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Practical Compliance

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IN THIS ISSUE

Integrated Disclosures–Initial Look

By Jay Friedland

Historically, lenders have been required to comply with two sets of mortgage loan disclosure requirements promulgated by two different regulators. The Federal Reserve acting under authority to implement the Truth In Lending Act (TILA) controlled the TIL disclosures regarding the rate and payments, while the Real Estate Settlement Procedures Act (RESPA), for which Housing and Urban Development (HUD) has been the primary regulator, focused on closing costs. Both schemes have substantially expanded over time. However, the last set of mortgage document disclosures promulgated (effective January 1, 2010) resulted in increased overlap between the two sets of disclosures, which was perceived to increase consumer confusion. To address this concern, the Dodd-Frank Act directed the Consumer Financial Protection Bureau (CFPB) to integrate the TILA and RESPA mortgage loan disclosures.

The CFPB proposed rules to integrate the two sets of documents in 2012 and on November 30, 2013 issued final rules and forms. While the overall result, in our opinion, generally appears to be one of improvement, the change in loan documents places another burden on lenders and their system providers to adapt to yet another set of new requirements.

The amount of material published to date with respect to the integrated disclosures is enormous, including the final rule with commentary, the numerous sample forms, the Guide to the Integrated Disclosure Forms, and the Small Entity Compliance Guide. The CFPB has gathered all this information at an Implementation site.

Obviously this article can only touch on the highlights, but a Survivors Guide, which is in the works and should be available next month, will provide additional detail and guidance.

What's New?

- Combining the RESPA and TIL early and final disclosure forms. The Early TIL and GFE have been replaced by the Loan Estimate, and the final TIL and HUD1/1A have been replaced by the Closing Disclosure. The Loan Estimate is three pages and the Closing Disclosure is five pages, but think in terms of long pages, similar to the HUD1.
- The receipt of six specific items is now considered an application, triggering the three business days for delivery of the initial disclosure. The creditor cannot add to the six items.
- Providing the final disclosure so that borrower receives it at least 3 days prior to consummation.
- A new Escrow Closing Notice, for use when the escrow ends
- The combined mortgage disclosure is now required for loans not previously covered: construction only loans, loans secured by vacant land and loans to trusts (of the type used for estate or tax planning).
- An additional time constraint: A revised Loan Estimate must be provided no later than seven business days before consummation.
- A new acronym: "TIP" standing for Total Interest Percentage.
- One effective date, but which is applied differently to different requirements. The rule generally applies to applications received beginning August 1, 2015 but some provisions apply to applications received or loans originated prior to that date.
- The new forms may not be used prior to the effective date, August 1, 2015.
- New form of tolerance comparison table which is not usable to determine lender rebate.
- Moving from the 10% to the 0% tolerance category fees paid for a settlement service where the borrower is not permitted to shop.

Beginning with the August 1, 2015 **effective date**, the new forms must be used for all <u>covered transactions</u> for which applications are received by the lender or mortgage broker. The new forms may not be used for transactions for which applications are received prior to August 1, 2015. However, after August 1, 2015, the old forms are still to be used for those few transactions to which the new rules do not apply.
Although most requirements are keyed to applications received for covered loans beginning August 1, 2015, there are several that apply even if an application has not been received. All of these track existing requirements with respect to early disclosures. A lender cannot:

- Impose a fee before the applicant has received the Loan Estimate and indicated an intent to proceed;
- Give written estimates of terms or costs specific to applicants prior the Loan Estimate without providing a <u>written statement</u> that the terms and costs may change; and
- Require verifying information before providing the Loan Estimate.

Lastly, the new rules contain an Escrow Closing Notice requirement which also is effective August 1, 2015, but it applies both to newly originated loans and <u>loans outstanding at that time</u> with escrow accounts that will be cancelled.

The Loan Estimate, which replaces the GFE and Early TIL, must either be delivered <u>within three business days after receipt of the application</u>, or either placed in the mail or emailed. The definition of application has changed to mean receipt (in writing, electronically or orally if then written down) of the following six pieces of information: applicant's name; income, social security number (to obtain a credit report), property address, estimated property value, and loan amount requested.

It is important to note that, *unlike prior requirements*, the new Rule does <u>not</u> allow flexibility in the definition to include other information "deemed necessary by the Lender." Similar to the existing rule:

- documents to verify information related to the consumer's application cannot be required prior to providing the Loan Estimate; and

- no fee, other than a credit report fee, can be charged until the applicant "has received the Loan Estimate …**and** indicated an intent to proceed with the transaction."

