The New CFPB Mortgage Disclosure Forms:
What you need to know now, what you need to learn soon.

No sooner had the ink dried on the 2010 changes to mortgage and closing disclosure forms required by HUD than Congress decided more changes were necessary.

On July 1, 2010, President Obama signed into law the Wall Street Reform and Consumer Protection Act, widely known simply as “Dodd-Frank” after its two principal authors. In addition to other significant financial reform, Dodd-Frank establishes the new Bureau of Consumer Financial Protection (CFPB) to work through and establish various changes to the mortgage origination and disclosure process. After its creation in July 2011, CFPB embarked on the formulation of new rules and forms, finally embodied in its Rule dated November 20, 2013 (or the “Final Rule”). The changes made to rules and forms are set to go into effect on August 1, 2015.

NEW FORMS

Most of the changes result from the directive from Congress that CFPB combine and simplify forms currently used to disclose the terms of residential real estate transactions involving mortgage financing. To do so, in the Final Rule CFPB created a new form, the Loan Estimate, intended to combine and replace the information currently contained in two separate forms (the Good Faith Estimate or “GFE” and the original Truth In Lending Act form or “TIL”) delivered to a borrower at the beginning of the mortgage process.

Congress also directed CFPB to combine two additional forms currently used for disclosure of the terms of the mortgage financing and transaction costs at the conclusion of a transaction. The new Closing Disclosure will combine the information in and replace the final Truth In Lending Act (TILA) form and the HUD Settlement Statement or “HUD-1” promulgated under the Real Estate Settlement Procedures Act (RESPA).

NEW PROCESSES

PREPARATION OF THE CLOSING DISCLOSURE

Since the GFE and TIL are both currently created by the lender, few logistical challenges exist for the lender’s creation of the new Loan Estimate. However, at the closing, the Final TIL and the HUD-1 are prepared by two different parties: the lender and the closing agent respectively. Therefore, combining information now existing in two separate systems to create the Closing Disclosure will create some challenges for both lenders and settlement agents. In its Final Rule, CFPB allows lenders to request the assistance of settlement agents in the preparation of the Closing Disclosure, but leaves ultimate responsibility (and liability) with the lender.
Since the Final Rule allows preparation of all or part of the Closing Disclosure by settlement agents, questions have arisen regarding the legal responsibilities of settlement agents for preparation of a form containing information and disclosure responsibilities under both the TILA and RESPA.

DELIVERY OF THE CLOSING DISCLOSURE

In addition to new forms, the CFPB has also instituted new processes to follow which will change how lenders and settlement agents process and close transactions.

One of the most notable closing process changes concerns the delivery of the final Closing Disclosure to the borrower. Instead of a borrower receiving the final HUD-1 Settlement Statement at or directly before closing, borrowers must now receive the final Closing Disclosure form three business days prior to “consummation” (generally, the day loan documents are signed). This is sometimes referred to as the “3-day waiting period”. Receipt means actual, confirmed by the borrower. If actual receipt of the Closing Disclosure cannot be confirmed, the delivery will be deemed received three business days after the Closing Disclosure is delivered (i.e., placed in the mail) by the lender or settlement agent. (Sometimes called the “3-day delivery rule”)

Thereafter, permissible changes to the loan terms and transaction costs on the Closing Disclosure between the delivery of the Closing Disclosure and the final closing are limited to:

- The addition of a prepayment penalty
- The Annual Percentage Rate (APR) becomes inaccurate, meaning a change of more than 1/8th percent
- A change in Loan Product

Any of the above changes require delivery of a new Closing Disclosure containing the changes and another 3-day waiting period prior to signing. Other changes only require the form to be amended, as appropriate and delivered to the borrower at the closing.

NEW TOLERANCE RULES

Most of the rules concerning the increase of certain fees and costs between the beginning and end of the transaction (often called “tolerance rules”) remain intact, although renamed “variation limitations” by CFPB. In fact, CFPB has chosen to strengthen those rules as they apply to costs involving affiliate third party providers, now allowing no change (or “zero tolerance”) in such items quoted on the original Loan Estimate. The Rule established a zero tolerance where a lender requires a service to be purchased AND that a specific provider be used.

OTHER NOTABLE PROVISIONS

At over 1800 pages, the Final Rule has a number of other rules impacting the loan origination and settlement processes. Here are a few:

- Line numbering on the HUD-1 gone – those familiar with the HUD-1 settlement statement will immediately note that the Closing Disclosure has dropped the line-numbering (i.e. 700 Section for Realtor Fees, 800 section for Lender Fees, etc.) replacing them with two main sections: Loan Costs and Other Costs. Each of these sections is further divided to reflect services the borrower did or did not shop for, as well as divisions for specific costs such as governmental charges, prepaids, impounds and a catch all “Other”.

- Alphabetical Listing of Services – to replace line-numbering and provide consistency between the Loan Estimate and the Closing Disclosure, the Final Rule requires the alphabetical listing of services within each subsection of the form. Clearer? You be the judge.

- Prefix for Title and Settlement Services – the description of all services related to the issuance of title insurance or the closing/settlement of the transaction must be preceded with the prefix “Title – “.

- Owner’s Title Insurance – on both the Loan Estimate and the Closing Disclosure, the description on the line for Owner’s Title Insurance will now be followed by “(Optional)”, even when a contract indicates the purchase of owner’s insurance by the buyer or the provision of an owner’s policy by the seller.

GETTING READY

While the use of new forms and processes will not start until August 2015, a substantial amount of work is ahead for settlement agents and lenders to prepare systems and communications necessary for implementation. In particular, settlement agents will need systems with varying levels of participation in Closing Disclosure process adopted by their individual lender clients.