WFG NATIONAL TITLE INSURANCE COMPANY®

A Guide to the New Mortgage Disclosure Rules

WFG National Title Insurance Company ("WFG") understands how frustrating it can be to deal with a regulatory change imposed on your business. We are providing you with this booklet to help you prepare for the coming changes to your business. Inside you will find a summary of the most important changes under the Rule.

Together we can smoothly transition through August 1.

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On August 1, 2015, the way that most residential mortgage loans are closed across the country will drastically change. A new rule from the new consumer protection agency created by Congress after the financial crisis, the Consumer Financial Protection Bureau ("CFPB"), will take effect on that day. The new rule (given its magnitude, we will refer to it as the "Rule") will change how mortgage lenders originate, disclose and close residential mortgage loans.

The Rule's formal name is the TILA-RESPA Integrated Disclosure Rule. The Rule "integrates" the two different mortgage loan disclosures that are required to be provided to borrowers under the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA") at application and closing. Specifically, the Rule replaces the Good Faith Estimate ("GFE"), the early and final Truth in Lending statements ("TIL"), and the HUD-1 settlement statement ("HUD-1") with two new disclosures: the "Loan Estimate" at application and the "Closing Disclosure" at closing. The CFPB designed these two new disclosures to be more accessible and understandable for consumers, which may benefit both consumers and industry.

But for the industry, the Rule represents significant changes to its processes. The Rule does more than integrate the RESPA and TILA disclosures. The Rule makes substantive changes to the origination process, including changing what is considered a loan application, imposing stricter limitations on increases in lenders' cost estimates, requiring new timing requirements for the disclosures and when loans can be closed, and placing the requirement to issue the Closing Disclosure on the lender. With this complete overhaul of the regulatory regime, the Rule stretched to nearly 1,888 pages, which is the lengthiest CFPB rule to date. Every stakeholder in the mortgage industry, including real estate agents and settlement agents (or escrow agents, which we discuss here), will be affected by the Rule.

Changes Upon Changes

Only about five years ago, the Department of Housing and Urban Development (HUD) issued its own rule that substantially revised the GFE and the HUD-1, and for the first time instituted new accuracy requirements for lender's cost estimates (i.e., the "tolerance" requirements). HUD's new forms were required to be used starting on January 1, 2010, and agents have finally become familiar with the revised GFE and HUD-1. But soon after adjusting to this change, the Federal Reserve Board required changes to its TIL disclosures. And then just last year, the CFPB required changes to lenders' underwriting process that impose stringent documentation requirements on lenders and restrictions on available loan products. These requirements have had the effect of stalling or hindering deals. Although the industry could use a break, the changes continue with the Rule.

WFG Has Got Your Back

WFG National Title Insurance Company ("WFG") understands how frustrating it can be to have to deal with yet another regulatory change imposed on your business. That is why we are providing you with this booklet. This booklet briefly summarizes the Rule, focusing on the changes that are the most relevant to real estate agents and escrow agents. WFG wants to help you prepare for the coming changes to your business. Together we can smoothly transition through August 1.

Changes to the Loan Application Process

Worksheets. The CFPB wanted to ensure that consumers were not confused between its new Loan Estimate and the "worksheets" that lenders provide before application. The Rule expressly permits lenders to provide these worksheets, but requires that they contain a disclaimer at the top stating that the estimates may change and that the consumer should obtain a Loan Estimate. Also, these worksheets cannot look similar to the Loan Estimate or Closing Disclosure. Real estate agents may receive more questions from consumers asking about how to obtain a Loan Estimate. You may want to be prepared to discuss the new definition of "application" under the Rule, which is discussed below.

Less Information to Apply for a Loan. First, the Rule requires lenders to provide the Loan Estimate to a consumer within three business days after they receive an "application" from the consumer (mortgage brokers can provide the Loan Estimate for a lender). The Rule narrows the definition of "application" to include just six items: the consumer's name, income, social security number (to obtain a credit report), property address, estimated value of the property, and the loan amount sought by the consumer. This means that consumers will need to submit less information to obtain their disclosures than currently.