An applicant may be provided cost estimates prior to the Loan Estimate. However, if a written estimate of terms or costs is specific to that consumer, it must be clearly and conspicuously stated at the top of the first page "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing the loan."

To the extent that a borrower can shop for settlement services, the lender within three business days of receipt of application must provide the borrower a written list identifying "at least one *available* provider of that service" and stating that the consumer may choose a different provider for that service.

A Revised Loan Estimate may be provided, but similar to the existing RESPA rules, there are restrictions including the "changed circumstances" requirement.

Timing constraints apply for the revised Loan Estimate, with the same assumption of receipt three days after mailing as in the current rules.

- The creditor must *deliver or place in the mail* the revised **Loan Estimate** to the consumer no later than **three business days** after receiving the information sufficient to establish that one of the reasons for the revision applies;
- The loan may not be consummated less than **seven business days** after the revised **Loan Estimate** is *provided*.
- Any **revised Loan Estimate** must be *received by* the borrower **four business days** prior to consummation, and prior to the date on which the Closing disclosures are provided.

Three **tolerance categories** were established with the last round of RESPA changes: Zero tolerance, 10% tolerance and without a specific tolerance limitation. They are still present but with some changes.

- Fees such as those for appraisals and credit reports have been moved from the 10% tolerance category to the 0% tolerance category; and
- The third category, those charges without a specific tolerance limitation, had sometimes been referred to as charges with an unlimited tolerance – not anymore! If a final charge in this category exceeds the Loan Estimate charge for the service, the lender will not be deemed to have failed the good faith standard of the Loan Estimate for that reason alone, However, the Loan Estimate charges "must be consistent with the best information reasonably available to the creditor at the time the disclosures are provided…This means that the estimate … was obtained by the creditor through due diligence, acting in good faith". It is unclear how this will be interpreted on exam. The provision of the early disclosure of settlement charges being subject to a good faith expectation is not new; however, the apparent increased emphasis in this area and specifically raising the good faith concern in the context of the charges not subject to a specific tolerance limitation is new. For that reason, additional care should be accorded to properly identifying charges in this category.

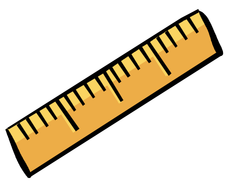
The Closing Disclosure, which replaces the HUD-1/1A, must be provided to the borrower no later than three business days before consummation of the loan. The three day requirement will likely result in some charges not being definitively known when the Disclosure is generated. If the actual terms and costs of the transaction are known, they must be used. Otherwise, lenders may estimate disclosures using the best information reasonably available. However, good faith and due diligence must be exercised in obtaining the information. To the extent estimates are used or information changes by settlement date, redisclosure of the Closing Disclosure may be required.

A one page **Escrow Closing Notice** must be provided (beginning August 1, 2015) whenever an escrow account on a covered loan is cancelled for whatever reason (even if at the borrower's request). This applies to all closed-end consumer loans secured by a first lien on real property or a dwelling, even those entered into prior to August 1, 2015 except for:

- reverse mortgages;
- instances where the escrow account that is being cancelled was established solely in connection with the consumer's delinquency or default on the underlying debt obligation; or
- when the underlying debt obligation is terminated for any reason, including by repayment, refinancing, rescission, and foreclosure.

The regulatory materials provide both model forms (blank forms, which are subject to safe harbor protection if properly completed) and sample forms which are meant to illustrate proper completion of the forms, sometimes under varying circumstances. Although lenders are not required to adhere to the model forms or sample forms, M&M Consulting strongly urges clients to so. A lender does not get "extra credit" for modifying a form in a manner that the lender believes is better for the consumer, but does run the risk of failing to properly disclose based on regulatory requirements.

Short Clips



ATR Rule and Successors-in-Interest

The CFPB published the final rule effective July 17th to interpret the definition of an "assumption" under Regulation Z. Industry and consumer advocates have been unclear about applicability of the ATR rule in certain situations. This rule clarifies that when a successor-in-interest, who has acquired title to a dwelling, agrees to be added as an obligor or as a substitute for the existing obligor on that mortgage note, they are not subject to the ATR requirements. According to the definition, this type of transaction does not constitute an "assumption". So upon the death of a borrower, their successor generally may be added to the mortgage without having to abide by the ATR rule and if necessary, may be considered for a loan workout. Other situations may arise, such as in a separation or divorce, or after a transfer from living parents to children.

