TILA-RESPA Combined Disclosures:
The Executive Perspective
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½-Way Point & What We Will Cover

- We are at the halfway point of TILA-RESPA Integrated Disclosure ("TRID") implementation and we are considering what is important NOW, so we will cover –
  - New risk environment and why it matters
  - Special challenges for mortgage lenders
    - Relying on others
    - Costs to be incurred in 2015 and beyond = budgeting for next year
  - Investor expectations
  - Looking ahead at the ½-way point
    - Vendor arrangements, including functionality, terms of agreements, costs and liability
    - Other compliance components
    - Handling the “off ramp” of post-close corrective actions – what can be done to minimize liability? When, who, how and at what cost?
NEW RISK ENVIRONMENT

- Now, RESPA disclosure violation = no private right of action; TILA disclosure violation = private lawsuits, damages, attorneys’ fees, etc.
- TRID: codified in Regulation Z/TILA, so TILA liability will become “order of the day” – “every closing a potential lawsuit”
- THE BUCK STOPS WITH THE LENDER – responsible for timing, completeness and accuracy of TRID disclosures
- Investors know this and will be even more careful about compliance - buyback risk could increase under TRID
- Basic TRID compliance will be 3-fold: (1) were the disclosures given on the proper forms (Loan Estimate (“LE”) & Closing Disclosure (“CD”)), (2) were they given on time, and (3) was each disclosure item on the LE disclosed within “variation” tolerances on the CD?
• Game plan now: what are your TRID implementation plans?
• Will you “build” (adapting your own systems) or “buy” (primarily rely on others, such as vendors) for 2015 TRID compliance?
• If something goes wrong, who bears the risk?
  • Borrower?
  • Vendor?
  • Mortgage broker?
  • Settlement agent? Other settlement services providers?
  • Real estate agent?
  • Investor?
• In the end, risk falls to originating lender under TRID Rule
Business Challenges and Your Bottom Line

• Expecting perfection in a historically “imperfect” process, with brand new forms and processes that need to be in place on time
  • Déjà vu all over again from 2010 RESPA discl reform, but stakes higher this time
• “Perfection” = higher costs to originators, so it is time to consider impact on 2015 budgets
• Examples of impact on lender budget planning for 2015
  • Increase cost of vendor-provided resources – higher licensing fees and transaction/usage costs?
  • Internal resources needed for compliance, testing & monitoring, as well as staff training – for “the hardest rule of all”
  • Outside professional fees for technologists, attorneys, compliance consultants
  • Resources (cash) needed for the disclosure liability “off ramp” – see below
What is Behind TRID?

- CFPB is driving overall, end-to-end electronic workflow for residential mortgage loans, not just e-signatures, but entirely electronic processes
  - CFPB has (too much) faith in the inerrability of computer systems, particularly systems that collect and manage data
- Obviously, requires close cooperation, especially for Closing Disclosure, among lender, settlement agent & title co.
- So, connectivity and communications among the settlement-side parties will be key
- CFPB believes long timeline to implementation justifies the effort, expenditure
Communications Plan?

- CFPB erred on the side of CONSUMER PROTECTION and gave too little regard to CONSUMER CONVENIENCE
- Consumers and their representatives, particularly real estate brokers, will be frustrated – plan on it now, and be ready to communicate with customers and others about the “new world”
- The extended (and possibly repeated) waiting periods for Closing Disclosures likely, at the beginning, to disrupt expectations of the parties, particularly in purchase money transactions
- Larger mortgage originators are working on communication plans now, to educate customers, real estate agents and their own staff on process changes
  - Real estate agents seem to know little now about what is ahead
“We’ll Rely on Our Vendors”

• Some mortgage lenders are saying, “we’ll rely on our vendors” for TRID compliance – what does this mean?
• Many types of vendors are or may be offering TRID solutions of one kind or the other to mortgage lenders
  • LOS
  • Title/settlement services providers
  • Document prep companies
  • Workflow management providers
  • Providers offering integration of one or more of these functions
• Still not clear who will be the “frontrunners” but many lenders right now are thinking of “the usual suspects” (existing vendors)
• There are time and expense limitations, growing more difficult as time goes by, to selecting new vendors
Questions to Ask Now of Vendors

• For engaging in diligence now, let’s look at examples:
  • For existing vendors, how will the solution be modified to accommodate TRID? Will the solution be adequate in terms of scope and functionality?
  • For new vendors, what is the scope of the offering? End-to-end TRID compliance, including generation of compliant disclosures, or just component parts?
  • When will the solution be available? In time to fully test in your user environment?
  • How is the solution integrated and connected with other workflow components, including connectivity between settlement agent, title company, doc prep and lender?
  • Will a new or amended services agreement be required?
  • Will pricing for services increase next year, as TRID comes online?
  • Under an existing services agreement or a new one, will the reps and warranties cover TRID violations due to system failure or inadequacy? Who bears the risk of non-compliant results?
Questions to Ask Now cont’d

