



Integration of TILA and RESPA Mortgage Disclosures - CFPB Proposed Rule

Executive Summary

The Bureau of Consumer Financial Protection (“CFPB” or “Bureau”) released a proposed rule on July 9, 2012 that would implement the requirements of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the “Dodd-Frank Act”) that direct the CFPB to combine into a single document certain mortgage disclosures required to be delivered to consumers when applying for and closing on a mortgage loan pursuant to Regulation Z (which implements the *Truth-in-Lending Act*, or “TILA”) and Regulation X (which implements the *Real Estate Settlement Procedures Act*, or “RESPA”). In particular, the proposed rule would introduce two new forms:

- The Loan Estimate – which would replace the “early” Truth-in-Lending disclosure required under TILA and the Good Faith Estimate (“GFE”) required under RESPA. It would be required to be provided to consumers within three days of receiving an application; and,
- The Closing Disclosure – which would replace the Truth-in-Lending disclosure, required under TILA and the HUD-1 (or Settlement Statement) required under RESPA. It would be required to be provided to consumers at least three days prior to loan closing.

A new definition and calculation for the “finance charge” and new records retention requirements would also be required, as well as other changes to facilitate blending the two regulations and their respective forms.

As proposed, the integrated disclosures rule would apply to closed-end mortgage loans, including construction-only loans and loans secured by vacant land. It would not apply to open-end home equity lines of credit (“HELOCs”) or reverse mortgages, and these transactions would continue to be covered by the current Regulation Z and Regulation X disclosure requirements.

Comments are requested no later than September 7, 2012 on proposed regulations to modify the definition of the “finance charge” and others to delay implementation of certain new disclosures required under Title XIV of the Dodd-Frank Act. Comments on all other aspects of the proposed rule are requested no later than November 6, 2012. The Dodd-Frank Act does not impose an implementation date for the integrated disclosures and the CFPB requests input on how much time lenders, mortgage brokers and settlement agents might need to modify their systems to accommodate the requirements proposed. The CFPB also notes that it may conduct large-scale quantitative testing to confirm that the forms aid consumers’ understanding of the transactions in advance of releasing a final rule.

Background

Section 1098(2) of the Dodd-Frank Act amended RESPA section 4(a) to require that the Bureau “publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of [TILA] that, taken together, may apply to a transaction that is subject to both or either provisions of law.” Similarly, Section 1100A(5) of the Dodd-Frank Act amended TILA section 105(b) to require that the Bureau “publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of [RESPA] that, taken together, may apply to a transaction that is subject to both or either provisions of law.” Section 1032 requires the Bureau to propose rules and model disclosures for these combined disclosures no later than July 21, 2012.

The CFPB began preparations for the combined disclosures as early as September 2010 when it began meeting with consumer advocates, other banking agencies, community banks, credit unions, settlement agents, and other industry representatives seeking input on consumer and industry issues associated with the current TILA and RESPA disclosures. In May 2011, the CFPB released through its *Know Before You Owe* initiative, the first in a series of prototypes of the Loan Estimate and Closing Disclosure forms in an attempt to obtain widespread input on the clarity and usefulness of the combined disclosures.

In addition to this rulemaking, the Bureau is actively engaged in completing six other rulemakings related to mortgage credit that are required by the Dodd-Frank Act. These rules will generally go into effect on January 21, 2013 and include:

- Expanded protections for “high-cost” mortgage loans under the *Home Ownership and Equity Protection Act* (“HOEPA”).
- Servicing requirements regarding force-placed insurance, error resolution, and payment crediting, as well as forms for mortgage loan periodic statements and “hybrid” adjustable-rate mortgage reset disclosures.
- Duty of care qualifications for certain creditors and mortgage loan originators and prohibitions on mortgage loan originators, creditors, and the affiliates of both from receiving compensation in various forms (including based on the terms of the transaction) and from sources other than the consumer, with specified exceptions.
- Requirements concerning appraisals for higher-risk mortgages, appraisal management companies, and automated valuation models.
- Requirements for creditors to determine that a consumer can repay a mortgage loan and related compliance standards, including “qualified mortgages.”
- Escrow account disclosures and exemptions from certain escrow requirements for certain small creditors.

