

Telephone Mortgage Applications & Required Early Disclosures

Answer by David Dickinson, BOL Guru

[BIO AND CONTACT INFO](#)

Question: When are the required earlier disclosures provided for residential mortgage transactions, when the customer is solicited by telephone? Reg. Z 226.19(a)(1) reveals only pertaining to written applications.

Answer: Read the Commentary to §226.19(a)(1)#3:

Written application. Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a “written application” has been received. In general, Regulation X requires disclosures “to every person from whom the Lender receives or for whom it prepares a written application on an application form or forms normally used by the Lender for a Federally Related Mortgage Loan” (24 CFR 3500.6(a)). An application is received when it reaches the creditor in any of the ways applications are normally transmitted--by mail, hand delivery, or through an intermediary agent or broker. (See comment 19(b)-3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

In my experiences, when an application is received (whether by mail, telephone or in person) the disclosure clock starts ticking.

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TIL Disclosures on Unsecured Loans

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Does the Truth in Lending disclosure have to be given with all consumer loans even if they are not mortgage related, such as a consumer loan that is unsecured?

Answer: Yes. The acid test is if the loan is for personal, family or household business Reg. Z will apply. There are rules for open end and closed end loans and there are general exceptions.

- (a) Business, commercial, agricultural, or organizational credit.
- (b) Credit over \$25,000 not secured by real property or a dwelling.
- (c) Public utility credit.
- (d) Securities or commodities accounts.
- (e) Home fuel budget plans.
- (f) Student loan programs.

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Reg. Z Disclosures Exemption

by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Is a Truth-in-Lending disclosure required for a 2nd mortgage on a 2nd home?

Answer: If it is a consumer loan, then yes, it will apply. Review the Reg. Z exemptions under §226.3. Here is a recap.

Exempt transactions:

- (a) Business, commercial, agricultural, or organizational credit.
- (b) Credit over \$25,000 not secured by real property or a dwelling.
- (c) Public utility credit.
- (d) Securities or commodities accounts.
- (e) Home fuel budget plans.
- (f) Student loan programs.

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Disclosures To Mortgage Co-signers?

Answer by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: I am doing a loan for a purchase of primary residence. The loan and note are in Mr. X's name. Mrs. X will be signing on the mortgage only. Do they both get preliminary disclosures?

Answer: Since this would not be a loan subject to a right of rescission, the non-applicant/non-obligor spouse is not entitled to TIL disclosures.

If this were a transaction subject to the ROR, the non-obligor spouse would be entitled to a copy of the "material disclosures" under TIL, but not to the advance TIL disclosure per se.

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Timing on HOEPA Disclosures

by David Dickinson and Andy Zavoina, BOL Gurus

[Guru BIOS](#)

Question: When disclosing a HOEPA loan we are required to provide borrower with HOEPA disclosures 3 days prior to closing the loan. If the loan has a 3 day right of rescission, are we in compliance by disclosing at the time the loan is closed if funding of loan is not until 3 days?

Answer by David Dickinson:

No. You must provide HOEPA disclosures 3 days PRIOR to consummation (closing) of the loan [refer to §226.31(c)]. Then, after closing, you must wait 3 more days for the rescission period to expire before advancing funds.

Answer by Andy Zavoina:

When it comes to HOEPA, many bankers cite only 226.32. But .31 has some provisions too, such as this one, being David's source: §226.31 General rules.

(c) Timing of disclosure--(1) Disclosures for certain closed-end home mortgages. The creditor shall furnish the disclosures required by §226.32 at least three business days prior to consummation of a mortgage transaction covered by §226.32.

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Complaint Resolution Under RESPA

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: I am in the process of reviewing and updating all of our compliance forms for our residential mortgage applications. On our current RESPA Servicing Disclosure, we state that any complaint resolution must be handled within 60 days of receiving the customer complaint. I am looking at a version (I assume current) in software we just purchased that states the complaint resolution needs to happen with 60 "business" days. Does the "business" day statement meet RESPA requirements?

Answer: Yes, it does. Refer to 3500.21(e)(3) which discusses responding to inquiries, "Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable, before taking any action with respect to the inquiry, the servicer shall:..."

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RESPA Disclosures Given BEFORE Application

by David Dickinson, BOL Guru

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Question: With respect to a real estate loan, we have a Loan Officer who completed and mailed the RESPA Disclosures prior to application date. They think they should not have to mail out any additional RESPA disclosures after we received the application because they had already been given. I question how they knew what figures to use since there was no application giving them the needed information.

Answer: RESPA disclosures are not triggered until there is an application. I'm going to assume that the loan officer had a verbal application, upon which the loan officer supplied the disclosures. Then the loan officer required a written application. Nothing is wrong with this as disclosures were provided, but it informs me that the loan officer doesn't really understand Regulation B's definition of an application. Next, it makes me wonder if the loan officer ever takes verbal applications and doesn't send disclosures (or an Adverse Action Notice) because the loan officer doesn't consider the application as received yet.