Although lenders can ask consumers for additional information, they will have to be careful to collect it before they receive the sixth item, to avoid triggering the requirement to provide a Loan Estimate. Regardless of whether a lender has received the additional information, upon receipt of the six items, the lender must provide the Loan Estimate within three business days. For real estate agents, this means that your clients may be considering or comparing Loan Estimates earlier than they currently do with the GFE. This could mean more questions from your clients.

More Accurate Estimates. In addition, the Rule imposes stricter requirements for the accuracy of the estimated charges on the Loan Estimate than the current requirements. The Rule expands the category of closing costs that cannot change, except under limited circumstances, to include not only the lender or mortgage broker's own charges, but also third-party charges for lender-required services that paid to their affiliates or for the services for which the lender does not permit the consumer to choose the provider. If costs change more than permitted, lenders will have to cover the increases. This means that lenders will need to obtain more accurate estimates for these costs to comply with these increased accuracy requirements. For real estate or escrow agents that have lender-affiliated companies, they may need to provide accurate estimates for their services.

Changes to Closings

The Lender's Closing Disclosure. One of the most significant changes in the Rule is that lenders will be responsible for providing the Closing Disclosure, whereas currently the HUD-1 is the settlement agent's document under RESPA. For all loans subject to the Rule, therefore, the lender must ensure that the Closing Disclosure is accurately and timely provided to the borrower (we discuss timing below).

Lenders are permitted to rely on settlement agents to provide the Closing Disclosure, but are ultimately responsible for the disclosure. Lenders will have to communicate with title companies, attorney closers, settlement agents, and escrow agents much more frequently and earlier in the process, to be able to provide an accurate Closing Disclosure before closing. It would be prudent to start discussions with lenders now regarding the information they will need from you and when and how they will need it. Some lenders may require information to be submitted electronically, through computer systems they have set up for this purpose. Other lenders may request a "manual" process, in which information is discussed over the phone or sent by fax or email. It is important to know how the lenders you do business with will want this information.

Closing Dates. The Rule also has strict timing requirements for when closing can occur. Closing cannot be any earlier than three business days after the borrower received the Closing Disclosure. And closing cannot be any earlier than seven business days after the lender provided the Loan Estimate. Although both of these timing requirements can be waived by the borrower in "bona fide personal financial emergencies," the Rule provides only one example of such an emergency, which is a borrower facing imminent foreclosure. This means that lenders (and their investors) will be unlikely to accept such a waiver. Real estate agents should discuss the potential of waiver before suggesting the use of one to a client.

Importantly, the Closing Disclosure is considered to be received by the borrower three business days after it is provided, unless a lender obtains evidence of earlier receipt. This is the case even for email. Lenders that rely on this will have to provide the Closing Disclosure (either by mail, email, or other form of delivery) a full week before closing. Also, for refinances, lenders will be required to provide the Closing Disclosure in this timeframe to all owners of the property, even if they are not a party to the loan. Real estate agents and escrow agents should expect to communicate much earlier in the process with lenders than currently about all aspects of the real estate transaction so that lenders can timely provide the Closing Disclosure.

As you know, changes can still occur between the time the Closing Disclosure is provided and closing. For most changes, the lender must provide a revised Closing Disclosure at or before closing. However, there are three types of changes that require a revised Closing Disclosure and a **new three-business day waiting period.** These three types of changes are: (1) where the change to the disclosed APR becomes inaccurate (these are, generally, changes of more than 1/8 of a percent for most loans and 1/4 of a percent for loans with irregular payments or periods); (2) the product type is changed (e.g., from a fixed rate to an adjustable rate); or (3) where there is a prepayment penalty added to the loan.

Changes to Closings continued

The potential to trigger a new three-business day waiting period means that real estate agents must be extremely careful about making changes to the transaction close to closing, because they have the potential of delaying closing by three days. As you know, a delay could have serious consequences, including a "domino effect" of delayed closings in the case of coinciding settlements, or the sale of the property to a different buyer. Real estate agents may want to discuss with their clients the need to "lock down" the deal as closing approaches, to ensure last-minute changes do not delay closings

In addition, because of the increased coordination and communication that will be required to complete the Closing Disclosure under the new Rule and avoid delays, real estate agents should understand that it will be a risky proposition to write short contracts and find a lender to fund in that timeframe. Under the Rule, lenders are responsible for disclosing much more information than they are currently, and are under increased pressure to ensure that the information they receive from third parties is accurate and not subject to change. Also, all of the information must be disclosed in the precise format and method required by the Rule. In addition, lenders have to grapple with a myriad of other regulatory requirements that apply to mortgage lending. Accordingly, lenders will likely need more time to ensure compliance with the Rule, as well as all other applicable requirements, before closing.

