and re-disclosure is *not* permitted. Also, in the case of a charge subject to the 10 percent cumulative tolerance, you may provide and use a revised Loan Estimate re-disclosing that settlement charge if a changed circumstance caused the sum of those charges subject to the tolerance to increase by more than 10 percent.

What is a "changed circumstance" that warrants the delivery of a revised or corrected Loan Estimate?
For the purposes of a revised Loan Estimate, a "changed circumstance" occurs when there is:

- An extraordinary event **beyond the control of any interested party** or other unexpected event specific to the member or the transaction (e.g., war or natural disaster);
- Information specific to the member or the transaction that you relied upon when providing the Loan Estimate and that was **inaccurate** or changed after the disclosures were provided (e.g., loss of employment or title insurer goes out of business); or
- **New information** specific to the member or transaction that you did not rely on when providing the Loan Estimate.

You should make sure to keep accurate documentation of changed circumstances.

Must a creditor provide a revised Loan Estimate if the rate is locked after the initial Loan Estimate is provided?
Yes. If, at the time the Loan Estimate was provided, the interest rate was not locked, the Final Rule requires you to provide a revised Loan Estimate no later than **three business days** (counting days you are open for business) after the interest rate was locked.[12] You may execute a written agreement with the borrower stating that the lock will not be effective until some later date if a borrower calls to lock a rate.

What are the timing requirements for revised Loan Estimates?
You may *not* provide a revised Loan Estimate on or after the date you provide the Closing Disclosure. Also, you must provide the revised Loan Estimate no later than **three business days** (counting days you are open for business) **after receiving information sufficient to justify revision**.

You must ensure the member receives the revised Loan Estimate no later than **four business days** (counting days other than Sundays and holidays) **before consummation**.

If you mail the revised Loan Estimate and rely on the "mailbox rule" (meaning that the member is considered to receive the revised Loan Estimate three business days after mailing), you would need to **place the revised Loan Estimate in the mail no later than seven business days before consummation** to allow three business days for receipt.

III. Special Information Booklet

Regulatory Tip: The special information booklet, also referred to as the Settlement Cost Booklet, explains the nature and costs of real estate transactions. The booklet, currently available here, contains information about such issues as shopping for a house, a loan, and settlement services.

When must creditors (or mortgage brokers) provide the special information booklet to members who apply for a covered transaction?[13] You must provide the booklet, currently required by RESPA, no later than **three business days** after receiving the member's loan application. In counting these business days, count days the creditor's offices are open for business.

However, a special information booklet is *not* required if:

- The member is applying for a HELOC subject to 12 CFR § 1026.40. However, you must provide a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit";
- The member is applying for a real property-secured consumer credit transaction that does

[12] The Final Rule initially required creditors to provide the revised Loan Estimate on the date the interest rate is locked. CFPB recently published amendments to the Final Rule, including an amendment to 12 CFR § 1026.19(e)(3)(iv)(D) extending the period for disclosure to three business days. The amendments, published at 80 FR 8767 (Feb. 19, 2015), are available here.
[13] If the member uses a mortgage broker, the mortgage broker must provide the special information booklet, and the creditor need not do so.

not have the purpose of purchasing a one-to-four family residential property (that is, a refinancing, closed-end loan secured by a subordinate lien or a reverse mortgage); or

- You deny the member's application or the member withdraws the application before the end of three business days.

IV. Written List of Service Providers

If the member is permitted to "shop" for a settlement service, what type of list of service providers must be provided and when?

If the member is permitted to "shop" for a settlement service, you must provide the member with a written list of services for which the member can shop. **The list must identify at least one available settlement services provider for each service and state that the member may choose a different provider of that service.** The list must also correspond to the settlement service providers for which the consumer can shop, as disclosed on the Loan Estimate. The list may identify services for which the consumer cannot shop, as long as those services are clearly and conspicuously distinguished from those services for which the consumer can shop.

You must provide the list separately from the Loan Estimate and within the same time frame as the Loan Estimate—no later than three business days after receiving the member's application. In counting these business days, count the days the creditor's offices are open for business. Form H-27(A) in Appendix H to Regulation Z is a model form for the list of settlement service providers.

V. The Closing Disclosure

The Closing Disclosure—Content

What disclosures are provided to the borrower to show final loan terms?

The Closing Disclosure shows final loan terms. It integrates and replaces the final TILA disclosure and the RESPA HUD-1. It must be provided at least three business days (counting days other than Sundays and holidays) before the loan is consummated.

What form is used to provide the Closing Disclosure?

