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The CFPB's TRID Rule: Questions we need answers to and why we don't have them... yet

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What is this really? Isn't it just a new HUD-1?

No, it is not a new HUD-1. The CFPB has created two forms that combine the current truth in lending disclosures with the current RESPA disclosures (the Good Faith Estimate and HUD-1 Settlement Statement). The new forms are a loan estimate (given by the lender to the loan applicant 3 days after application) and the closing disclosure that must be received by the borrower 3 business days before closing. The big issue is not the fact that there is a new form or even the new timelines, although those are important, but rather the liability of the lender to the borrower for its accuracy.

Why are the lenders so concerned about the new form being correct?

For two reasons. First, due to the requirements of the ability to repay/qualified mortgage rule that started in January 2014, lenders have to know much more about the financial terms of both the mortgage transaction and the purchase transaction, and more information about the property. For example, an adjustment made between a buyer and a seller (such as a seller credit for a repair that changes the loan to value ratio) can impact the "salability" of the loan on the secondary mortgage market. Lenders are already feeling the costs of non-QM loans and looking to tighten controls around changes to the settlement costs without their consent.

With regard to the integrated mortgage disclosures rule, the lender, and only the lender, is responsible for the accuracy of the entire closing disclosure, which contains components of both the RESPA and TILA disclosures. This differs from the current (2014) situation, where the settlement agent is responsible for the HUD-1 and the lender is responsible for the TIL. This rule was issued pursuant to TILA, which changes the financial liability dramatically.

What does that financial liability mean?

Currently, if there is an error on the HUD-1 (an incorrect tax adjustment, the wrong amount of a payoff figure) it is a violation of section 4 of RESPA - but there is no penalty for non-compliance. While the statute does allow for administrative actions against a violator (such as by HUD or the CFPB) there is no private right of action (the borrower or seller can't sue the closing attorney).

Under TILA, if there is a violation, the borrower can sue the lender for statutory damages (\$4,000) as well as bring a private lawsuit for actual damages, and the penalties in an administrative action under Dodd-Frank can go from \$5,000 to \$1 million per day.

What we don't know yet? The impact of this rule on potential CFPB actions against lenders and the potential for private lawsuits.

But this is why lenders are taking the issue of 'who prepares the closing disclosure' so seriously.

When will it impact me?

First, some lenders have already begun telling their closing agents that they plan to exert much more control over the current closing process once this rule takes effect.

What we don't know yet?

What other lenders will decide.

We expect that most lenders will want to have some control over the issuance of the initial closing disclosure and control over any changes. Every attorney, settlement agent, and title agent should be reaching out to their lenders to see what their thought process is at this point.

Second, as lenders decide what level of control they will keep over the final closing disclosure and what changes will be permitted, we expect that they will be revising their closing instructions.

What we don't know yet? What those changes will look like.

We do think that some lenders will use this change in the rule about conducting a closing to re-visit who they use for closing services and their controls over them, and that it may also cause some to incorporate vendor management criteria (such as ALTA best practices) into their decision-making.

Stay Alert! August 1 will come sooner than you think!

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