Post-Closing Changes. There is also a requirement under the Rule to provide a revised Closing Disclosure for certain changes to the amounts the borrowers pay after closing of the loan. If within the 30 days after closing the lender learns of a change to the amounts actually paid by the borrower that occurs after closing, the lender must provide a revised Closing Disclosure to the borrower within 30 days of learning of the change. Escrow agents will need to coordinate with lenders to communicate changes that occur after signing or recording.

Seller's Closing Disclosure. The Rule requires the settlement agent (which includes an escrow agent) to provide a Closing Disclosure to the seller at or before closing. If the Closing Disclosure provided to the seller is separate from the disclosure provided to the borrower (which is permitted by the Rule), the escrow agent must provide the lender a copy of the disclosure provided to the seller. The same post-closing disclosure requirement that applies to the lender for the borrower's Closing Disclosure applies to the escrow agent with respect to the Closing Disclosure provided to the seller.

The Disclosures Are Changing

The Rule "integrates" the early TIL and the GFE, which mortgage lenders and brokers provide after receiving a mortgage loan application, into the "Loan Estimate." The Rule also integrates the final TIL disclosure and the HUD-1, which mortgage lenders and escrow agents provide at closing, into the "Closing Disclosure."

Consumer Benefits. The are some consumer benefits of the new disclosures. The CFPB designed the disclosures using extensive testing with consumers and industry. The organization and format of the new disclosures are drastically different from the current disclosures. The Loan Estimate and Closing Disclosure were designed to use less text and emphasize more understandable information for consumers. Also, the two disclosures were designed to match, so consumers will more easily be able to compare their estimated and final loan terms and costs. And instead of receiving two different disclosures at application and closing, consumers will receive only one disclosure. As a result, real estate brokers and settlement agents should expect that consumers may ask more questions about their loan terms and costs, or what has changed at closing.

Industry Challenges. While the disclosures represent some benefits for consumers, some of the changes will take some getting used to for the industry. These changes include:

- Itemized Closing Costs. Unlike the GFE, which provides for lump sum categories, the Loan Estimate uses an itemized list of closing costs. This means consumers may have more questions about individual charges. In addition, lenders will be required to itemize third-party charges that they know the consumer is likely to pay. For real estate agents, this could mean that lenders will inquire about the amount of your commissions or administrative charges at application, to disclose these charges on the Loan Estimate.

- Highlighted Risks. Both the Loan Estimate and Closing Disclosure are designed to highlight risks that loan payments may increase. In particular, the disclosures present clear information about potential increases in the monthly payment, the interest rate, and the loan amount (for loans with negative amortization). If your deal involves an adjustable rate loan, or other potential increase in payments, be prepared to handle consumer inquiries regarding these changes.

- No More HUD-1 Line Numbers. Significantly, the new disclosures do not use the same three and four-digit line numbers that have been used for decades on the HUD-1. The Closing Disclosure not only abandons the HUD-1 numbers, but has a completely different organization of closing costs. It also uses far fewer line numbers that are dedicated to specific charges. Especially important for real estate agents, the Closing Disclosure will not have a separate category of closing costs for real estate commissions and charges, unlike the HUD-1 with its 700 series. They will be grouped with other unrelated charges. For real estate agents and settlement agents, this will require time to become familiar with the new categories, subcategories, and line numbers for closing costs. You will need to conduct staff training to be prepared to discuss these with consumers.

- Real Estate Agent and Settlement Agent Contact Information. You are now part of the disclosure. The Closing Disclosure will include the contact information and license numbers for both the buyer's and seller's real estate agents, and the settlement agent. Be prepared to be ensure that all of this information is accurately included.

