



Financial Services & Products ADVISORY ■

NOVEMBER 21, 2013

At Long Last . . . Love RESPA and TILA Engaged! Wedding Set for August 2015

Executive Summary

On November 20, CFPB Director Richard Cordray and others announced the new residential mortgage disclosures at the **Know Before You Owe: Mortgages** hearing in Boston. The new forms combine and revise existing RESPA and TILA disclosures into one "**Loan Estimate**" provided within three business days of application and a "**Closing Disclosure**" delivered at least three business days before the loan closes, allowing consumers to compare actual closing costs to estimated costs. The effective date of the new final rule is August 1, 2015.

Background

The Dodd-Frank Act transferred interpretive authority over RESPA, TILA and a broad array of other federal regulations to the new CFPB. Among Dodd-Frank's directives was for the CFPB to integrate the mortgage disclosures mandated under Regulation X (which implements RESPA) and Regulation Z (which implements TILA). More than two years ago, under then-CFPB Acting Director Elizabeth Warren, the **Know Before You Owe** project commenced and the CFPB began drafting prototype-integrated disclosures and testing them throughout the United States.

Early yesterday, the CFPB issued the final **Integrated Disclosure Rule** (the "Final Rule"), comprised of nearly 1,888 pages, which is available at http://www.consumerfinance.gov/f/201311_cfpb_final-rule_integrated-mortgage-disclosures.pdf.

- The prototype Loan Estimate may be accessed at http://www.consumerfinance.gov/f/201311_cfpb_kbyo_loan-estimate.pdf.
- The final Closing Disclosure may be accessed at http://www.consumerfinance.gov/f/201311_cfpb_kbyo_closing-disclosure.pdf.

For purposes of the Final Rule, a "loan application" is made when a mortgage lender or broker receives the applicant's name, income, social security number, property address, estimated value of the property and mortgage loan amount sought. In a departure from the proposed rule, the Final Rule provides that re-disclosure (along with a new three-business-day waiting period) only applies if the APR increases by more than 1/8th of one percent, the loan product changes or a prepayment penalty is added. Other changes can be disclosed on a revised Closing Disclosure without delaying the closing.

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The Final Rule also includes Spanish versions of the Loan Estimate and Closing Disclosure and specifies that settlement agents, rather than lenders, may provide the Closing Disclosure.

Alston & Bird Observations

When it comes to consumer disclosures, more is not necessarily better. Most observers would agree that the overlapping and complex existing disclosures were often difficult for consumers to fully understand, and there was certainly room for improvement. The new initial Loan Estimate and final Closing Disclosure cut the existing RESPA and TILA disclosures from four down to two by combining the Good Faith Estimate and the Preliminary TILA, as well as the Final TILA with the HUD 1 Settlement Statement. Unlike the current GFE and HUD-1, the format and content of the Loan Estimate and the Closing Disclosure match, making it far easier for consumers to determine what costs, if any, have changed between the initial and the final disclosure (i.e., “comparison shopping”). The new rule should also reduce the number of GFE redisclosures that confuse consumers and are far too common under the current disclosure regime.

The **Know Before You Owe** mortgage program has sought to test and refine the prototype disclosures for more than two years. However, the concept of merging RESPA and TILA together into an integrated disclosure has been discussed for more than two decades. It appears that the CFPB fully appreciates the significant challenges and costs to change processes and systems to provide the new disclosures and, thus, has afforded a 21-month implementation window. While the prototype forms have elicited criticism in a number of areas—in particular, the lack of prominence of the APR, and the exclusion of certain types of the APR calculation—the new disclosures appear to do a commendable job of providing information to consumers in a manner that is more readable, understandable and relevant to the needs of the particular consumer. For example, in past years, the average life of a loan has dropped from seven years to under five years. While the APR arguably helps with comparison shopping, it masks the effective rate for most consumers who actually pay off their loans long before the final scheduled payment.

Some fans of bundling (or the proposed guaranteed mortgage package) also complain that the Loan Estimate gives settlement service providers too much leeway for adding itemized costs. The general consensus, however, is that while the Final Rule may not be perfect, it is a significant step forward in the implementation of the Dodd-Frank requirements.

As previously highlighted, the CFPB provided 21 months to implement the new rule. Many view this as being abundantly fair to the industry in light of the system overhauls necessary to incorporate the new disclosure content, and the need to develop policies and procedures for gathering, calculating, processing and delivering that content to consumers. On the downside, given this ample implementation window, we expect that the CFPB will have little or no tolerance for companies that fail to fully implement and operationalize the requirements of the rule by the effective date. This is in contrast to the recent CFPB pronouncements that there will be latitude on the implementation of the other Title 14 Mortgage Rules that go into effect in January.

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