I recommend that you provide training on inquiries, applications, prequalifications and preapprovals. This would be a good place to start.

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Disclosures on Pre-quals and Preapprovals

Answer by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: Are preliminary disclosures required on pre-approvals when there is no designated property? Borrowers obtain full credit approval, subject to appraisal. Also on pre-qualifications, are disclosures required? These would be cases that there is no credit verified, only qualified at borrower's verbal communication.

Answer: Neither a Prequalification or a Preapproval require any RESPA, TIL, etc. disclosures until a house is identified.

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Disclosures on HELOC to Purchase Home

Answer by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: What required disclosures do you need on a HELOC if the main purpose of the loan is to purchase the borrowers' house? They are only asking for \$40,000.00? Do you need an early truth in lending disclosure or early good faith estimate and any other early disclosures?

Answer: If you provide a HELOC to fund the purchase of the home, you don't need to provide a P-TIL or any RESPA documents. You would need the HELOC disclosures (booklet and program disclosure) and flood determination, appraisal disclosure and the Right of Rescission (to cover future advances).

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Early TIL Disclosures on Refinance

by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: It appears it is not necessary to do the Early TIL disclosures on a 1-4 family residential refinance even with new money, but only at closing. I know Early TIL disclosures are required on Purchase and with permanent lender on construction loans. Is this correct?

Answer: You are correct. The Preliminary TIL disclosure [§226.19(a)] applies only if RESPA applies and the loan is to purchase or construct the borrower's principal dwelling. A P-TIL is not triggered by a refinancing.

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Signed TIL Disclosure Required?

Answer by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Are loan officers in retail mortgage required to have a Truth in Lending disclosure signed?

Answer: While there is no legal requirement to have a TIL signed, it certainly is a good idea as it demonstrates disclosure and acceptance of the terms disclosed. There isn't a stated requirement that you have a note form signed either. Again, enforceability is much easier when this is done.

There are relative few documents that "require" a signature by law or regulation.

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Papering Renewals and Extensions

by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: What type of disclosure documents are necessary when you are doing a 3 year renewal of a first mortgage, and also for a 6 month extension of a first mortgage?

Answer: There are no disclosures for extensions and renewals. Only new loans. These types of modification do not trigger any new disclosures to the customer. They do, however, trigger the flood insurance requirements again.

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Early TIL on Home Equity Line?

Answer by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: On an open end home equity line mortgage, is it necessary to provide an early TIL?

Answer: There is no Preliminary TIL disclosure requirement for open-end loans. Instead you provide a HELOC booklet and program disclosure.

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Application Fee vs. Third Party Fee

Answer by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: Our bank intends to charge residential mortgage applicants a \$500.00 non-refundable application fee but no appraisal fee, credit report fee. Bank will pay the appraisal fee and credit report fee to the 3rd party vendors. Questions: 1. Do we need to disclose the payment of the third party fees as POC in the GFE and HUD1? 2. Does the non-refundable application fee, which applies to all applicants, need to be a APR item?

Answer: 1. Yes. All fees must be disclosed, even if paid by the lender.

2. No. If it is charged to ALL applicants, it is not a FC [see §226.4(c)(1)].

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Disclosures Timing on Phone and Mail Apps

by David Dickinson, BOL Guru

[Guru BIOS](#)

Question: Disclosures must be signed and dated within 3 days of application. Does this apply if someone applies by mail or by phone?

Answer: Very few disclosures need to be signed. If you receive an application by mail or telephone, you should mail the required disclosures within 3 business days.

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Early TIL for "To Be Determined" Purchase

Answer by Richard Insley, BOL Guru

[BIO AND CONTACT INFO](#)

Question: If I take a loan application on a "to be determined" purchase, do I send out a TIL or wait until there is an executed sales contract? Currently I send a TIL initially and redisclose again upon getting the purchase contract. Which is appropriate?

Answer: Early TIL estimates are only required in RESPA-covered residential mortgage transactions. Until you know what property is being purchased, you do not know whether the loan will be subject to RESPA. Therefore the three day clock does not begin until you have determined that the loan will be RESPA-covered and a RMT.

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Are disclosures necessary for a \$1MM consumer loan?

by Richard Insley and Lucy Griffin, BOL Guru

Question: I have a lender making a \$1MM loan to a consumer to construct a personal residence. The loan is NOT real estate secured. I am finding myself unwilling to accept that there are no disclosure requirements for this transaction, however, I believe it to be exempt from Reg Z, RESPA, HMDA and Flood. Is there something I am overlooking?

Answer by Richard Insley:

[BIO AND CONTACT INFO](#)

No.