The CFPB is seeking an “orderly, coordinated and efficient” rulemaking process for these rules and the proposed integrated disclosures in recognition of the overlapping nature of their requirements. Accordingly, the early comment date related to the definition of “finance charge” is aligned with the comment period attached to the HOEPA proposed rule, which also relies on the definition of “finance charge” and the related annual percentage rate (“APR”) calculation.

Description

To implement the Dodd-Frank Act requirements to publish a single, integrated disclosure for mortgage loan transactions combining the requirements of TILA and RESPA, the CFPB has proposed a new form, the Loan Estimate, to be provided to consumers when they are applying for a loan and a new Closing Disclosure form to be provided to consumers in advance of the loan closing.

Loan Estimate

The Loan Estimate would replace the “early” Truth-in-Lending disclosure required under TILA and the Good Faith Estimate required under RESPA. In addition, it:

- Would be due to the consumer within three business days of submitting an application.
- May not be delivered to the consumer less than seven business days before consummation of the transaction.
- May be provided to the consumer by the mortgage broker, though the creditor would remain responsible for the accuracy of the form.

Definition of an Application

The proposal would define the submission of an application to include receipt of:

- 1) The consumer’s name;
- 2) The consumer’s income;
- 3) The consumer’s social security number;
- 4) The property address;
- 5) An estimate of the value of the property; and
- 6) The mortgage loan amount sought.

Creditors would be able to collect whatever information is, in the creditor’s view, necessary for a reasonably reliable estimate, provided that it collects the additional information prior to or at the same time as collecting the six pieces of information. However, a creditor may not require a consumer to submit documents verifying information provided as part of the application before providing the Loan Estimate disclosures (i.e., the consumer may provide information orally).

Creditors would be permitted to provide consumers with a written estimate prior to an application but such an estimate would be required to contain a disclaimer to prevent confusion with the actual Loan Estimate.

Restrictions

The proposed rule would place restrictions on the amount by which the Loan Estimate may differ from the Closing Disclosure:

- Costs that would not be permitted to change between the Loan Estimate and the Closing Disclosure (unless an exception applies) would include:
 - The creditor’s or mortgage broker’s charges for its own services;
 - Charges for services provided by an affiliate of the creditor or mortgage broker; and
 - Charges for services for which the creditor or mortgage broker does not permit the consumer to shop.

- Charges for other services generally would not be permitted to increase by more than 10 percent calculated in the aggregate (the sum of all changes cannot increase more than 10 percent).
- Certain estimates based on the best available information at the time of disclosure would be considered made in good faith regardless of the amount actually paid by the consumer including charges for: prepaid interest; property insurance premiums; escrows, impounds, reserves or similar accounts; and charges paid to third-party service providers selected by the consumer.
- Exceptions that would permit costs to increase between the Loan Estimate and the Closing Disclosure would include:
 - Changed circumstances affecting settlement charges, such as extraordinary events, information provided at application that becomes inaccurate or new information that was not relied upon at the time of the Loan Estimate.
 - Changed circumstances affecting eligibility, where a change in circumstances affects a consumer's creditworthiness or the value of the security of the loan.
 - Revisions requested by the consumer.
 - Interest rate dependent charges, such as points or lender credits that change because the interest rate was not set when the disclosures were required to be delivered.
 - Expiration, where the consumer expresses an interest to proceed with a transaction more than ten business days after the disclosures are provided.
 - Delayed settlement on a construction loan.
- When an exception applies and the resulting charges would exceed the tolerances for those changes, revisions to the Loan Estimate would be required to be delivered to the consumer within three business days of receiving the information to establish the exception.
 - Revised Loan Estimates would be required to be delivered no less than four days prior to consummation.
 - Revised Loan Estimates would be required to be delivered prior to the delivery of the Closing Disclosure.

Closing Disclosure

The Closing Disclosure would replace the Truth-in-Lending disclosure required under TILA and the HUD-1 required under RESPA. It would be required to be delivered to the consumer at least three days in advance of the loan consummation. Two alternatives are provided for delivery:

- Alternative 1- the creditor would be responsible for delivering the Closing Disclosure;
- Alternative 2 – the settlement agent would be responsible for delivery of the Closing Disclosure but the creditor would be responsible for the accuracy of the document.

A consumer would be permitted to waive the three-day waiting period if the consumer determines that consummation of the loan and the extension of credit is needed to meet a bona fide personal financial emergency. Written supporting documentation would be required to be submitted to the creditor.