The Disclosures Are Changing continued

- **New Information on the Disclosures.** The new disclosures include a number of new disclosures. For example, the Closing Disclosure contains a disclosure about the availability of state law anti-deficiency protections, title "Liability after Foreclosure." In addition, both the Loan Estimate and the Closing Disclosure will include a new disclosure called the "Total Interest Percentage," or "TIP" for short. This is the total amount of interest paid over the loan term, expressed as a percentage of the loan amount. Real estate agents and settlement agents should become familiar with these new disclosures to be prepared to discuss them with consumers.

- **Simultaneous Issuance of Lender's and Owner's Title Insurance.** The Rule requires a new method of disclosing the rates that apply to the simultaneous issuance of lender's and owner's title insurance for both the Loan Estimate and the Closing Disclosure. Lender's title insurance is disclosed based on the full cost of the lender's policy, as if no owner's title insurance were being purchased. The owner's title insurance is disclosed by taking the total cost of the simultaneous issuance rates and deducting the full premium for lender's coverage, with the difference being disclosed as the cost of the owner's title insurance. The CFPB's objective with this disclosure was to show the borrower the cost of the required lender's policy, and the marginal increased cost to obtain the optional owner's policy. In fact, the Rule requires owner's title insurance to be disclosed with an "(optional)" notation, to inform the borrower that it is not required by the lender.

  While this disclosure may cause owner's title insurance look cheaper to borrowers, it differs from the way the simultaneous issuance rates are promulgated or filed in many states. In addition, in states where seller's typically pay for owner's title insurance, the CFPB's calculation may cause the seller's payment to appear lower than is actually paid. Industry trade associations have voiced their concerns regarding this requirement to the CFPB, but it does not appear that the CFPB is willing to change this requirement.

  Escrow agents may find it prudent to use a separate statement to show borrowers the actual costs for the simultaneous issuance of these policies to comply with their state law obligations. They may also find it prudent to investigate methods of "trueing up" the amount of the seller's payment for the owner's title insurance policy, such as an adjustment or an additional seller credit on the disclosures.

More Liability for Lenders

An important change brought on by the Rule is that it increases the potential for civil liability for lenders and investors. This means lenders may face more borrower lawsuits than for the current disclosures. But the combining of requirements from two different laws makes it difficult to determine which parts of the Rule and the disclosures have this potential for borrower lawsuits. The Rule does not specify which provisions are subject to this liability, so it may take some time before this issue is untangled by the courts. In the meantime, lenders and their investors may be extremely cautious regarding compliance with the Rule, taking the approach that a violation of any of the disclosures could trigger a borrower lawsuit.

Long Live the Current Disclosures

Finally, the Rule actually adds to, and does not replace the current disclosures. The Rule covers closed-end loans that are secured by real property. The Rule does not apply to HELOCs, chattel dwelling loans (for example, mobile homes not attached to real property, houseboats, etc.), and reverse mortgages. Loans that are not subject to the Rule remain subject to the currently applicable disclosure requirements. You may still deal with loans that use the GFE, HUD-1 and TIL. The CFPB stated that they intend to issue new rules that integrate the disclosure requirements for these other products as well, but has not stated or even hinted at a timeframe. So, for the foreseeable future, be prepared to maintain procedures to identify which disclosure regime your transactions are subject to.

For More Information

In addition to this guide, you may want to consult information provided by the CFPB about the Rule. Here is a link to the CFPB's webpage for the Rule, which includes small entity guides to the Rule and the new disclosures, a sample calendar illustrating when different events can occur under the Rule, and sample disclosure forms. **http://www.consumerfinance.gov/regulatory-implementation/tila-respa/**

Conclusion

The Rule integrates the current disclosures for most residential mortgage loans into two new disclosures, the Loan Estimate and the Closing Disclosure. The Rule also overhauls the loan origination process. The result is that consumers may have a better understanding of their mortgage loans, but lenders and others in the real estate and mortgage industry will be challenged to meet the new procedural requirements under the Rule. It is inevitable that real estate closings will be significantly impacted by the Rule. Lenders will likely take a cautious approach in managing transactions to avoid delays and compliance violations. You should be prepared to work more closely with lenders, and understand the strict timing requirements under the Rule, to ensure you are ready for business on August 1.