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### Venable CFPB Update: Getting Ready for August 2015: What Is a Mortgage Application?

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On August 1, 2015, mortgage lenders will be required to provide applicants with a new, integrated disclosure, the Loan Estimate (which replaces the “Early” Truth in Lending disclosure), and the Good Faith Estimate. To prepare for when this regulation goes into effect, this update reviews what will constitute an “application” for a mortgage loan, and what that means to mortgage lenders, mortgage brokers, and lead generators. Note that this new definition will not apply to loan products other than mortgage loans.

At present, neither the Truth in Lending Act (TILA) nor the Real Estate Settlement Procedures Act (RESPA) defines the term “application.” Regulation X, however, defines an application as:

[T]he submission of a borrower’s financial information in anticipation of a credit decision relating to a federally regulated mortgage loan, which shall include the borrower’s name, the borrower’s monthly income, the borrower’s social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator.

In its proposed rule, the Bureau proposed elimination of the final “catch-all” criteria of “any other information deemed necessary by the loan originator.” Despite strong industry opposition to the removal of this criterion, the Bureau adopted a final definition for an application that removed this catch-all component of the definition of an application.

Creditors, brokers, and lead generators will all be affected by this change and will need to consider the information they collect and how it affects their operations and their relationships with other parties involved in the origination of the mortgage loan. Once an entity takes an application, the three-day clock to provide the Loan Estimate starts to tick.

- **Creditors.** Mortgage lenders will need to determine whether to request additional information (such as the loan product desired) along with the six elements that will constitute an application, or if they will request less than six to delay providing the Loan Estimate until later in the application process. Although the creditor may request more than the six elements that constitute an application, the creditor is still prohibited from requesting verification information at this stage, which may include requests for a purchase and sale agreement.
- **Mortgage Brokers.** Although mortgage brokers are permitted to provide the Loan Estimate, they may need to increase and improve their communication channels with creditors to ensure that applicants receive appropriate disclosures.
- **Lead Generators.** Lead generators will want to avoid taking an application as defined in the final rule for several reasons. First, the taking of an application could trigger state licensing obligations. Second, taking an application could implicate the loan originator compensation rule. Third, creditors will not want lead generators to take an application and start the three-day clock. Accordingly, lead generators will want to avoid taking a key piece of information such as the applicant’s Social Security Number (or other unique identifier obtained to receive a credit report such as a Tax Identification Number).

This change does not affect the definition of application that exists under Regulations B and C.