

Financial Institution Compliance Update

June 24, 2015

This communication is designed to provide you with quick snapshots and timely perspective on recent regulatory developments.

TILA/RESPA Integrated Disclosure (TRID) Rules: Preparing for the Changes

Background

On January 20, 2015, the Consumer Financial Protection Bureau (the Bureau, the CFPB) issued the final rule intended to streamline disclosure forms for mortgage transactions. The new Loan Estimate disclosure form replaces the Good Faith Estimate and the Early Truth in Lending Disclosure; the Closing Disclosure replaces the HUD-1/HUD-1A Settlement Statement. Like early disclosures under current rules, the Loan Estimate must be provided to mortgage loan applicants within three business days after an application is received; however, the Closing Disclosure must be provided at least three business days before closing. Now that the CFPB has agreed to extend the effective date, the new disclosures will be required for consumer mortgage applications received on or after October 1, 2015.

Challenges

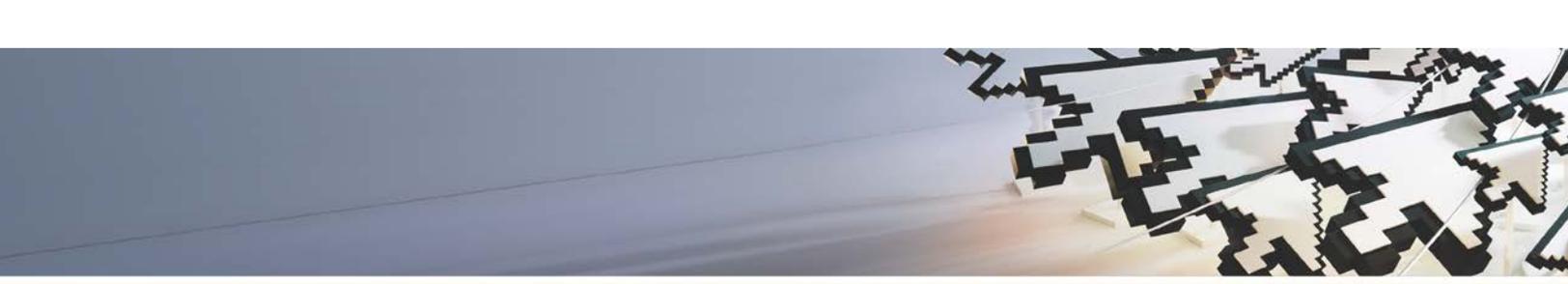
While lending institutions have long struggled with consistently disclosing mortgage costs and fees between the Good Faith Estimate and the Early Truth in Lending Disclosure, and tracking fees and costs to the corresponding closing disclosures, the new forms present a new facet to an old problem. Where the existing Good Faith Estimate generally tracked to numbered series costs on the HUD-1/HUD-1A Settlement Statement, the new Loan Estimate and Closing Disclosure provide no such structure for categorizing fees. This means regulatory and management expectations for the disclosure of costs and fees must be clearly communicated to loan origination personnel, confirmed during processing to ensure consistent performance to those standards, and validated post-origination to assure controls are operating as intended and disclosures meet compliance requirements.

In addition, where organizations accept consumer mortgage applications from brokers who also provide the Loan Estimate disclosure, special care must be taken to review broker-generated disclosures and related practices. This is not just for technical compliance, but also for compliance and consistency with the lending organization's standards.

The requirements apply broadly to consumer mortgage loans, similar to existing RESPA requirements. The most significant differences are that the new rules apply to closed-end consumer real estate secured credit extended to certain trusts for tax or estate planning purposes, changes in form structure and content, and the timing for both early and closing disclosures. As with any consumer protection regulations, these rules present another facet of risk related to Unfair, Deceptive or Abusive Acts or Practices (UDAAP).

In April 2015, the American Bankers Association ("ABA") surveyed¹ member bankers to learn more about the progress their vendors have made in delivering systems related to preparing for integrated disclosure implementation. Approximately 800 bankers participated in the survey, saying generally they were uncertain that they and their vendors will be ready for the change. The survey found nearly three-quarters of banks surveyed are using a vendor or

¹ American Bankers Association. May 13, 2015. "TRID Compliance Systems Not Ready?" Retrieved from <http://www.noodles.com/view/23D04D9FE7FEC7CD61D0D44DA4667FFC5A90D869?2774xxx1431555974>



consultant to assist with TRID implementation. Of those using a vendor, only 9 percent had received their completed systems by the end of April. Similar discussions were common at the 2015 ABA Compliance Conference, where nearly 26 percent of respondents to an ad hoc survey were certain enough their systems would not be ready that they are in the process of developing manual process to shore up compliance efforts.

