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TILA / RESPA Integration

The Times, They Are A-Changing
(Again)!

– presented by –

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Upcoming Regulations – Integrated Disclosure Rule

- CFPB issued final rule Nov. 20, 2013; *Changed on Jan. 20, 2015*
- Effective date: *Applications taken on or after October 3, 2015*
- **Goals of New Rule:**
 - Easier to use mortgage disclosure forms
 - Improve consumer understanding
 - Aid comparison shopping
 - Prevent surprises at closing table
- **Finalized 2 new disclosure forms:**
 - **Loan Estimate** (3 pages):
 - To replace the GFE/Initial TIL
 - Provided to consumers within 3 business days after application
 - **Closing Disclosure** (5 pages):
 - To replace the HUD-1/Final TIL
 - Must be received by consumers 3 business days before consummation



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CFPB Finalized Amendments & Corrections on Jan. 20, 2015

- **Final Rule makes a number of amendments, clarifications, and technical corrections to the final rule, including**
 - Allowing creditors to provide a revised Loan Estimate within three business days after the date the interest rate is locked, instead of the current requirement to provide the revised Loan Estimate on the date the rate is locked
 - Correcting an oversight by creating room on the LE for disclosure that must be provided as a condition of issuing a revised estimate for construction loans where the creditor expects settlement to occur more than 60 days after the initial LE is provided
 - Making various non-substantive updates, including citation and cross-reference updates and wording changes to enhance clarity

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Coverage

- Applies to most closed-end consumer mortgage loans
- Does not apply to:
 - HELOCs
 - Reverse mortgages (those still use GFE/HUD-1/TIL)
 - Mortgages secured by mobile homes or by dwellings not attached to property
 - Creditors that make five or fewer mortgage loans in one year
- **If the new rule applies, creditor cannot use the GFE / HUD-1 / TIL forms for the transaction**
 - So, some loan *types* use the new forms, and others use the old
 - And some loan files use the new forms, and others use the old
 - Lenders will have to train staff and program systems

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Loan Estimate

- **Must be delivered or mailed within 3 business days after application AND not later than 7 business days before consummation**
 - Creditor or mortgage broker may provide the loan estimate
 - BUT creditor is ultimately responsible
- **Application is triggered when the creditor receives 6 pieces of information** (name, income, social security number, property address, property value estimate, mortgage loan amount sought)
 - Rule eliminates catch-all provision of “any other information deemed necessary by the loan originator” in current Reg X
 - CFPB thinks it would delay loan estimates to consumers
- **Re-disclosure within 3 business days of changed circumstance or borrower requested change** (same as now)
 - In some cases, only when aggregate tolerances are crossed



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Modified Tolerances

- Loan Estimate must be a “good faith” estimate of closing costs
- An estimate is in good faith if the charge paid by the consumer does not exceed the original disclosure, except as follows:
 - Charges that cannot increase include:
 - Fees to affiliated providers when service is required (*new*)
 - Fees to unaffiliated providers if consumer cannot shop (*new*)
 - Fees paid to the creditor or mortgage broker & transfer taxes
 - Charges subject to 10% cumulative tolerance:
 - Fees paid to unaffiliated providers if consumer can shop & chooses a provider on the creditor’s written list
 - Recording fees
 - Charges that can increase:
 - Fees for consumer selected unaffiliated providers not on creditor’s list
 - Fees for services not required by creditor
 - Prepaid interest, property ins. premiums, and escrow amounts
- If amounts paid at closing exceed the tolerance, creditor must refund the excess & provide a revised Closing Disclosure that reflects the refund no later than 60 days after consummation

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Closing Disclosure

- **Must be received by the consumer no later than 3 business days before consummation & reflect actual terms/costs of transaction**
 - Seller must receive no later than day of consummation
- **If Closing Disclosure becomes inaccurate before consummation, corrected disclosure must be provided at or before consummation**
 - But consumer has the right to ask to inspect the Closing Disclosure the business day prior to consummation
- **Changes that require a new 3 business day waiting period:**
 - APR changes more than 1/8 of a percent (1/4 for irregular transactions – loans that have multiple advances or irregular payment periods/amounts)
 - Change in loan product (e.g., adjustable to fixed rate) or
 - Addition of a prepayment penalty
- **Considered received by the consumer:**
 - If in person – on the day provided
 - If mailed or delivered electronically – 3 business days after delivered or placed in the mail (unless creditor can evidence consumer's receipt earlier)

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Closing Disclosure (continued)

- **Creditor is responsible for providing the Closing Disclosure to the consumer**
 - The creditor may contract with settlement agents to have the settlement agent provide the Closing Disclosure to consumers on the creditor's behalf
 - Creditors and settlement agents also may agree to divide responsibility, with the settlement agent assuming responsibility to complete some or all the Closing Disclosure
 - **But the creditor is ultimately responsible for accuracy and proper delivery to the consumer**
- **Settlement agent still must prepare & provide the Closing Disclosure to the seller reflecting the actual terms of the seller's transaction**
- **Creditor *may* include a consumer signature line on the Loan Estimate and/or the Closing Disclosure (at the creditor's option) BUT using rule's signature line required language**

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Other Noteworthy Issues

- **Business day has different meanings depending on the requirement:**
 - For 3 days after application trigger: business day means days creditor's office is open to public
 - For the 7 days & the 3 days before consummation triggers: business day means calendar days except Sundays & legal holidays (Rescission definition)
- **Rule does not change the finance charge definition** (no "all in" APR)
- **Records generally must be retained for 3 years**
 - Closing Disclosure & supporting docs must be retained for 5 years

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Penalties & Liability

- No penalties for disclosure violations under RESPA
- Penalties for disclosure violations under TILA:
 - \$4,000 per violation
 - Actual damages & attorneys' fees
- CFPB indicates will look to the statutory authority (RESPA or TILA) for each provision to determine penalties

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Key Implementation Concerns

- **Increased time for closings**
 - Closing disclosure length increased to 5 pages
 - Additional time needed to explain form to consumer
 - After closing disclosure, required 3 day waiting period before consummation (from time of consumer receipt)
- **Significant technology changes & employee training**
 - Change in philosophy from disclosure of bundled fees & charges to disclosure of itemized fees & charges
 - Fees and charges listed alphabetically on new forms
 - Fees no longer listed by line number or series
 - No distinct line for a distinct service
 - Different disclosure forms and processes depending on
 - Type of loan
 - When application was taken
- **Cooperation and Understanding !**

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Questions ?

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