

WASHINGTON STATE FINANCIAL SERVICES ASSOCIATION

DFI Proposed Disclosure Rules and Form
Non-Traditional Lending Law (SHB 2770)

Submitted June 2, 2008

RULE COMMENTS

Comment 1. general

The Department should address the overlap between this 2770 disclosure and the required Consumer Finance disclosure. Both require disclosure of prepayment penalty information, while the Consumer Finance disclosure requires APR and the 2770 disclosure requires interest rate. Receiving both disclosures could be confusing to the consumer.

Solution:

The SHB 2770 gives the Director authority to add information to the 2770 disclosure, the conflict between the two disclosures could be resolved by adding the APR to the 2770 disclosure, and amending the Consumer Finance regulation to state that the Consumer Finance disclosure requirement is satisfied by giving the 2770 disclosure.

Comment 2. WAC 208-600-200(2)

The statute does not require both the "amount of the initial loan payment" and the "fully indexed loan payment amount," but instead requires a disclosure of "whether the loan payments will adjust at the fully indexed rates."

Solution:

Revise rule to reflect exact language of statute.

Comment 3. WAC 208-600-200(3)(b)

There is no statutory basis for the requirement that the disclosure summary be the first disclosure document provided to the borrower or that the disclosure be "on top" when providing paper disclosures. Attempting to provide an exam record/trail to demonstrate compliance will be very difficult, if not impossible.

Solution:

Strike (b)

Comment 4. WAC 208-600-200(4)(b)

This rule could be read to require a re-disclosure on all loans three days prior to closing. The re-disclosure requirement applies only when material terms change before closing. When loan is rescindable under Truth in Lending Act, three days prior to closing can coincide with rescission period.

Solution:

Clarify that a re-disclosure is only required if a material term changes. Clarify that the list of terms provided in SHB 2770 Sec. 3 (2) is the exclusive list of material terms that will trigger a re-disclosure. Identify that for a loan subject to rescission under TILA, the 3-day prior notice can coincide with the rescission period.

FORM COMMENTS

Comment 1. Introduction

Include some introductory language that the disclosure is of the loan terms applied for and that these terms may be subject to change, or the disclosure is not a loan approval.

Comment 2. Income Disclosure

Income is not a statutorily required disclosure. it should not be included or it should be replaced with simple instruction the borrower to be sure to review income on loan application.

At a minimum, the disclosure should indicate that the figure is estimated and based on information provided by the borrower, with instructions to contact the lender if it is not accurate:

At the time of this disclosure, the estimated combined monthly income for all borrowers that will be used to evaluate your loan qualification is: \$_____. This amount is based on information you have provided and may also be based on information from other sources. If this amount is not correct, please contact Lender.

The rule should specify that the monthly income used for underwriting is not a "material term" that will trigger a re-disclosure requirement if changed.

Comment 3. Escrow or Impound Account Disclosure

The form should clearly indicate that the information provided is an estimate and based on information provided by the borrower.

Your monthly taxes and insurance are estimated to be \$_____. This amount is based on information you have provided and may also be based on information from other sources. Lender [] will [] will not escrow for taxes and insurance. If Lender does not escrow, it will be your responsibility to pay these items when they are due. If Lender does escrow, the amount of the monthly escrow and the amount needed to establish the escrow account will be finalized at closing.

The rule should specify that the estimated monthly escrow is not a "material term" that will trigger a re-disclosure requirement if changed.

Comment 4. Interest Rate Disclosure

a. The indication of whether the loan is fixed or adjustable rate should be located on the form with the interest rate disclosure. If the loan is fixed rate, the interest rate disclosure should simply state the rate.

b. For adjustable rate information, the terminology used in the disclosure should be consistent with that used elsewhere. For instance: The "beginning" interest rate should be called the "initial" interest rate. The initial interest rate "will remain in effect for ___ months," not "is good for ___ months." The rate and payment can change "at that time" and "every ___ months after that based upon the movement of the index rate and the amount of your margin." An application disclosure should not require the date of the first interest rate change.

c. The "Today's estimate of how high the rate will go ..." statement is not an accurate description of the fully indexed rate. There are many variables that determine how the borrower's interest rate will adjust, including the index, margin, adjustment caps, and the size of the initial discount. A better disclosure would be to focus on the statutory requirement to indicate whether the loan payments will adjust at the fully indexed rates: Your initial interest rate [] is [] is not discounted from the current fully indexed rate, which is the current index value plus the margin. If so, your interest rate and payment will very likely increase whether or not interest rates stay the same or even decrease.

d. The maximum monthly payment is not a note term, so lenders are not likely to have a data field for this information. This is not a statutorily required disclosure. Given the variables affecting the monthly payment, this provision should be removed from the disclosure.

Comment 5. Other Fees

“HUD-1A” should be added to “GFE and HUD-1” statement on fees.

Comment 6. Special Factors/Prepayment Penalty

a. The prepayment penalty disclosure format may not be appropriate for all lenders. For instance, prepayment penalties can be expressed in terms of percentages, not \$. Some lenders give the customer an option of whether or not to have a prepayment penalty in exchange for a lower rate, and would want this to be part of the disclosure. Some lenders apply prepayment penalties only on a full payoff, not when a "substantial portion" of the loan is prepaid. Lenders should be allowed to change this disclosure to accurately disclose the operation of their own prepayment penalty.

b. Regulation should specify that if lender discloses a loan with prepayment penalty, a borrower decision to switch to a no prepayment penalty loan is not a change in a material term that will trigger a re-disclosure requirement. Borrowers may not decide until the day of closing to switch to no prepayment penalty. It is not in the borrower's interest to have to delay closing three days to re-disclose – this might mean borrowers will stay with prepay penalty to be able to complete the closing on the specified day.

c. An application disclosure cannot provide an exact balloon payment date. Disclosure should instead provide balloon payment term, (e.g., at the end of 5 years).

d. Reduced documentation charge disclosure should read "will be charged to you" not "was charged to you". The disclosure occurs prior to the closing of the loan and changes have not been charged to the borrower at the time of disclosure.