CRA and HMDA Data Updates

The FFIEC has announced updates to their website for the Community Reinvestment Act and Home Mortgage Disclosure Act (HMDA). In addition, the Geocoding System was updated for 2014, which like 2012 and 2013 is based on 2010 census data. On June 30th the Distressed/Underserved Tract List became available and the next day the 2012 and 2013 lists were updated to include certain island areas. Also on July 1st updated census and demographic data tools were released.

Also related to HMDA, the Federal Reserve released a HOEPA Information Letter on June 16th to make us aware that a new version of the HMDA Data Entry Software will be available in early August. The update will incorporate the 2013 changes to the HOEPA rule that expanded coverage to home equity lines of credit for 2014 applications.

Evaluating High-Risk ACH Business Customers

The National Automated Clearing House Association released guidance on May 29th that provides sound business practices for financial institutions in assessing and monitoring companies that may present a higher risk profile in initiating ACH transactions. The guidance primarily focuses on risk management across all departments including compliance and BSA. Our clients should conduct appropriate due diligence when initially evaluating an ACH originator and also on an ongoing basis to ensure that they completely understand the business' risk profile. Clients may also want to use the Originator Watch List, and Terminated Originator Database and complaint databases at the CFPB and the FTC, as resources for due diligence.

Home Equity Lines of Credit (HELOC) Nearing the End of The Draw Period

In light of the loss mitigation requirements recently incorporated into Regulation Z, we thought it would be good to share FIL-33-2014 the FDIC released July 1st. The Interagency Guidance stresses the importance of working with borrowers to avoid unnecessary defaults and communicating clearly and effectively. The guidance also focuses on end-of-draw risk management principles, which is what examiners will review. Policies and procedures should be established to delineate how HELOCs nearing their draw period are managed commensurate with the financial institution's risk profile. Financial institutions should consider outreach programs, and ensure refinancing, renewal, and modification programs are consistent with consumer protection regulations.

VA Loan Guaranty Regulations

The VA published an interim final rule on May 9 to define the types of VA loans that are "qualified mortgages" for the purposes of the new Ability-to-Repay provisions of the Truth-in-Lending Act. The ruling establishes which VA loans have either safe harbor protection or the presumption that the borrower is able to repay a loan in accordance with the Ability-to-Repay provisions. This ruling does not change the VA's policies and procedures with respect to how lenders originate mortgages, except with regard to making qualified mortgages.

UDAP… It really Does Lead to Penalties

On June 26th, the Federal Reserve issued a consent order to cease and desist, and civil money penalties totaling $3,510 million against Cole Taylor Bank of Chicago, Illinois related to its relationship with Higher One, Inc. of New Haven, Connecticut. Higher One is a nonbank entity providing financial aid disbursements for higher education and partners with Cole Taylor Bank to provide one method of receiving the disbursement, the OneAccount.

Disclosures considered material regarding the OneAccount were omitted, including how a student can receive their refund without opening an account, fees, features, and limitations of the account, and the locations of ATMs where students could access their funds without charges. The school logo was also prominently displayed, which may have implied that the school endorsed the OneAccount. We remind our clients that UDAP violations are serious and can be quite costly.

Proposals–Not Final Rules

NCUA Proposal to Update Parts 701 and 722

On June 26th the NCUA published proposed amendments to Parts 701 and 722 that eliminate the requirement to make appraisals available to consumers upon request, because the CFPB's recent amendment to Regulation B requires all credit unions to automatically provide a copy of the appraisal. The NCUA is also proposing to expand the current exemption for certain transactions involving an existing extension of credit by federally insured credit unions. The credit union would not be required to obtain another appraisal when no new monies are involved or monies advanced, and there is adequate collateral protection in the new transaction. The proposal also makes a minor change to the definition of the term "application". The comment period closes August 25th.

CFPB Aims to Simplify HMDA Reporting

On July 24, 2014 the CFPB proposed changes to Regulation C which implements the Home Mortgage Disclosure Act (HMDA). According to the CFPB, after much study, the proposal will standardize the reporting threshold, ease reporting requirements for some small banks, align reporting requirements with industry data standards, improve the electronic reporting process and improve data access. The Bureau is proposing quarterly reporting by larger institutions. All closed-end, open-end lines and reverse mortgages secured by dwellings will be reportable, but unsecured home improvement loans will be eliminated. Expanded data on applicants, the property, loan features, and additional unique identifiers will be required. Disclosure statements would be required to be made available through a lender's website. Some further clarifications are proposed for areas which have caused confusion historically.

The comment period closes October 22, 2014.

