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Implementation date for the CFPB's RESPA-TILA Integrated Disclosure rule less than 14 months away

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With the implementation date for the CFPB's RESPA-TILA Integrated Disclosure rule less than 14 months away, settlement agents face an array of changes to practices and procedures. Much of this will involve new ways of working with settlement software. We are already getting questions about how our software will change. Some of these can be answered now, but other things depend on how the mortgage industry will want to work with the new closing disclosure.

While the new forms must be used for most consumer credit transactions secured by real estate, the new rule excludes HELOCs, reverse mortgages, and loans secured by mobile homes. This raised the question of what forms to use for these transactions. For better or worse, the integrated disclosure forms may not be used. The CFPB has clarified that these transactions require use of the current GFE and HUD-1. In addition, many settlement agents choose to use the pre-2010 HUD-1 for commercial and cash transactions. This means that settlement software will need to produce all three types of settlement statements.

Another topic of discussion is the confidential information about the borrower's transaction contained in the closing disclosure, and whether this information needs to be disclosed to the seller. To avoid this, the CFPB has published a secondary closing disclosure for sellers, with only the figures for the seller's transaction. Its two pages include the seller-side adjustments from the current HUD-1 plus any seller-paid costs and fees.

Combining the information from the TIL and the HUD-1 into the Closing Disclosure has led to an awkward situation, considering the TIL is usually generated by the lender and the HUD-1 by the settlement agent. Throughout the rulemaking process, the CFPB left open the question of which party would produce and deliver the combined form. In the end the bureau decided that either the lender or the settlement agent may do so.

There is no clarity yet on how this will be handled in practice. Lenders may choose to generate the initial disclosure themselves and have their settlement agents produce the final version for the closing. Others may instead transmit the loan figures to the settlement agent and let the agent handle all the stages of working with the form. We will probably see a variety of practices, as we do today with the generation of loan documents, depending on the sophistication and centralization of the lender's operations.

There will be new issues in coordinating the communication between lenders and the settlement agents. The disclosure must be delivered to the borrower at least three business days before the consummation of the loan (and three additional business days must be added if it is mailed). In addition, if the lender needs to provide a corrected or updated disclosure, this may initiate an additional three-business-day waiting period.

Concerns have been raised about getting the information necessary to produce the closing

disclosure in time to meet the deadline. It may be that instead of getting final figures just before the closing as we do now, agents will be getting figures just before the disclosure is due to go out to the borrower. To aid in the timely production of documents, lenders and settlement agents may wish to employ electronic transfer of loan information between LOS systems and settlement software. The Mortgage Information Standards Maintenance Organization (MISMO) has published a uniform data set to facilitate software development toward that end.

The next 12-18 months will present many challenges for our industry, some of which have not even taken shape yet. It will be critical for settlement agents to communicate with their software vendors as they get input from their lenders as to exactly what will be expected of them come next August.

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