Know before You Owe: Inside the Changes to Mortgage Loan Disclosure Rules

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The Dodd-Frank Act implemented a number of consumer safeguards, among them disclosure requirements surrounding residential mortgage lending. *Economy Matters's* "ViewPoint" takes a look at one aspect of it: the combined Truth in Lending-Real Estate Settlement Procedures Act Integrated Disclosure Rule.

The Dodd-Frank Act included several provisions to improve consumer credit protections. These amendments were designed to correct deficiencies that the mortgage crisis revealed. Topics such as a borrower's ability to repay and a safe harbor for mortgage lenders—also referred to as qualified mortgages—were just two of the new underwriting requirements addressed. Other changes included new rules for appraisals, escrow accounts, servicers, loan originators, and credit insurance.

Dodd-Frank also mandated that the existing disclosure requirements for residential mortgage lending—found in the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA)—be combined to eliminate redundancy, achieve consistency of terms, and improve the loan shopping and closing experiences for consumers. Before the Dodd-Frank revisions, TILA required creditors to use a common form and consistent language in preclosing disclosures of loan terms and to provide a final form at closing. RESPA required lenders, brokers, and servicers of home loans to provide disclosures regarding the real estate settlement process, including a breakdown of costs and payments, to borrowers at closing. This article focuses on the requirements for the combined TILA and RESPA rules, related supervisory expectations, and potential implications.

The rule

On November 20, 2013, the Consumer Financial Protection Bureau's (CFPB) rule combining TILA and RESPA disclosures and forms—also called "Know before You Owe"—was adopted. After several delays, the final rule became effective October 3, 2015. The Truth in Lending-Real Estate Settlement Procedures Act Integrated Disclosure Rule (TRID) applies to most closed-end consumer residential mortgage transactions. TRID requires two disclosures for consumers:

- A loan estimate must be provided within three business days of application
- A closing disclosure must be provided three business days before loan consummation

The timing of these disclosures is designed to allow consumers to better understand and compare terms when shopping for a mortgage and to be fully informed of the costs of a loan before closing in order to avoid any unexpected charges. The CFPB released a compliance guide to accompany TRID. It includes information on practical implementation and compliance issues.

Supervisory expectations

On October 21, 2015, the Federal Reserve issued Consumer Affairs (CA) Letter 15-10, which provides guidance on the Board's supervisory expectations for compliance with TRID. These expectations are consistent with guidance provided by the CFPB and other banking regulatory agencies. Institutions are expected to make good faith efforts to comply with TRID in a timely manner. Initial compliance examinations will focus on evaluating overall efforts, considering the scope and scale of changes required by each institution. A review of each firm's implementation plan, which should include changes to policies and procedures, processes, and training, will also be conducted. Furthermore, a firm's ability to deal with technical problems or any other implementation issues will be considered. This approach is consistent with expectations regarding early examinations for compliance with the Ability to Repay and Qualified Mortgage rules that were effective in January 2014.

The Federal Financial Institutions Examination Council (FFIEC) issued revised examination procedures for Regulation Z (TILA) and Regulation X (RESPA) in September 2015. These changes were communicated in this consumer affairs letter. If mortgages are included in the scope of consumer compliance examinations, the revised procedures will be used.

Implementation and outcomes

Industry reaction to "Know before You Owe" proposals and final rules has been very vocal. Groups have expressed their concern about the cost of compliance, the potential for litigation, and the overall value of the new disclosures to consumers. Since the rule went into effect in October 2015, there have been several reports of extended closing periods as a result of lender delays in processing the new forms. Technical difficulties with third-party vendors are reportedly contributing to these delays.

Although it is too early, from a supervisory perspective, to assess the industry's overall compliance efforts, in December 2015, Moody's reported that third-party reviewers found errors in more than 90 percent of the 300 loans assessed. If sustained, this finding could have a negative effect on securitizations as investors refuse to purchase loans for fear of liability resulting from lender errors.

Recently, CFPB Director Richard Cordray responded to industry concerns about TRID implementation. The director emphasized that supervisors are sensitive to the efforts required to comply with the new rule and reiterated the regulators' position that "examinations for compliance in the first few months of implementing the new rule will be corrective and diagnostic, rather than punitive." Despite this reassurance, many in the industry continue to request an official grace period for compliance with TRID.

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