In the States

MASSACHUSETTS– AMENDMENTS TO 209 CMR 43.00 & 53.00 MADE FINAL

The amendments to 209 CMR 43.00 and 53.00 Massachusetts' Consumer Affair and Business Regulation have been made final as of July 18th. The amendments to part 43.00, Audit Requirements for Credit Unions are intended to make the regulation easier to read and remove the requirement of notifying the Commissioner of Banks of the accountant selected by the Audit Committee. In addition, the minimum threshold for needing an annual audit has been increased from $30 million to $50 million in assets.

The amendments to part 53.00, Documentation and Determination of Borrower's Interest are to establish an additional "safe harbor" for any home loan that meets the definition of a "Qualified Mortgage". QM exemptions such as the small creditor exemption are also clarified.

FDIC NEW YORK REGION PERIODIC NEWSLETTER

The FDIC's Division of Depositor and Consumer Protection in the New York Region distributes a periodic newsletter that provides good information on matters affecting consumer protection programs. The newsletter stresses that the information provided is not official FDIC guidance or instruction. The most recent newsletter published in June provided information on the recent changes to the Biggert-Waters Flood Insurance Reform Act specifically for contents coverage and other best practices. It also references the recent guidance for community development financial institutions mentioned in our previous **Practical Compliance**. To sign up for the newsletter, email DCPNewsletterNY@fdic.gov.

Good To Know

Send your questions to the *answerperson@mmconsulting.info*

Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received five days a week. Call the answer person toll free at (888) 483-4333.

Q. We approved a loan application subject to verifications and other underwriting conditions. The applicant never provided the required documentation, but the applicant eventually withdrew the application as the property sale did not go through. For HMDA purposes, would we report the application as approved not accepted?

A. No it would not. According to the HMDA Getting It Right Guide and FAQs about action taken, an application should be reported as a denial when the application is approved with underwriting conditions which the applicant does not meet. For example, if the approval is subject to a recent bank statement showing sufficient funds to close and the applicant never provided one, this would be considered an underwriting condition and should be reported as a denial.

If the approval had been fully underwritten, with appropriate verifications completed, and remaining subject only to the appraisal and other closing type items, then the withdrawal could be shown as approved not accepted.

Essentially, without fully completed underwriting, the approval also is not complete.

Important Dates– Don't Forget!

(Generally we retain the prior month, and go forward for a year as known. Dates are either effective dates of final rules, or end of the comment period for proposed rules.)

6/01/2014 Flood Insurance. NFIP coverage rate changes take effect. See FEMA's WYO Bulletin W-13070.
6/01/2014 Flood Insurance. Coverage for multifamily buildings increases to $500,000 maximum.
6/01/2014 Distressed and Underserved lists. Agencies updated list for CRA, posted at FFIEC.
6/09/2014 Appraisal Management Companies. Comments close of proposed minimum requirements.
6/16/2014 Combining rules. OCC is combining regulations from the OTS to reduce duplication.
6/30/2014 Regulation DD. Federal Reserve version repealed as rule was transferred to the CFPB.
6/30/2014 Regulation P. Federal Reserve version repealed as rule was transferred to the CFPB.
6/30/2014 Regulation V. Federal Reserve amended definition of a "creditor" for Red Flags rule.
7/14/2014 Regulation P. Comments close for proposed amendments to Regulation P.
7/17/2014 Regulation Z ATR. Clarification of Successors in Interest under ATR rules.
10/22/2014 Regulation C. Comments close for proposed HMDA Reg. C amendments.
11/30/2014 Form -92070. HUD form re Servicemember Civil Relief Act expires.
8/01/2015 Integrated Disclosures. TILA and RESPA combined disclosures required.
1/01/2016 Flood Insurance. Escrow rules effective date as delayed by HR3370 in Sec.25.

The 2014 M&M Consulting Compliance School

When? September 23, 24 & 25 (Tuesday - Thursday)

Where? Doubletree by Hilton, Milford, Massachusetts

What's special this year

- First feedback from the exam & audit fronts on the Ability to Repay determination and Servicing requirements, as well as best practices in these areas
- First comprehensive look at the new Integrated Mortgage Loan Disclosures
- 5% "skin in the game" risk retention requirement and Qualified Residential Mortgages (QRMs)
- Status of Flood Reform Act changes
- Special Focus on HMDA
- A close look at Compliance Management System expectations
- Dealing with "Legalized" Marijuana

If you did not receive our announcement at the end of April, or would like more information, please contact Jay Friedland at jbanker@mmconsulting.info or at (207) 650-4665.