CFPB has provided a standard Closing Disclosure form, which you must use for federally related mortgage loans subject to RESPA. The form, known as **Form H-25**, is found in Appendix H to Regulation Z. For *non*-federally related loans subject to the Final Rule, the form is a model form. You are *not* strictly required to use Form H-25. However, the disclosures must contain the exact same information and be made with substantially similar headings, content, and format.

May the Closing Disclosure be adjusted for transactions that have no seller (*e.g.*, refinancings)?
Yes, but the Final Rule specifies the adjustments that you can make. An example of an adjusted form for transactions without a seller is provided as Form H-25(J) in Appendix H to Regulation Z.

Regulatory Tip: You may contract with settlement agents to have them provide the Closing Disclosure to members on your behalf. You and your settlement agents may also agree to have the settlement agents assume responsibility for completing some or all of the Closing Disclosure. However, you must ensure the Closing Disclosure is provided in accordance with all requirements of the Final Rule.

What information does the Closing Disclosure form provide?
Information the Closing Disclosure provides includes:

- On page 1: general information, such as the date issued, the member's name, the loan type; loan terms; projected payments; and costs at closing.
- On page 2: details about loan costs and other costs, such as taxes and government fees; prepaid costs; and initial escrow payments at closing.
- On page 3: calculations of cash to close; and summaries of borrower's and seller's transactions.
- On page 4: additional loan disclosures, including an escrow account description and adjustable payment and interest tables.
- On page 5: loan payment calculations, including total loan amount, finance charge, amount financed, APR, and total interest as a percentage of the loan amount; a notice about how to get more information; and contact information for the lender, mortgage broker, real estate broker, and settlement agent.

What happens if certain information is not reasonably available when the Closing Disclosure is prepared?
Generally, the Closing Disclosure must contain the actual terms and costs of the transaction, unless that information is not reasonably available. In that case, **you may estimate disclosures using the best information reasonably available** by acting in good faith and using due diligence to obtain the information, and you must provide corrected disclosures containing the actual terms of the transaction at or before consummation.

The Closing Disclosure—Timing

Regulatory Tip: Keep in mind, timing requirements under the Final Rule use two different definitions of the term "business day." See the earlier Regulatory Tip in this document.

What are the timing requirements for providing the Closing Disclosure?
In general, the timing requirements for Closing Disclosures impose a three-business-day waiting period – meaning **a loan may not be consummated fewer than three business days after the member receives the Closing Disclosure** (counting days other than Sundays and holidays). If the Closing Disclosure is not provided in person, the member is considered to have received it three business days after it is delivered or placed in the mail (counting days other than Sundays and holidays).

If there are delays that prevent providing the Closing Disclosure statement three business days before settlement, what can be done?
If a settlement is scheduled during the three-business-day waiting period, you generally must **postpone settlement** – unless the member waives or modifies the waiting period.

When can a member waive the three-business-day waiting period?
A member can waive or modify the three-business-day waiting period after the member has received the Closing Disclosure by giving you a dated written statement that describes a **bona fide personal financial emergency** for which the loan is required and that modifies or waives the waiting period.

Who needs to make disclosures to the seller and when must they be made?
The **settlement agent** is required to provide the seller with the Closing Disclosure, reflecting the actual terms of the seller's transaction, at or before consummation. The settlement agent may comply with this requirement by either:

- Providing the seller with a copy of the Closing Disclosure provided to the member (the buyer), if it also contains information relating to the seller's transaction; or
- Providing the seller with a separate disclosure, including only the information applicable to the seller's transaction. (See Form H-25(I) in Appendix H to Regulation Z for a model form.) However, if the seller's disclosure is provided in a separate document, the settlement agent must also provide the creditor with a copy of the disclosure provided to the seller.

The Closing Disclosure—Accuracy & Modifications

When must the Closing Disclosure be revised or corrected after it has been provided?
The general rule is that you must re-disclose terms or costs on the Closing Disclosure if certain types of changes occur that cause the provided Closing Disclosure to become inaccurate. **Three categories of changes require a corrected Closing Disclosure containing all changed terms**:

- Changes before consummation (pre-consummation changes) that require a new three-business-day waiting period;
- Pre-consummation changes that do *not* require a new three-business-day waiting period; and
- Changes that occur after consummation (post-consummation changes).

Regulatory Tip: Although all pre-consummation changes require you to re-disclose terms on the Closing Disclosure, only the three changes listed trigger a new three-business-day waiting period, which could push back the date of consummation. For any other types of changes, you must provide a corrected Closing Disclosure reflecting any changed terms to the member at or before consummation.

