Know before you close.

Five Things Attorneys Need to Know Before October 2015

Straight talk about how to have a smooth transition to the new CFPB regulations and forms.

Five Things to Know Before October 3, 2015

- What Transactions Are Affected And Exempt?
- What Are The New Forms Being Introduced?
- How Will The Timing Of A Closing Be Impacted?
- How Will The Communication Of Fees And Figures Be Handled?
- How Are Title Charges Reflected On The New Forms?

By now you have heard of CFPB, but the question still remains, "How will it impact me?" So, we have put together some general information about the new rules and forms, as well as, the impact these will have on both the loan process and the closing of the transaction. With the changes just around the corner (October 3, 2015) we want to work with you to make sure we are all ready for the change.

1. What Transaction Types Are Affected and Exempt?

The new rules and the new forms apply to all closed-end consumer credit transactions secured by real property, other than reverse mortgages, which include the following types of loans:

- Purchase money
- Refinance
- 25 acres or less
- Vacant-land
- Construction-only
- Timeshare

Consumer loans exempted from the new rules and forms are:

- Reverse Mortgages
- Home Equity Lines of Credit (HELOCs)
- Chattel-Dwelling/Mobile Home Only Loans
- Creditors who originate less than 5 loans in a calendar year

The portions of Truth-in-Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) governing

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Reverse Mortgages are not being replaced or deleted. Creditors will be required to issue a TILA disclosure and Good Faith Estimate (GFE) on these types of loans. Settlement agents will be required to use a 2010 HUD-1 Settlement Statement to close these types of loans. Loans in progress (applications submitted prior to October 3, 2015) are not subject to the new rules or the new forms.

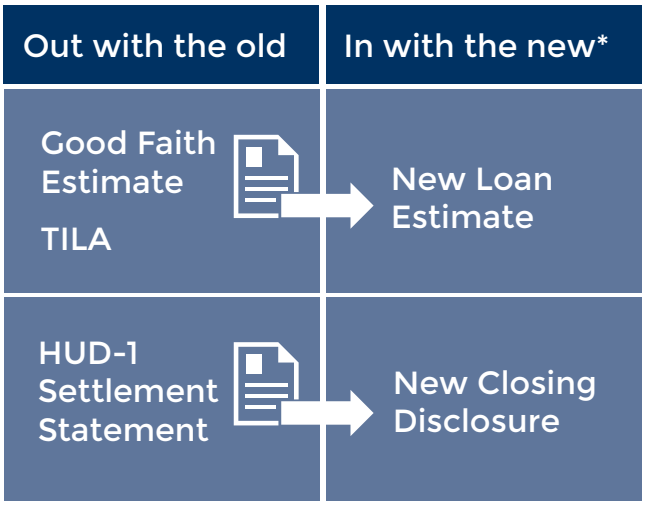
2. What Are The New Forms Being Introduced?

On November 20, 2013 the CFPB announced the completion of their new integrated mortgage disclosure forms along with their regulations (RESPA Regulation X and TILA Regulation Z) for the proper completion and timely delivery to the consumer. These regulations are known as "the Rule".

Any residential loan originated on or after October 3, 2015 will be subject to the new rules and forms set forth by the CFPB. The Rule replaces the Good Faith Estimate (GFE) and early TILA form with the new Loan Estimate. It also replaces the HUD-1 Settlement Statement and final TILA form with the new Closing Disclosure. The introduction of the new disclosure forms require changes to the systems that produce the closing forms. Our company has prepared our production systems to provide the new required fee quotes, generate the new closing disclosure forms, and track the delivery and waiting periods required by the new regulations.

The Loan Estimate – Currently, borrowers receive two separate forms from their lender at the beginning of the transaction: the Good Faith Estimate (GFE), a form required under the RESPA, and the initial disclosure required under TILA. For loan applications taken on or after October 3, 2015 the creditor will instead use a combined *Loan Estimate* form. The new three-page Loan Estimate form must be provided to borrowers on a timetable similar to the current receipt of the GFE.

Which forms are in & out on October 3, 2015?



* As for October 3, 2015 for residential purchase and refinance transactions.

The Closing Disclosure – The combination of forms continues at the end of the transaction as well, with the HUD-1 Settlement Statement and the final TILA forms now combined into a single *Closing Disclosure* form. This new five-page form is used not only to disclose many terms and provisions of the loan, but also the financial transaction of the closing.

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3. How Will the Timing Of a Closing Be Impacted By Closing Disclosure Delivery?

As part of the final rule creating these two new combined forms, the CFPB determined that borrowers would be better served by having a short time to review the new Closing Disclosure prior to signing their loan documents. As a result, the Rule requires borrowers have three days after receipt of the Closing Disclosure to review the form and its contents prior to signing loan documents.

However, note that the three-day review period starts upon "receipt" of the form by the borrower. Unless some positive confirmation of the receipt of the form (i.e. hand delivery), the form is "deemed received" three days after the delivery process is started (i.e. mailing). As a result, the combination of the "delivery time period" and the "review time period" results in six business days from mailing to loan signing.