• Examples of questions – cont’d
  • Will system architecture support the special requirements of TRID, such as time-stamping and retaining each and every disclosure and revised disclosure? Does the system include adequate database functionality (v. “flat file” format)?
  • Are other features being added, such as e-signature capability? Additional cost?
  • Are system results capable of being reproduced easily and audited later by lender, investors and regulators (like banking agencies and CFPB)?
  • Is the solution compatible with current MISMO standard (3.3) or reliant on previous version?
  • Does vendor have customer service bandwidth, particularly as “go live” date approaches and in the early going post-August 1, 2015?
  • Will the system support post-consummation corrective measures, to help the lender avoid TRID liability?
Vendors: Only Part of the Solution

• Vendors delivering workflow-based solutions will provide only PART of what is need for compliance with TRID
  • Just getting the process right will not be enough, according to the regulators
• CFPB and banking regulators still will be looking for compliance with all aspects of the rule and Exam Guidelines
  • Compliance management system and management buy-in
  • Specific, documented policies, procedures and controls, in particular QC tailored to TRID
  • Training
  • VENDOR MANAGEMENT (see below)
  • Monitoring and audit, to demonstrate compliant results
• Investors also will expect compliance to be consistent with compliance with other mortgage rules
Vendor Management

• Important part of compliance for banks and non-banks alike
• For new vendors, the path is well travelled, per CFPB and banking agency guidance
  • Vetting, diligence, monitoring and corrective action
• Revisions to existing vendor functions are not immune from enhanced vendor management duties, especially for “core” consumer-facing activities such as TRID disclosures
• Expect the CFPB and banking regulators to pay attention to this in future inquiries and examinations
• Vendors should be ready for increased customer due diligence
What Else Might We Expect?

• Given the enhanced liability for TRID violations and operational challenges (e.g., connectivity and data transfer), lenders may desire to shorten the list of approved vendors such as title companies and settlement agents
  • Important to consider impact of borrower selection of settlement service providers
• Still a little early to tell, but lenders may wish to consider whether buyback and indemnity reserves will need to be adjusted
• Compare current incidence and cost of issuing post-closing corrected RESPA disclosures with future expectations
  • Root cause analysis of current redisclosures?
  • What do you know that may “help” or “hurt” when TRID becomes effective?
• Obviously, pay close attention to investor guidance – so far, pretty scarce
TRID Liability “Off Ramp”

• CFPB justification for strict disclosure rules in TRID: POST-CLOSING CORRECTIVE ACTIONS
• For TRID disclosures, compliance will be determined based on a comparison between the content of the final LE and the final CD
• TRID Rule says that violations of “good faith disclosure” requirements for LE may be cured if the lender takes action WITHIN 60 DAYS OF CONSUMMATION
• This is in contrast with the other TRID “correction” rules:
  • (1) post-consummation events affecting borrower costs on CD may be cured by redisclosure and refund not less than 30 days of receiving knowledge of the post-consummation increase, AND
  • (2) redisclosure for “non-numeric clerical errors” that do not result in change to amounts paid by borrower, within 60 days of consummation
The Workings of Corrective Actions

• If the borrower actually pays more (on the CD) than disclosed on the LE, the lender then must refund the increased amount to the borrower and submit a new (revised) CD to the borrower
• Timeframe is no later than 60 days after “consummation” (not necessarily closing)
• Consideration of advantages of the liability limiter, through enhanced QC comparing final LE & final CD
  • This process similar to the current RESPA disclosure rule, but harder to do under TRID because of rounding rules, alphabetization requirements, “flow through” impacts on “Cost to Close” + changes to tolerance rules (called “variations”) that have not yet been interpreted by the CFPB
  • In the early going, consider enhanced size of QC sample, if not 100%
Further Considerations for Off-Ramp

- Overall, similar to current redisclosure rule, but the stakes for legal liability (TILA violations) are higher
- Investors, warehouse lenders or MI’s may conduct the “comparison” within 60 days, but redisclosure and refund will be on the lender
- For getting it done, lenders will have options
  - Internal review/QC, with the need for “expert” staff to conduct the reviews
  - Retaining diligence firms to conduct the reviews
  - Relying on vendors to “get it right” and check their own work
  - Automated compliance solutions are emerging and could be best choice based on cost and efficiency
- Remember that the “off ramp” doesn’t cover all CD disclosures, such as APR, and timing errors generally are not correctable post-closing
Further Considerations for Off-Ramp (cont’d.)

- Coordination with settlement agent, as is the case now under RESPA, will matter under TRID
  - Who will send out the revised Closing Disclosure to the borrower?
- For changes to amount paid by seller, the redisclosure requirement is on the settlement agent, but TRID Rule doesn’t say who is responsible for refund to seller
  - Again, coordination will be needed – lenders and settlement agents should have clear understandings on redisclosure duty and who pays
  - Coordinated redisclosure for changes in borrower (buyer) payments and seller payments is permitted