

**Consumer Financial Protection Bureau's
New Loan Estimate and Closing Disclosure
October 2012**

Driving More Change . . . Are You Informed (really)?

The Consumer Financial Protection Bureau (CFPB) has issued their long awaited proposed rule (it is a 1099 page regulation by the way) that includes a new settlement statement. So what does this mean? How will your relationships change, especially with lenders? What are the new deadlines for disclosure to consumers? How are tolerances being expanded? And what do the new forms look like? These are just a few of the topics we will touch on in this initial Primer on the proposed rule. Putting it out front, the current HUD-1A will no longer exist for settlements and the new Closing Disclosure will take its place on top of additional integrations referenced below.

Title Company of the Rockies (TCR) is already working hard to understand the key concepts and theories behind the latest changes coming given that the HUD-1 will be replaced once again under the new CFPB rule and promulgated forms. We are presenting this Primer so that everyone in the mountain real estate industry has a chance to develop an initial understanding of timelines and to get an overall lay-of-the-land so that we all can formulate a plan as these changes impact our respective businesses.

Mandated by the Dodd-Frank Act, the CFPB is integrating the current Truth-in-Lending (TIL), Good Faith Estimate (GFE) and HUD-1 and HUD-1A disclosures. The central mission of the CFPB is to make markets for consumer financial products and services work for Americans — whether they are applying for a mortgage, choosing among credit cards, or using any number of other consumer financial products. The CFPB has exclusive authority to issue regulations and enforce myriad of federal consumer protection laws including: Truth In Lending, Fair Debt Collection Practices Act, Electronic Fund Transfers Act, Equal Credit Opportunity Act, Home Owners Protection Act, RESPA, etc. According to the CFPB, a creditor must ensure the consumer receives these new disclosures no later than three (3) business days (business day means all calendar days except Sundays and public holidays) before consummation of the transaction. As an example, if the closing is scheduled for a Thursday then the consumer must receive the disclosures by that preceding Monday. This equates to a three (3) day waiting period after the final disclosure is received by the consumer. Commentary provided to the new rule talks about the waiting period being in place to let the consumer understand what they need for closing.

Unless an exemption is available, any changes required to the final disclosures will result in a new three (3) day waiting period to apply. Changes to initial Closing Disclosure after delivery requires another 3-day waiting period unless: (i) Change resulting from a seller/buyer negotiation [Example – “walk-thru” credit]; (ii) Permitted cost increase Amount paid by consumer increases less than \$100 [Example - cost of disclosed item(s) increase(s) by less than \$100]; (iii) Change occurring to a governmental fee after closing Example – County Recorder changes fee prior to delivery of documents for recording; (iv) Correction of a non-numeric clerical error [Example – Incorrect name of settlement service provider]; and (v) Refund of a Lender tolerance violation [Example – Lender refund of tolerance violation not shown on original Closing Disclosure]. All changes require a new Closing Disclosure to be delivered at or before “consummation”. *Important - Personal Delivery Rules still apply.*

Be advised that comments made to the new rule caution lenders about inflating fees on the Loan Estimate for tolerance measurements or otherwise. The intention is to only allow for “true miscalculation errors.” An

example of a non-numerical clerical error would be if the disclosures identify the wrong settlement service provider as the recipient of a payment. The Creditor/Settlement Agent must provide revised disclosures to correct a non-numeric disclosure as soon as practicable, but no longer than thirty (30) days after closing. Lastly, a tolerance violation that results in a consumer refund can be included in the disclosure without triggering a new waiting period. The CFPB may add new tolerances to the final rule.

The “key” is receipt of the disclosures, not delivery of the disclosures. Delivery can be achieved (i) in person, (ii) overnight mailer or courier with a presumption the consumer does receive the disclosures three (3) business days after mailing (but . . . that presumption can be “rebutted” by actual receipt earlier or later than the three (3) business days), and (iii) email (same presumptions apply and the Creditor or Settlement Agent must comply with E-Sign along with getting prior approval from the consumer to use electronic disclosure). A waiver for the waiting period might be obtained, but the rule discourages that practice. As an example, a “bona fide personal emergency” might enable a waiver to be applied, but nobody presently knows what that term really means. Another example that may be easier to apply is “imminent foreclosure sale.” However, any waiver can only be applied after receipt of the disclosures.

An “enhanced” coordination between Lenders, Realtors, and Settlement Agents will be a must. Lenders will need to get their figures to the Settlement Agent at least three (3) days before delivery of the disclosures and Settlement Agents will need to provide lenders their final settlement numbers earlier in the process. Any changes in any figures or numbers will require mutual alerts in those changes and the reasons for them. The rule makes it “crystal clear” that a lender remains liable for the accuracy of the figures regardless of who is providing the Closing Disclosure. Settlement Agents will need to order payoffs, HOAs, water/sewer, etc. much earlier than current practices. It will be imperative that all parties agree to the actual closing date up front.

Clear as Mud? Some obvious questions:

- Where is the Sellers involvement in this new process?
- Can software vendors for lenders and Settlement Agents reasonably meet the CFPB’s expected implementation date?
- Where’s the settlement statement?
- I’m a Realtor, don’t I sign the settlement statement anymore?

Now is the time to make your voice heard during the comment period open until November, 6, 2012.

See, <http://www.consumerfinance.gov/notice-and-comment/>. Caution: your comments will be public information. For more information please see the American Land Title Association’s website section on the new CFPB rules at: <http://www.alta.org/cfpb/index.cfm>. We will keep you posted!

Don't miss your opportunity to help shape the new rules before they are made final! Title Company of the Rockies will continue to provide our mountain real estate community with updates as the rule continues to unfold to ensure that all real estate related organizations do not get left behind. We are already working with our software vendors discussing how these changes need to be accommodated with our production applications and procedures.

To get copies of the current Disclosure Forms, contact your local Title Company of the Rockies office. We will be happy to email you the current forms. - *Robert L. Howe, president*