

TILA-RESPA Combined Disclosures: The Executive Perspective

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1/2-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 1/2-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?

THINKING ABOUT RISKS FOR 2015

- 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