Revisions to the Closing Disclosure

Any revisions to the Closing Disclosure that are required subsequent to the delivery of the Closing Disclosure would initiate a new three-day waiting period, except for revisions that result from:

- Negotiations between the buyer and seller after the final “walk through;”
- Actual payments made by the buyer exceeding the disclosed amount by \$100 or less;
- Changes due to events occurring after consummation that result solely from payments to a government entity in connection with the transaction;
- Non-numeric clerical errors; and
- Refunds paid to the consumer within 30 days of consummation for amounts paid in excess of the Loan Estimate.

Other Implementing Changes Proposed

“Finance Charge”

The proposal would redefine “finance charge” for closed-end mortgage loans to include fees and charges that are payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. However, the proposed rule would exclude from the finance charge late fees and similar default or delinquency charges, seller’s points, amounts required to be paid into escrow accounts if the amounts would not otherwise be included in the finance charge, and premiums for property and liability insurance if certain conditions are met

The CFPB further notes that it is considering modifications to the APR triggers under the HOEPA higher –priced loans to accommodate the expanded definition of “finance charge” under the integrated disclosure proposal.

Recordkeeping Requirements

A creditor would be required to retain evidence of compliance with the Loan Estimate and Closing Disclosure forms for a period of three years from consummation or later date when the disclosures were required. Completed disclosures would be required to be retained for a period of five years. The evidence must be retained in an electronic, machine-readable format.

Delayed Implementation of Title XIV Certain Disclosures

Certain mortgage-related disclosures required under Title XIV of the Dodd-Frank Act are scheduled to become effective January 21, 2013 and would be reflected in the TILA and RESPA disclosures subject to the integrated disclosures proposal. The CFPB proposes to delay those requirements by temporarily exempting entities from the requirement to comply on January 21, 2013, until a final rule implementing the integrated TILA and RESPA disclosures takes effect. The Bureau intends to release a final rule delaying these disclosures prior to January 21, 2013. The Title XIV disclosures address:

- Negative amortization features;
- State law anti-deficiency protections;
- The creditor’s partial payment policy;
- Mandatory escrow accounts;

- Waivers of escrow at consummation;
- Monthly payments, including escrows, at initial and fully-indexed rate for variable-rate transactions;
- Repayment analyses including escrow payments for taxes and insurance;
- Settlement charges and fees and the approximate amount of the wholesale rate of funds;
- Mortgage originator fees;
- Total interest as a percentage of principal; and
- Appraisal management company fees.

Commentary

The release of the CFPB's proposed rule would integrate TILA and RESPA disclosures for closed end mortgage loans to provide for increased consumers' understanding of the transactions. If finalized as proposed, this rule would require supervised banks and non-banks to be compliant with a single set of requirements when originating a closed-end mortgage loan. It would also require substantial changes to the closed-end mortgage disclosure process and the corresponding control environment.

Supervised banks and non-banks should assess their TILA and RESPA disclosure process and controls and determine the necessary action to take. Disclosure process and control change considerations should include:

- System changes to develop the two new disclosure forms: Loan Estimate Form and Closing Disclosure.
- System changes to include new disclosure content and timing.
- Controls to verify that charges are within new defined tolerances/thresholds.
- Upfront and on-going monitoring to verify the accuracy of the disclosure content including, but not limited to, APR's and finance charges.
- Record Retention timing.
- Additional disclosure requirement control enhancements including:
 - Policies and Procedures updates;
 - Monitoring/QC/Testing including but not limited to transaction testing; and
 - Training to include purpose and requirements of the integrated disclosures.

The CFPB's ongoing efforts to concurrently finalize the six other mortgage-related rules required by the Dodd-Frank Act with the integrated disclosures rule will likely serve to complicate the compliance process. Supervised banks and nonbanks are encouraged to provide comment to inform the CFPB of the potential impacts the multiple rules will generate and the time needed to implement necessary systems changes. With regard to the integrated disclosures proposed rule, broad areas of concern to which the industry is preparing to respond include, among others:

- The proposed revision to the definition of "finance charge;"
- The proposed calculation of APRs and the related triggers for other rulemakings;
- The proposed revision to the definition of "application;"
- The proposed \$100 tolerance provided for Closing Disclosure changes; and
- The timing of the compliance date for the final integrated disclosures rule (and coordination with the other mortgage-related rules changes).

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