- Fifty-eight percent of respondents said they expected to receive their systems in July or had not yet received a delivery date which will give them minimal time to test systems, train staff, and enhance or develop processes before October 1.
- Further complicating implementation, just one-third of banks surveyed expect systems to be delivered all at once. Forty-two percent said they would be delivered in stages, pushing back the date at which a bank can test its full system. For nearly a quarter of banks using vendors, the final software system will not cover every type of loan the bank offers, requiring banks using these systems to produce specialty disclosures in house, or switch vendors at short notice. One of five respondents said they would consider ceasing to offer the mortgage product altogether.

In light of the results, the ABA proposed that regulators provide a grace period to the industry. In a letter to the CFPB summarizing the survey results, ABA Executive Vice President Robert Davis advocates for a 3-month grace period following the rule's effective date, forewarning the bureau, "If we do not get this implementation right from the start, there will be a significant negative impact on consumers, banks, and the recovery of the housing market." The Consumer Financial Protection Bureau has extended the effective date by 60 days, saying enforcement would be predicated upon a lending institution's demonstrated good faith effort to comply by the effective date.

The stakes are high in complying with the new rules. The CFPB has enforcement jurisdiction for both TILA and RESPA and, depending on the circumstances, penalties for violations could include \$5,000 per day for a single violation, \$25,000 per day for violations shown to be reckless, and \$1 million per day for committing violations knowingly.

Our recommendations

While mortgage lending organizations face significant challenges in complying with these new requirements, taking appropriate steps now to prepare for the change will ease the compliance burden and help demonstrate the diligence and good faith effort to comply. In addition to updating the organization's Compliance Risk Assessment and Compliance Management Program to reflect the changes, organizations can take action to avoid costly penalties and remediation:

- **Workflow assessment/planning:** A comprehensive gap analysis of frontline controls and processes will reveal weaknesses where the new rules could derail operations. For example, frontline controls relying on manual processes are likely to require significant staff expansion. Identifying those areas now and improving or transitioning to automated controls wherever possible can minimize margin for human error and reduce costs.
- **System/technology upgrades:** In addition to obtaining written assurances from critical third-party vendors such as loan origination system providers, lending institutions must ensure internal resources are adequate for onboarding system updates and upgrades, beta testing such system changes, and ensuring all appropriate personnel receive communication and training to successfully utilize the system post-change. One important question to ask system and technology providers is whether their systems can produce both the old disclosures and the new ones simultaneously (and how), since applications received before October 1 but originated after October 1 will require the old disclosure forms.



- **Vendor management:** This is especially important for meeting record retention requirements, ensuring data transfer occurs as expected for the old and the new disclosures. As with systems, organizations will want to be sure adequate resources are devoted to validating vendor practices and managing the change.
- **Policies and procedures:** As organizations examine frontline business activities (accepting applications, underwriting, processing, closing and post-closing), policies and procedures will be critical both for governing expectations and performance (policies) and for providing clear direction in complying (procedures). Consider the differences between the document types when evaluating their effectiveness:
 - Policies address **what** the expectation is and its classification, **who** is responsible for execution and enforcement of the expectation, and **why** the expectation has been formalized
 - Procedures detail **who** performs the task, **what** steps are performed, **when** the steps are performed and **how** they are performed
- **Preparing staff:** As with any significant regulatory change, training specific to employees' roles and responsibilities will ensure personnel are clear on the expectations and impact. Especially helpful in effectively communicating requirements and expectations is connecting roles, is including in the materials presented to processors, for example, what is expected of lenders and underwriters. This approach gives employees a broader understanding of the requirements within the context of the business activity and their impact on that activity.

How Experis can help

Experis Finance offers industry experience in all aspects of financial services institution compliance including: policy and procedure development and review, business process review and transformation, governance, comprehensive risk assessments, internal control testing and monitoring techniques.

To learn more about our industry best practices or how Experis can assist you, contact us at knowledge@experis.com or visit [Experis Finance](#).