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CFPB to issue Proposed Rule: What should you be looking for?

June 21, 2012 - Spotlights

With the issuance of a Proposed Rule to integrate mandatory disclosures under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) due on or before July 21st the Consumer Finance Protection Bureau will be requesting comments from all participants in the residential mortgage lending/real estate settlement process. The current guidance from CFPB is that it will primarily concern itself with comments that address the following:

- 1.) Is the proposal beneficial to consumers in aiding them to better understand the mortgage lending settlement process; and
- 2.) Do the suggested changes disproportionately have an adverse effect on small businesses?

Below are some of the issues expected to be included in the Proposed Rule- presented as a "road map" of items to look for in reading the Rule upon its release. In addition to the items included above, an additional area of comment from the industry might include whether the proposed rule brings increased liability and if the cost of that risk will be passed along to consumers, both of which could have an adverse effect consumers and small businesses.

Somewhat in the order in which they arise in the course of a mortgage application/real estate closing, these are the major topics currently expected to be covered by the rule making:

What specific items of information can a lender request that will trigger the issuance of a Good Faith Estimate?

Currently, a lender is required to issue a Good Faith Estimate once they have received 6 basic items of information (name, income, social security number, address, value and loan amount) and "any other information deemed necessary by the lender." The CFPB is considering limiting this list to certain specific items beyond the group of 6, but mandating that the GFE must be issued once that finite list of items is received.

Will the current grouping of tolerances be expanded? Will the number of GFE's be reduced?

Currently there are three groups of fees assessed to the consumer by tolerance grouping. The CFPB has indicated that it feels additional items might be added to the "0" tolerance group (flood determination, credit reports, tax monitoring and appraisal and fees paid to the lender's affiliates).

In addition the CFPB has indicated it wants to limit the number of GFE's a lender can issue, even due to changed circumstances.

When must the final disclosures be provided? 3 business days before closing, or 1?

Currently TILA final disclosure must be provided 3 business days before closing and the settlement statement (HUD-1) on the day of closing. Which date will be required by the Rule?

Who provides the settlement disclosure?

Currently the lender provides the TIL disclosure and the settlement agent provides the HUD-1. Who will provide the integrated final disclosure- the lender, the closing agent or both?

What type of form will the final disclosure be?

Currently the TIL form can be modified by a lender and the HUD-1 cannot. Which option will the rule require- a "model" form (as TILA now is) or a "standard" form (as RESPA now is)?

Will the definition of the APR change?

Currently the APR includes in the finance charge some, but not the entire, of borrower's closing costs. CFPB has indicated that an expansion of that disclosure could make it more meaningful to consumer. Will there be a proposed new definition of the finance charge? If so, what amounts will be included? What will be the consequences of a redisclosure and delay of settlement?

What impact would a new finance charge definition have on the defined terms of points and fees under the Qualified Mortgage, the Qualified Residential Mortgage and the Home Owners Equity Protection Act?

Miscellaneous Items:

- * Will there be a seller side/buyer side to the form to protect the borrower's privacy given all the personal financial information to be disclosed about the borrower's transaction?
- * How will the purchase of an owner's title insurance policy be presented?
- * How does the proposed final Settlement Statement address concerns regarding practical issues for the preparer/settlement agent such as a section for miscellaneous disbursements, continuance of the existing line numbers, and ease of reproductions.

Once the Proposed Rule is issued much more commentary will follow and all involved are urged to stay abreast of those upcoming developments.

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