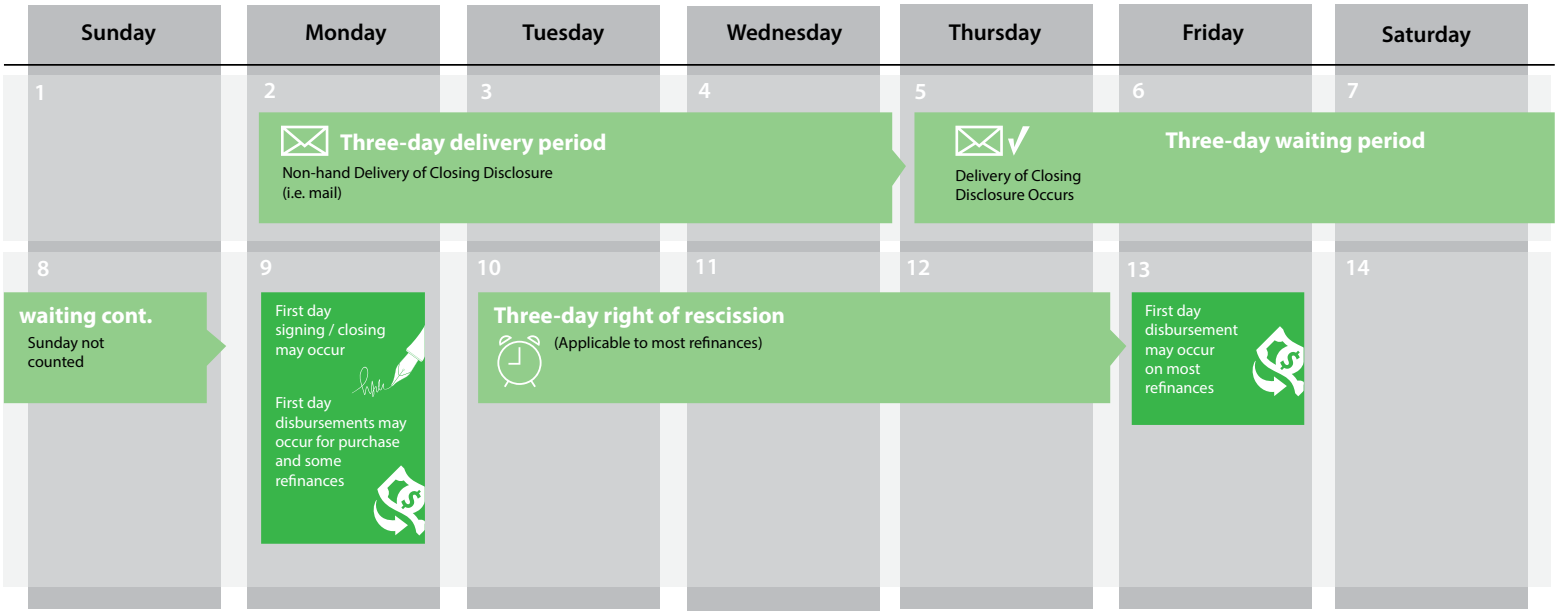
After delivery of the initial Closing Disclosure changes may require a re-disclosure and new waiting period:

- Increase of APR by greater than 1/8%
- Change in loan program such as Fixed Rate to ARM
- Addition of pre-payment penalty after the initial disclosure

4. How Will the Communication of Fees and Figures Be Handled (Proration, Credits, etc.)?

Lenders will continue to need accurate estimates of title and settlement fees for the preparation of both the Loan Estimate and Closing Disclosure. In addition, for transactions in which an owner's policy will be purchased, the rule prescribes special mathematical calculations for disclosure of the owner's and lender's title insurance premiums, which may require receipt of rates for both a stand-alone and simultaneously-issued lender's policy, as well as the owner's policy rate. We are modifying our online

Example Closing Calendar



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rate calculators to assist in these calculations. Preparation of the Closing Disclosure will take a collaborative effort between lenders, settlement companies and other vendors and may require fees to be submitted approximately 2 weeks in advance of "consummation" - the date on which the borrower becomes legally obligated on the loan.

5. How are Title Charges Reflected on the New Forms?

Both the new Loan Estimate and Closing Disclosure require any listing of a settlement service involving title insurance or closing activities to be preceded by the phrase "Title – ". In doing so, a borrower can clearly see all such charges in the same area.

However, that is where the clarity ends. In most jurisdictions, title insurers offer a discount (often called a simultaneous-issue discount) on the loan policy premium when purchased at the same time as an owner's policy. However, in some parts of the country, the standard purchase of an owner's policy of title insurance is not as well established. As a result, the CFPB determined consumers were better served by showing the full, not discounted, loan policy premium in all situations on both the Loan Estimate and the Closing Disclosure instead of, where applicable, the discounted premium. If an owner's policy is also purchased in the transaction, a formula is used to discount the owner's policy. In those areas where custom and practice provide that a buyer/borrower pay for both the owner's and lender's policies, the total actual amount paid for both policies is the same, even though the actual premium amounts are reflected differently on the new forms.

More problematic are those areas where custom provides the seller pay for the owner's policy and the buyer purchase the lender's policy. In these areas, the policy premium for the lender's policy will be overstated and the owner's policy premium understated. As a result, look for an adjustment to be made on Page 3 of the new Closing Disclosure form to correct premium amounts to those contemplated by the parties in their contract.

Also, line numbers have been removed and there are now seven fee areas on the disclosure. The line numbering on the HUD-1 familiar to most of us is gone. Instead, the fees and charges are placed on the Closing Disclosure in one of seven areas:

- Origination Charges
- Services Borrower Did Not Shop For
- Services Borrower Did Shop For
- Taxes and Other Government Fees
- Pre-paids
- Initial Escrow Payment at Closing
- Other

Individual charges within each of these major groupings are listed alphabetically. Columns are provided to separate charges of buyer, seller and others, as well as columns for payments both before and at closing.

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