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Tuesday, July 17, 2012

Disclosure Integration, High Cost, and Counseling

On July 9, 2012, the CFPB issued its proposed integration of RESPA and TILA disclosures into the "integrated" forms, entitled "Loan Estimate" and "Closing Disclosure". These new forms are derived from the Good Faith Estimate (GFE), the Truth-in-Lending (TIL) Disclosure, and the HUD-1/1A Settlement Statement. This assemblage has been duly dubbed with the euphemism "integration".

Excluded from the forthcoming integration are reverse mortgages, home equity lines of credit (HELOCs), chattel dwelling loans, and *de minimis* originations consisting of loans made by creditors who make five or fewer otherwise covered loans per year.

I have covered the process of constructing these forms in several newsletters and articles, including [HERE](#), and [HERE](#).*

The CFPB is not expecting to finalize the integration before the end of this year. Comments are due November 6, 2012.

However, there is a comment deadline of September 7, 2012 - which will lead to rulemaking before January 2013 - regarding the extent to which the rule applies to loans previously exempted from RESPA or TILA and the further redefining of the term "finance charge" to include most costs associated with residential mortgage loans.

By its own admission, the CFPB has stated that the proposal to "broaden" the definition of a "finance charge" by adopting certain adjustments or accommodations in its HOEPA implementing regulations under Regulation Z, would "cause more loans to exceed the APR and points and fees triggers and be classified as high-cost mortgages under HOEPA."

The CFPB has also set forth proposed rules to implement Dodd-Frank amendments regarding high-cost mortgages and also to provide homeownership counseling provisions that would affect mortgage lending generally (with no exclusion for HELOCs).

The implications of these rules, taken together, are far reaching. I would suggest that you visit our Library for further information.

IN THIS ARTICLE

"Loan Estimate" and "Closing Disclosure"

Integration

High-Cost Mortgages

Homeownership Counseling

Library

"Loan Estimate" and "Closing Disclosure"

- The **Loan Estimate** replaces the GFE and early TIL, while the **Closing Disclosure** replaces the HUD-1/1A and final TIL.
- HUD's Special Information Booklet will still be required.
- The CFPB's proposal would combine five pages (seven if typical appraisal and servicing disclosures were to be counted) of TILA/RESPA data into a three-page Loan Estimate,



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not counting the written list of available providers that must be separately provided if the creditor allows a consumer to shop for a settlement service.

- The Closing Disclosure is five pages.

Integration

The integration not only provides an entirely new format but also reconciles certain existing differences between Regulation X, the implementing regulation of RESPA and Regulation Z, the implementing regulation of TILA.

Highlights

- Redefines the term "application" by deleting the 7th component from the definition adopted by HUD, as outlined in its New RESPA Rule FAQs, as "any other information deemed necessary by the loan originator."
- Alters the coverage of the disclosure requirements so they would apply to home loans, except for the aforementioned exemptions.
- Changes the timing and responsibility rules for providing closing disclosures.
- Prohibits the collection of any fees other than a credit report fee, until the Loan Estimate has been received, as provided by Regulation X, instead of the broader parameter of the "credit history" fee set forth in Regulation Z.
- Prohibits the collection of any fees other than a credit report fee, until the consumer has indicated "an intent to proceed with the loan," as specified by the Regulation X amendments of January 2010.
- Requires the credit report fee to be accurately described as a credit report fee, not as an "application fee."
- Allows preliminary estimates only if they are clearly labeled as not the Loan Estimate.
- Continues requiring the Regulation X Special Information Booklet, and possibly incorporating material from the Regulation Z's ARM (CHARM) booklet.
- Prohibits a creditor from requiring a consumer to verify any information the consumer provided with the application (per Regulation X).
- Incorporates the disclosure tolerances of Regulation X, modified to extend the zero tolerance to fees paid to affiliate providers and providers for whom a consumer cannot shop.
- Adjusts Regulation X limitations on revising Loan Estimates, including the definition of "changed circumstances."
- Allows a waiver of waiting periods in the event of bona fide personal emergencies.
- Permits price averaging.
- Requires providing certain Closing Disclosures to the seller, if a seller is a party to the transaction.
- Requires close communication and cooperation between mortgage brokers and settlement agents who may provide disclosures, in order to ensure accurate disclosure.
- Prohibits providing disclosures of both estimated and actual costs at the same time (viz., as revised Loan Estimate and a Closing Disclosure).
- Requires the retention of evidence of compliance (i.e., permitting electronic file



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 - ▶ May (2)
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 - ▶ March (5)
 - ▶ February (2)
 - ▶ January (6)
- ▶ 2011 (106)
- ▶ 2010 (86)
- ▶ 2009 (8)

retention) for three years for Loan Estimates and five years for Closing Disclosures.

- Requires states with existing exemptions from TILA (i.e., Maine, Connecticut, Massachusetts, Oklahoma, and Wyoming) to conform their laws if they wish to retain their exemptions.

High-Cost Mortgages

- Balloon payments would largely be banned, and creditors would be prohibited from charging prepayment penalties and financing points and fees.
- Late fees would be restricted to four percent of the payment that is past due, fees for providing payoff statements would be restricted, and fees for loan modification or loan deferral would be banned.
- Creditors originating open-end credit plans would be required to assess consumers' ability to repay the loans. (Note: creditors originating high-cost, closed-end mortgage loans already are required to assess consumers' ability to repay.)
- Creditors and mortgage brokers would be prohibited from recommending or encouraging a consumer to default on a loan or debt to be refinanced by a high-cost mortgage.
- Before making a high-cost mortgage, creditors would be required to obtain confirmation from a federally certified or approved homeownership counselor that the consumer has received counseling on the advisability of the loan.

Homeownership Counseling

The CFPB included homeownership counseling provisions that would affect mortgage lending generally (with no exclusion for HELOCs and, in fact, the only exclusion would be Home Equity Conversion Mortgages).

The rule would amend Regulation X to require lenders to provide a list of five federally certified or approved homeownership counselors located in the zip code of the loan applicant's current address (or "nearby" if five are not available in that zip code), within three business days of application. In addition, before making a negative amortization loan, a creditor would be required to obtain confirmation that a first-time borrower had received homeownership counseling.

The Bureau expects to create a website portal to make it easy for lenders and consumers to obtain lists of homeownership counselors in their areas.

Library



Integrated Mortgage Disclosures

under the Real Estate Settlement Procedures Act
and the Truth In Lending Act

High-Cost Mortgage and Homeownership Counseling

Amendments to the Truth in Lending Act and
Homeownership Counseling Amendments to
the Real Estate Settlement Procedures Act

Factsheet about the CFPB's Mortgage Rules

Loan Estimate – Sample

Closing Disclosure – Sample



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