

WFG NATIONAL TITLE INSURANCE COMPANY®

A Guide to the New Mortgage Disclosure Rules - For Real Estate Brokers and Agents

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.

Prepared by Richard Horn, Attorney

Dentons 2-17-15



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 you close most residential transactions involving mortgage loans.

You may hear the Rule referred to as the TILA-RESPA Integrated Disclosure Rule, “TRID” for short, or the CFPB’s “Know Before You Owe” forms. The Rule “integrates” the Truth in Lending (“TIL”), Good Faith Estimate (“GFE”), and HUD-1 disclosures into 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 the requirements that come along with these forms will have significant effects on your closings. Every stakeholder in the mortgage industry, including real estate brokers and agents, will be affected by the Rule.

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 requires that they contain a disclaimer at the top stating, “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.” This could result in questions from your clients about the difference between the worksheets and the Loan Estimate. It will most often look like this:

***Your actual rate, payment, and cost could be higher.
Get an official Loan Estimate before choosing a loan.***

Less Information to Apply for a Loan. The Rule requires lenders to provide the Loan Estimate within three business days after they receive 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 a Loan Estimate than they do now for a GFE. This could result in earlier questions from your clients about these the loan process.

More Accurate Estimates. The Rule imposes strict accuracy requirements for estimated charges on the Loan Estimate. The lender or mortgage broker’s own charges, charges paid to lender and mortgage broker-affiliates, charges for which the consumer is not permitted to choose the provider cannot change from their estimates, except under limited circumstances. If charges increase other than as permitted, lenders will have to cover the increases. This means that lenders will need to obtain more accurate estimates for these charges. For real estate agents and brokers that have lender-affiliated companies, such as a title company, this may mean lenders will ask for more accurate estimates or fee schedules.

Changes to Closings

The Closing Disclosure. One of the most significant changes in the Rule is that lenders will be responsible for providing the Closing Disclosure. Currently, the HUD-1 is the settlement agent's document under RESPA. Therefore, lenders will be responsible for much more information on August 1.

Lenders will have to communicate with real estate agents and brokers, title companies, attorney closers, settlement agents, and escrow agents much more frequently and earlier in the process, to be able to provide the Closing Disclosure. Lenders will be able to use settlement agents to complete or deliver the Closing Disclosure, but they will remain responsible for the disclosure. It would be a good idea to discuss with the lenders and title agents you currently do business how they will handle this change.

The New Closing Dates. If that change wasn't enough for industry to grapple with, the Rule has another one for us. The Rule requires the Closing Disclosure to be **received by the consumer at least three business days before closing**. Unless a lender provides the disclosure in person, or has evidence of receipt, it is considered to be received by the consumer three business days after it is sent. This is the case even for email. This means that many **lenders, to ensure they can close as scheduled, will be sending the Closing Disclosure a full week before closing**.

Gone are the days of your client getting the HUD-1 at the closing table. This change is meant to give consumers an opportunity to review their final numbers before closing in an unpressured environment, which can be a good thing for your clients. But given the accuracy requirements described above, and the amount of information that needs to be pulled together for closing, this change will result in significant changes to the operations of lenders and title companies. Many closings may be delayed, so that lenders can obtain the required information and send the Closing Disclosure a week before closing.

Although this timing requirement 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. We caution you from relying on using a waiver, and recommend that you discuss using a waiver with the lender before suggesting it to a client.

Changes after the Closing Disclosure is Provided. 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 will require 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 changes of more than .125% for most loans and .25% for loans with irregular payments or periods, and result from changes in lender charges or the interest rate); (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. These triggers should be relatively infrequent, but if they happen, it could be a serious event for your clients. As you can imagine, such a delay could have a domino effect in the case of coinciding settlements, or even cause the seller to turn to a different buyer. If there is the potential for any change to the loan, you should be prepared to discuss the repercussions of such a change with your client. You may want to recommend that your clients "lock down" the financing and loan charges as closing approaches, to ensure last-minute changes do not delay closings.

Goodbye 30-Day Contracts. With the increased coordination and communication that will be required to complete the Closing Disclosure, and the need for lenders to provide the Closing Disclosure in many cases a week before closing, it will be a risky proposition to write short contracts and find a lender to fund in that timeframe. Lenders will likely need more time to ensure compliance with the Rule, and meet all their disclosure requirements before closing. Therefore, beginning on August 1, to avoid delays in the scheduled closing date that could have serious consequences for your clients, it would be prudent to consider writing contracts with no less than 60 days to close.

The Disclosures Are Changing

The disclosures are also changing quite substantially. It may be prudent to review the new Loan Estimate and Closing Disclosure, to be able to discuss them with your clients when questions arise. We will briefly mention some of the significant changes here, but you can find more information about them on the CFPB's website: www.consumerfinance.gov/knowbeforeyouowe.

- 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.
- Highlighted Risks. Both the Loan Estimate and Closing Disclosure are designed to highlight risks, such as whether the loan has an adjustable rate, or whether the loan payments may increase for other reasons. 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. Especially important for real estate agents and brokers, 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. You may want to conduct staff training to be prepared to discuss these disclosures with consumers.
- Real Estate Agent and Broker 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 brokers. Be prepared to be ensure that all of this information is accurately included on the disclosure.

Conclusion

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 title companies to help ensure all of these new regulatory requirements are satisfied. And please let us at WFG know how we can help ensure you are ready for business on August 1.