Answer by Lucy Griffin:

[BIO AND CONTACT INFO](#)

By not taking a security interest, you dodge RESPA, HMDA and Flood. Also by not taking a security interest, you are making a loan for more than \$25,000 and thus dodge Z.

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Curing HOEPA Violations

Answer by David Dickinson, BOL Guru

[BIO AND CONTACT INFO](#)

Question: If a bank makes a loan subject to HOEPA without proper disclosures, how can the bank cure the violation?

Answer: I don't believe that you can cure this error. The HOEPA disclosure is a "material disclosure." If you fail to give a HOEPA disclosure before consummation and you close the loan, you can't fix the error as you can't back up the clock. Also, if this is a rescindable loan, the right of rescission was also not properly handled if you didn't give a HOEPA disclosure.

Generally, my suggestion is let it go, train and try not to do it again. Notifying the customer will only draw attention to the un-fixable error. You may want to consult a legal professional as well.

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Consumer Construction Loan Disclosures

Answer by Andy Zavoina, BOL Gurus

[BIO AND CONTACT INFO](#)

Question: How do I properly disclose a permanent consumer construction loan? We normally would have two separate transactions but we are committing to the permanent financing on the front end. Do I produce one set of ETIL for construction and one for permanent within 3 days of receipt of the application? I am receiving conflicting information from local compliance experts.

Answer: Appendix D to Reg. Z contains sample clauses. You may disclose your construction and permanent separately or combined into one set of disclosures in accordance with 226.17.

The disclosures mirror your documents, so you have a choice.

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Required Fees Listed On TIL Disclosure

Answer by David Dickinson, BOL Guru

[BIO AND CONTACT INFO](#)

Question: What fees are required to be listed on a Truth in Lending disclosure? Are there certain ones or should I list all the fees on the disclosure?

Answer: [§226.18\(c\)](#) requires an itemization of the amount financed. There is no TIL requirement to list all fees, only those making up the amount financed. Don't confuse the HUD-1/1A requirement to list all fees with Reg. Z's requirement to itemize the amount financed.

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Preliminary Mortgage Disclosures: Should we send them on Submission or completion of the application?

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We are having a discussion about preliminary disclosures on mortgages. Do preliminary disclosures have to be sent when an application is submitted or when an application is completed?

Answer: Different definitions will apply to the situations in different ways. A completed application is a completed application, but while one may be complete for a credit decision, another may be complete enough for early disclosures. In the case of the latter, a property description and amount requested can be key, especially the former. RESPA defines an application and Z refers to RESPA. Reg. B allows you consider a completed application, completed, based on what you require, within reason and limits specified under [202.2](#).

I believe the smartest plan here is to disclose what you can, when you can and to make your decision in a timely manner. If someone is trying to manipulate the definitions and extend time-lines, I believe you will be looking at problems tracking applications, knowing when decisions should be made, reporting for HMDA, etc. Just not a good thing, IMHO.

§3500.2(b) Application means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a pre-qualification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.

§226.19 (a) (1) Time of disclosures. In a residential mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) the creditor shall make good faith estimates of the disclosures required by [§226.18](#) before consummation, or shall deliver or place them in the mail not later than 3 business days after the creditor receives the consumer's written application, whichever is earlier.

This should not be relied upon as legal advice.

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Preliminary disclosures: When do you start counting the days?

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Preliminary disclosures: When do you start counting the days? Is the day you receive the application consider day 1 or does the time begin the day after you receive the application? For example if I received a completed application on 2/18/03 do preliminary disclosures have to be given on 02/20/03 or do I have until 02/21/03?

Answer: Start counting with the first business day following the date on which you receive the application. Since 2/18/03 was a Tuesday, the three business days are Wednesday, Thursday, and Friday, and you'll have to put the advance disclosures in the mail or deliver them to your application by Friday, 2/21/03.

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Reg Z, Billing Error Resolution, and Initial Disclosures

Answer by David Dickinson, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Regulation Z section 226.13 refers to a consumer's credit card or open-end credit plan. The commentary makes it sound like the billing-error resolution notice is required for any open-end plan but the notice set forth in Appendix G keeps referring to a credit card. Do we need to include the billing error resolution in the initial disclosure and an annual notice for a line of credit where there is no access card? If so, do we just delete the references to the access card and the \$50 limit?

Answer: The error resolution notice is required for all open-end credit. You can omit any non-applicable portions of the model language.

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The Loan Is Denied: Do you still need the insurance disclosure?

Answer by: David Dickinson, BOL Guru

[BIO AND CONTACT INFO](#)

Question: Do we have to do the new insurance disclosure with denials?

Answer: This depends on whether or not you have offered a credit insurance product before denying the application or not. The insurance disclosure is triggered if an insurance product is solicited, offered or sold in connection with credit request. If a credit insurance product is offered, then the disclosure is triggered even if the credit application is later denied, withdrawn or approved.

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