



Q & A about Private Lenders, Commercial Loans, TRID, and MLO Licensing Provided by Compliance Services 12/31/15

Do the provisions of the new Rule apply to private lenders?

The answer is **maybe**. Sorry, I hate to do that to you. There are two new Rules private investors must understand; first is the TILA-RESPA Integrated Disclosure (TRID) Rule and second is the Loan Originator (MLO) Act. The TRID Rule has an exemption for any lender making five or fewer loans per year. As an example, if it is a simple seller take-back or a parent/child transaction the TRID Rule will not apply; however, the MLO Act may make this type of loan difficult to make. The MLO Rules can be found at <http://www.consumerfinance.gov/regulations/loan-originator-compensation-requirements-under-the-truth-in-lending-act-regulation-z/>

Do the provisions of the Rule apply to second mortgages?

Yes. There is actually an example of a form in the Rule showing that the proceeds from the second mortgage are brought over to Section L of the Closing Disclosure (CD) for the first mortgage.

Does the Rule apply to most residential loans?

The provisions of the Rule apply to most closed-end residential mortgages. Within the Rule there is a discussion as to why the CFPB decided to include two-year temporary construction loans so depending on the type of loan to which you are referring, the Rule may apply.

Does the Rule cover vacant land and construction-to-permanent loans?

The Rule covers all closed-end residential mortgages if the money, property or service is used primarily for personal, family or household purposes and the debt is secured by a closed-end transaction secured by real property. Real property includes vacant land, construction-only loans and construction-to-permanent loans. Page 1275 of the Rule cites: ***“D. Coverage of the Final Rule. The integrated disclosure provisions do, however, apply to construction-only loans, vacant-land loans, and loans secured by 25 acres or more, although these transactions are currently exempt from RESPA coverage, because the Bureau believes that excluding these transactions would deprive consumers of the benefit of enhanced disclosures.”***



Page 1757 §1026.37(a)(9)(iii) of the Rule cites: *“Construction. Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-to-permanent loan). In a construction-only loan, the borrower may be required to make interest only payments during the loan term with the balance commonly due at the end of the construction project.”*

Does the form and related requirements apply to second homes and investment properties with 1-4 family units?

Yes, it does if the property is deemed “residential” by the lender. Even if the loan is made to a Corp or LLC, if there is a borrowing entity personal guarantee attached, the loan may be subject to RESAP and Therefore TRID.

If the creditor/lender requires a service only because it was mentioned in the Contract for Sale, does it trigger the creditor/lender’s need to supply a list of service providers for that service? CFPB’s verbal response was, “yes.” If the creditor/lender includes the requirement on their commitment, **then it is deemed a loan requirement and the lender must comply with providing a list of service providers for that service.**

We asked, “what if the creditor/lender includes a simple requirement that the consumer must meet all of the requirements of the Contract of Sale but does not mention any specific services?” The CFPB representative said, “They must comply with the additional provisions of the Rule if their loan is conditioned on meeting the requirement.”

What types of transactions are exempt from the requirements of the new Rule?

HELOC, reverse mortgages, loans made by creditors making five or fewer loans per year (but they still have to deal with the Safe Act and the Mortgage Loan Originator (LO) Act), cash, commercial purpose loans, mobile home loans where there is no attachment to land involved (wheels on) and no-interest second mortgages made for down payment assistance, and energy efficiency or foreclosure avoidance are all exempt.

Most every other residential 1-4 family dwelling closed-end mortgage falls within the scope of the Rule.



How will the Rule affect commercial transactions? Under the Rule, will we be required to have two separate and distinct sets of forms between commercial transactions and residential transactions?

Legitimately structured commercial transactions do NOT fall under the provisions of the Rule. The form used for commercial transactions will most likely be dictated by the lender; however, check with your software provider to make certain that the current-HUD-1 and the ALTA Settlement Sheet are in your system for your use with exempt transactions. Likely you will still use the disclosures from pre-TRID.

If a creditor/lender on a commercial transaction requires a mortgage on one of the parties' residences, does that mortgage fall under the provisions and requirements of TRID?

This was verbally answered by a CFPB attorney who said that as long as the "primary" purpose of the mortgage on the residential property is NOT for "personal, family or household purposes," it does not fall under the provisions of TRID. **I would not be so quick to agree with this.** Anytime you attach a principal residence, you are probably moving into the "danger zone". The same would be true of personal guarantees, which seem to imply that the borrower's other assets could be attached in the event of a default on the commercial note. That seems to fly in the face of the consumer protection new RESPA and TRID attempt to create. I don't have clear idea yet on this one; have not seen any audit results yet to help form my opinion about it.

Are transactions involving loans of 25 acres or more, construction-only loans and vacant land loans covered by TRID?

Yes. While these loans were exempt from mortgage disclosure requirements under old RESPA and Regulation X, **the TRID Rule includes them depending on the primary purpose of the loan.** The loan is included as a "consumer credit transaction" if the **money, property or services is used primarily for personal, family or household purposes** and the debt is secured by a closed-end transaction secured by real property. **The CFPB believes that covering all real estate-secured closed-end consumer credit transactions (other than reverse mortgages) would eliminate the guess work for lenders as to which loans are covered and which loans are exempt while providing consumers with the best information available to make their decisions.**

You have to proceed at your own risk until a few more CFPB Audits have been completed and your compliance people can interpret the audit results for you. Until then, be cautious.