

# 5 Things Attorneys Need to Know

Straight talk about the new CFPB regulations and forms.

Five things to know:

- ✓ What Transactions Are Affected And Exempt?
- ✓ What Are The New Forms Being Introduced?
- ✓ How Will The Timing Of A Closing Be Impacted?
- ✓ How Will The Communication Of Fees And Figures Be Handled?
- ✓ How Are Title Charges Reflected On The New Forms?

By now you have heard of CFPB, but the question still remains, "How does it impact me?" So, we have put together some general information about the new rules and forms, as well as, the impact these have on both the loan process and the closing of the transaction.

## 1. What Transaction Types Are Affected and Exempt?

The new rules and the new forms apply to all closed-end consumer credit transactions secured by real property, other than reverse mortgages, which include the following types of loans:

- Purchase money
- Refinance
- 25 acres or less
- Vacant-land
- Construction-only
- Timeshare

Consumer loans exempted from the new rules and forms are:

- Reverse Mortgages
- Home Equity Lines of Credit (HELOCs)
- Chattel-Dwelling/Mobile Home Only Loans
- Creditors who originate less than 5 loans in a calendar year

The portions of Truth-in-Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) governing Reverse Mortgages are not being replaced or deleted. Creditors will be required to issue a TILA disclosure and

Good Faith Estimate (GFE) on these types of loans. Settlement agents will be required to use a 2010 HUD-1 Settlement Statement to close these types of loans.

## 2. What Are The New Forms Being Introduced?

On November 20, 2013 the CFPB announced the completion of their new integrated mortgage disclosure forms along with their regulations (RESPA Regulation X and TILA Regulation Z) for the proper completion and timely delivery to the consumer. These regulations are known as "the Rule".

### The Loan Estimate

Prior to August 1st, 2015, borrowers received two separate forms from their lender at the beginning of the transaction: the Good Faith Estimate (GFE), a form required under the Real Estate Settlement Procedures Act (RESPA), and the initial disclosure required under the Truth-in Lending Act (TILA). For loan applications taken on or after August 1st, 2015 the creditor will instead use a combined Loan Estimate form intended to replace the two previous forms. The new three-page Loan Estimate form must be provided to borrowers on a timetable similar to the past receipt of the GFE.

### The Closing Disclosure

The combination of forms continues at the end of the transaction as well, with the HUD-1 Settlement Statement and the final TILA forms now combined into a single Closing Disclosure form. This new five-page form is used not only to disclose many terms and provisions of the loan, but also the financial transaction of the closing of the sale.

## 3. How Will the Timing Of a Closing Be Impacted By Closing Disclosure Delivery?

As part of the final rule creating these two new combined forms, the CFPB determined that borrowers would be better served by having a short time to review the new Closing Disclosure prior to signing their loan documents. As a result, in its rule CFPB mandated borrowers have three days after receipt of the Closing Disclosure to review the form and its content. However, note that the three-day review period starts

upon “receipt” of the form by the borrower. Unless some positive confirmation of the receipt of the form (i.e., hand delivery), the form is “deemed received” three days after the delivery process is started (i.e. mailing). As a result, the combination of the “delivery time period” and the “review time period” results in six business days from mailing to loan signing.

After delivery of the initial Closing Disclosure changes may require a re-disclosure and new waiting period:

- Increase of APR by greater than 1/8%
- Change in loan program such as Fixed rate to ARM
- Addition of pre-payment penalty after the initial disclosure

#### 4. How Will the Communication of Fees and Figures Be Handled (Proration, Credits, etc.)?

Lenders will continue to need accurate estimates of title and settlement fees for the preparation of both the Loan Estimate and Closing Disclosure. In addition, for transactions in which an owner’s policy will be purchased, the rule prescribes special mathematical calculations for disclosure of the owner’s and lender’s title insurance premiums, which may require receipt of rates for both a stand-alone and simultaneously-issued lender’s policy, as well as the owner’s policy rate. We are modifying our online rate calculators to assist in these calculations. Preparation of the Closing Disclosure will take a collaborative effort between lenders, settlement companies and other vendors and may require fees to be submitted approximately 2 weeks in advance of “consummation” - the date on which the borrower becomes legally obligated on the loan.

#### 5. How are Title Charges Reflected on the New Forms?

Both the new Loan Estimate and Closing Disclosure forms require any listing of a settlement service involving title insurance or closing activities to be preceded by the phrase “Title - ”. In doing so, a borrower can clearly see all such charges in the same area. However, that is where the clarity ends.

In most jurisdictions, title insurers offer a discount (often called a simultaneous-issue discount) on the loan policy premium when purchased at the same time as an owner’s policy. However, in some parts of the country, the standard purchase of an owner’s policy of title insurance is not as well established. As a result, CFPB determined consumers were better served by showing the full, not discounted, loan policy premium in all situations on both the Loan Estimate and the Closing Disclosure instead of, where applicable, the discounted premium. If an owner’s policy is also purchased in the transaction, a formula is used to discount the owner’s policy.

In those areas where custom and practice provide that a buyer/borrower pay for both the owner’s and lender’s policies, the total actual amount paid for both policies is the same, even though the actual premium amounts are reflected differently on the new forms.

More problematic are those areas where custom provides the seller pay for the owner’s policy and the buyer purchase the lender’s policy. In these areas, the policy premium for the lender’s policy will be overstated and the owner’s policy premium understated. As a result, look for an adjustment to be made on page 3 of the new Closing Disclosure form to correct premium amounts to those contemplated by the parties in their contract.

Also, the line numbering on the HUD-1 familiar to most of us is gone. Instead, the fees and charges are placed on the Closing Disclosure in one of seven areas:

- Origination Charges
- Services Borrower Did Not Shop For
- Services Borrower Did Shop For
- Taxes and Other Government Fees
- Pre-paids
- Initial Escrow Payment at Closing
- Other

Individual charges within each of these major groupings are listed alphabetically. Columns are provided to separate charges of buyer, seller and others, as well as columns for both payments before and at closing.

### Example Closing Calendar