What pre-consummation changes require a new three-business-day waiting period?
A new waiting period of three business days (counting days other than Sundays and holidays) between when a member receives a revised Closing Disclosure and consummation is required if:

- The **APR** disclosed on the Closing Disclosure becomes inaccurate;
- The **loan product** changes; or

- A **prepayment penalty** is added.[14]

Are there any other requirements for Closing Disclosures that include pre-consummation changes?
A member has the right to inspect the Closing Disclosure during the business day before consummation. You may arrange for settlement agents to permit that inspection. If the member chooses to inspect the Closing Disclosure the day before consummation, the Closing Disclosure must reflect any adjustments to the costs or terms that are known to you at the time of inspection.

What are the requirements for post-consummation changes?
You must provide a corrected Closing Disclosure, within the timeframes after consummation indicated, in the following circumstances:

- **Member and Seller Charges**: If an event in connection with the settlement occurs within 30 calendar days after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the member or the seller from what was previously disclosed.
    - You must deliver the corrected Closing Disclosure or place it in the mail within 30 calendar days of receiving information sufficient to establish that such an event has occurred.
- **Clerical Errors**: To correct a non-numerical clerical error.
    - You must deliver the corrected Closing Disclosure or place it in the mail within 60 calendar days after consummation.
- **Refunds**: If you cure a tolerance violation by providing a refund to the member:
    - You must deliver or place in the mail a corrected Closing Disclosure that reflects the refund no later than 60 calendar days after consummation.

VI. Escrow Closing Notice

What is the Escrow Closing Notice?
The Escrow Closing Notice is a notice provided to a member before cancelling an escrow account in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling.[15]

What are the timing requirements for providing the Escrow Closing Notice?
If the **member requests cancellation** of an escrow account, the creditor or servicer must ensure that the member receives the Escrow Closing Notice no later than **three business days** before the member's escrow account is closed.

[14] The Federal Credit Union Act and NCUA regulations prohibit federal credit unions from charging a prepayment penalty. *See* 12 U.S.C. §1757(5)(A)(viii), 12 CFR § 701.21(c)(6).
[15] *See* 12 CFR § 1026.20(e). The Escrow Closing Notice is *not* required if the escrow account being cancelled was established solely in connection with the member's delinquency or default on the underlying debt obligation, or if the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure.

If an account is cancelled for **any other reason**, the creditor or servicer must ensure that the member receives the Escrow Closing Notice no later than **30 business days** before the member's escrow account is closed.

If the notice is not provided in person, the member is considered to have received the Escrow Closing Notice three business days after it is delivered or placed in the mail. (For purposes of the Escrow Closing Notice timing requirements, count days other than Sundays and holidays.)

VII. Partial Payment Disclosures

What information regarding the partial payment policy must be provided?
If you are required by existing Regulation Z to provide mortgage transfer notices when the ownership of a mortgage loan is being transferred, the notice must include information related to the policy that will apply if partial payments are made for the mortgage loan.[16] This post-consummation partial payment disclosure is required for a closed-end consumer credit transaction secured by a dwelling or real property.

What Should You Do Next?

If your credit union offers mortgage loans to members, **you should take several actions to implement the regulatory requirements of the Final Rule prior to its effective date**:

- **Become familiar with the new requirements** of the Final Rule;
- **Determine the business and process changes needed** to comply with the Final Rule;
- **Develop a plan to implement the new requirements by August 1, 2015**, including a schedule and a budget;
- **Review the plan with executive management**;
- **Identify third parties affected** by the Final Rule, including vendors and real estate agents.
- **Contact vendors to make sure they can implement the necessary changes and deliver relevant software on time**, and address any questions about the new processes and who will perform which tasks;
- **Plan how you will work with settlement service providers** to ensure the accuracy of disclosures;
- **Develop and provide training** for staff and management;
- **Test and implement technology changes**; and
- **Roll out changes in time to issue the new disclosures for applications received on or after August 1, 2015**.

What Other Resources Are Available?

The full text of the Final Rule and CFPB resources related to implementation of the Final Rule are available here.[17]

A CFPB TILA-RESPA Integration Disclosure Timeline Example is available here.

[16] *See* § 1026.39(d)(5) for content requirements.
[17] Recent amendments to the Final Rule are available here.

If you have questions, contact NCUA's Office of Consumer Protection at (703) 518-1140 or ComplianceMail@ncua.gov, your regional office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman