

Proposed rule to simplify and improve mortgage disclosure forms

DETAILED SUMMARY OF THE PROPOSAL

The Consumer Financial Protection Bureau (“the Bureau”) invites the public to comment on a proposed rule that will simplify and improve disclosure forms for mortgage transactions. Please submit your comments online at www.regulations.gov. You have until November 6, 2012 to review and provide comments on most of the proposal. However, comments are due for two parts on September 7, 2012: the changes to the calculation of the finance charge and Annual Percentage Rate (APR) and they delay of the effective date for certain disclosures required by the Dodd-Frank Act.

Background

For more than 30 years, federal law has required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also has generally required two different forms at or shortly before closing on the loan. Two different federal agencies developed these forms separately, under two federal statutes: the Truth in Lending Act (“TILA”) and the Real Estate Settlement Procedures Act (“RESPA”). The information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) directs the Bureau to combine the forms. To accomplish this, the Bureau has engaged in extensive consumer and industry research and public outreach for more than a year. Based on this input, the Bureau is now proposing a rule with the new, combined forms. The rule also provides a detailed explanation of how the forms should be filled out and used.

The first new form (the **Loan Estimate**) is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage for which they are applying. This form will be provided to consumers within three business days after they submit a loan application. The

second form (the **Closing Disclosure**) is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. This form will be provided to consumers three business days before they close on the loan.

The forms use clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The forms also provide more information to help consumers decide whether they can afford the loan and to compare the cost of different loan offers, including the cost of the loans over time.

In developing the new Loan Estimate form and Closing Disclosure form, the Bureau has reconciled the differences between the existing forms and combined several other mandated disclosures. The Bureau also has responded to industry complaints of uncertainty about how to fill out the existing forms by providing detailed instructions on how to complete the new forms. This should reduce the burden on lenders and others in preparing forms in the future.

Summary of the Proposed Rule

SCOPE OF THE PROPOSED RULE

The proposed rule applies to most consumer mortgages. The proposed rule does not apply to home-equity lines of credit, reverse mortgages, or mortgages secured by a mobile home or by a dwelling that is not attached to land. The proposed rule also does not apply to loans made by a creditor who makes five or fewer mortgages in a year.

THE LOAN ESTIMATE

The Loan Estimate form would replace two current federal forms. It would replace the Good Faith Estimate designed by the Department of Housing and Urban Development (“HUD”) under RESPA and the “early” Truth in Lending disclosure designed by the Board of Governors of the Federal Reserve System (“FRB”) under TILA. The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Loan Estimate form would be completed. There are sample forms for different types of loan products. The Loan Estimate form also incorporates new disclosures required by Congress under the Dodd-Frank Act.

The lender may rely on a broker to provide the Loan Estimate form. However, the lender also remains responsible for the accuracy of the form.

The lender or broker must give the form to the consumer within three business days after the consumer applies for a mortgage loan. The proposed rule contains a specific definition of what constitutes an “application” for these purposes.

Consistent with current law, the lender generally cannot charge consumers any fees until after the consumers have been given the Loan Estimate form and the consumers have communicated their intent to proceed with the transaction. There is an exception that allows lenders to charge fees to obtain consumers’ credit reports.

Lenders and brokers may provide consumers with written estimates prior to application. The proposed rule requires that any such written estimates contain a disclaimer to prevent confusion with the Loan Estimate form. This disclaimer would not be required for advertisements.

THE CLOSING DISCLOSURE

The Closing Disclosure form would replace the current form used to close a loan, the HUD-1, which was designed by HUD under RESPA. It would also replace the revised Truth in Lending disclosure designed by the FRB under TILA. The proposed rule and the Official Interpretations (on which lenders can rely) contain detailed instructions as to how each line on the Closing Disclosure form would be completed. The Closing Disclosure form contains additional new disclosures required by the Dodd-Frank Act and a detailed accounting of the settlement transaction.

The lender must give consumers this Closing Disclosure form at least three business days before the consumer closes on the loan. Generally, if changes occur between the time the Closing Disclosure form is given and the closing, the consumer must be provided a new form. When that happens, the consumer must be given three additional business days to review that form before closing.

However, the proposed rule contains an exception from the three-day requirement for some common changes. These include changes resulting from negotiations between buyer and seller after the final walk-through. There also is an exception for minor changes which result in less than \$100 in increased costs.

The Bureau seeks comment on whether to permit additional changes without requiring a new three-day period before closing.

Currently, settlement agents are required to provide the HUD-1, while lenders are required to provide the revised Truth in Lending disclosure. The Bureau is proposing two alternatives for who is required to provide consumers with the new Closing Disclosure form. Under the first option, the lender would be responsible for delivering the Closing Disclosure form to the consumer. Under the second option, the lender may rely on the settlement agent to provide the form. However, under the second option, the lender would also remain responsible for the accuracy of the form. The Bureau seeks comment as to which alternative is preferable.

LIMITS ON CLOSING COST INCREASES

Similar to existing law, the proposed rule would restrict the circumstances in which consumers can be required to pay more for settlement services – the various services required to complete a loan, such as appraisals, inspections, etc. – than the amount stated on their Loan Estimate forms. Unless an exception applies, charges for the following services could not increase: (1) the lender’s charges for its own services; (2) charges for services provided by an affiliate; (3) charges for services for which the lender does not permit the consumer to shop. Also unless an exception applies, charges for other services generally could not increase by more than 10 percent.

The rule would provide exceptions, for example, when: (1) the consumer asks for a change; (2) the consumer chooses a service provider that was not selected by the lender; (3) information provided at application was inaccurate or becomes inaccurate; or (4) the Loan Estimate expires. When an exception applies, the lender generally must provide an updated Loan Estimate form within three business days.

APR CHANGES

The proposed rule redefines the way the Annual Percentage Rate or “APR” is calculated. Under the rule, the APR will encompass almost all of the up-front costs of the loan. This will make it easier for consumers to use the APR to compare loans and easier for industry to calculate the APR.

RECORDKEEPING

The proposed rule requires lenders to keep records of the Loan Estimate and Closing Disclosure forms provided to consumers in a standard electronic format. This will make it easier for regulators to monitor compliance. The Bureau seeks comment on whether smaller lenders should be exempt from this requirement.

EFFECTIVE DATE

The Bureau is seeking comment on when this final rule should be effective. Because the final rule will provide important benefits to consumers, the Bureau seeks to make it effective as soon as possible. However, the Bureau understands that the final rule will require lenders, mortgage brokers, and settlement agents to make extensive revisions to their software and to retrain their staff. Therefore, the Bureau is seeking comment on how much time industry needs to make these changes. The Bureau is proposing to delay compliance with certain new disclosure requirements contained in the Dodd-Frank Act until the Bureau's final rule takes effect.