Mortgage closings today

A preliminary look at the role of technology in improving the closing process for consumers

Consumer Financial Protection Bureau

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Message from Richard Cordray

Director of the CFPB

A key part of the mission of the Consumer Financial Protection Bureau (CFPB) is to increase transparency in financial markets and to provide tools and opportunities that empower consumers to make better financial choices. In line with this mission, we are enthusiastic about the potential to improve the mortgage closing experience for American consumers.

Buying a home is one of the biggest financial decisions most people will make in their lifetimes, but navigating the closing process can be a challenge. We are well aware of the frustrations that consumers feel when they walk into their mortgage closing and face a tall stack of detailed documents. I have heard these concerns during my time as Director of the CFPB and while in public office in Ohio – and I have experienced them myself as a homeowner. To quote my friend Neal Wolin, former Deputy Secretary of the Treasury and a particularly knowledgeable consumer, when he vividly described his closing:

> "*The documents are literally impenetrable...Here I was—former general counsel of the Treasury, former general counsel of a Fortune 100 financial services company—asking my lawyer to help me through 100 pages of incomprehensible, turgid gobbledygook.*"[1]

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[1] Chan, S. (2010, April 17) Trench Warfare: Send In the Deputies. *The New York Times*, available at http://www.nytimes.com/2010/04/18/business/18regs.html?pagewanted=all&_r=1&

This much is clear to me: the package of closing documents is too large, and the process is overly complex and stressful for consumers. The CFPB is committed to work on improving the process for everyone involved. Last year, we finalized our "Know Before You Owe" rule that integrated the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) disclosures, which will take effect in August 2015. We are confident that the changes we made to the mortgage disclosures, particularly the new requirement to deliver the Closing Disclosure three business days before closing, will help improve consumer empowerment and avoid surprises at the closing table.

However, our work does not stop there. Throughout this past year, we have been speaking with consumers and industry players and collecting input from all involved in the closing process. Our goal has been to gain a clearer picture of closing challenges and their root causes – and to identify potential solutions. Based on this initial research, we believe that there may be opportunities to leverage technology in order to solve some of the issues that cause frustrations for both consumers and professionals in the mortgage closing process. Specifically, we hypothesize that technology-enabled electronic closing (eClosing) solutions have the potential to reduce errors, limit surprises, lessen anxiety, and create more time and opportunity for consumers to understand their mortgage and make more informed decisions.

This is why we are excited to announce that we will be launching a pilot program within the next year to further explore the opportunities within eClosing solutions and to test additional educational tools that can be incorporated to benefit consumers. Our goal will be to determine how the eClosing process can be made to reflect the spirit of our "Know Before You Owe" rule: increased consumer understanding, fewer surprises at the closing table, and a more empowered consumer.

To be clear, the goal of this project is not to write a new rule. In fact, a key takeaway from our first stage of research was the recognition that the CFPB has direct authority over only a small portion of the closing package. Rather, we see ourselves as a catalyst and facilitator of change, as a convener of government and industry stakeholders, and as an advocate for consumers by identifying how new uses of technology can benefit consumers during the closing process.

As stakeholders across the industry continue to integrate more technology into their closing processes, we want to work collaboratively to ensure that consumers benefit from this technology and avoid any unwarranted risks. We plan to share our initial observations in this paper and to investigate the topic further in the upcoming pilot program. By working together, we hope to spur improvements across industry that enable consumers to better understand their financial commitment, feel more confident about their role in the process, and ask the necessary questions before signing on the dotted line.

Sincerely,

Richard Cordray

Richard Cordray

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1. Executive summary

The mortgage closing process is complex and often onerous for all involved. For most consumers, closing a mortgage signifies the most substantial financial transaction they will complete in their lifetimes. However, the process can be time-consuming and confusing. Consumers face a daunting package of closing documents that is too large to absorb and too difficult to understand. This makes many consumers feel overwhelmed and with little control over this important process. For industry, the cumbersome process and flood of paperwork increases complexity, produces delays, and ultimately adds cost.

The CFPB asked consumers and industry stakeholders for comments in order to understand the key challenges generating these frustrations during the closing process. In addition to the number and complexity of documents mentioned above, consumers, lenders, settlement agents, and others often reported issues with the process itself. In many cases, consumers do not see the closing package until they arrive at the closing table, which is usually too late to digest the information, ask questions about changes in fees, or correct errors, without delaying the closing. Furthermore, consumers often feel alone in the process; some claim that key participants are difficult to reach and that they do not know who is available to explain the documents and process. As a result of these challenges, consumers are often stressed and confused and do not think they can play an active role in their closing process, and industry stakeholders are burdened by complexity and a lack of standardization.

According to the CFPB's research, two root causes drive these problems. First, the closing package is large and complex due to the high number of federal, state, and local regulations requiring disclosures, as well as additional documents added by lenders and investors as part of their risk management processes. Second, the closing process has a high level of variability due to the number of stakeholders involved and the fact that neither documents nor practices are uniform across transactions; this variability often leads to increased confusion and errors.

The CFPB's long-term vision for the closing process is *an empowered, knowledgeable homebuyer experiencing a more efficient, consumer-friendly process*. Through its initial research and outreach, the CFPB has identified two potential solutions that could contribute to this vision and address key challenges and frustrations for consumers and industry:

- **Electronic closing (eClosing)** has the potential to address challenges by shifting the closing experience toward a more paperless process and by facilitating other consumer-friendly improvements. For the purposes of this report, the term "eClosing" refers to a mortgage closing that relies on technology for stakeholders to review and/or sign the documentation electronically. An eClosing may be a fully paperless process or a process that relies partly on paper and partly on technology.

- **Reduction and simplification** of the closing package to decrease the number and complexity of documents and to enhance how they are presented to consumers is a second potential solution.[2] The CFPB is interested in working collaboratively with government and industry partners to encourage the use of documents that are more streamlined and consumer-friendly. However, the CFPB recognizes that other stakeholders own or regulate the majority of the closing documents. The volume and complexity of the documents and actors involved create high barriers that limit opportunities for direct CFPB action. Additionally, the need for action at multiple levels of government would likely take considerable time to bear fruit. As a result, the Bureau will not focus its efforts on this solution over the next year.

The first solution, moving mortgage closings to an electronic format, will not, in and of itself, resolve all the challenges associated with the closing process. But the Bureau believes that eClosings, coupled with the Bureau's vision for additional consumer-friendly features within the eClosing process, can reduce complexity and anxiety and facilitate improvements that could greatly alleviate consumer challenges. For example, eClosing solutions could use technology to include new content, such as embedded educational tools, or improve the process by facilitating earlier delivery of documents. Additionally, eClosing may eliminate process steps and reduce errors in manual processes, which could increase overall efficiencies and reduce costs for consumers, industry, or both. As industry continues to embrace more technology and paperless processes, the CFPB wants to understand how these technologies work and how they could

[2] Streamlining of documents should always consider the impact on the consumer. In some cases, removing or changing a document that informs or protects the consumer could add harm and counteract the CFPB's vision for this project.

impact the consumer. *For these reasons, this report will focus primarily on the potential for eClosings to improve the closing process for all parties involved, with a focus on consumers.*

Over the next year, the CFPB will conduct additional outreach and research to understand how eClosing opportunities can improve the closing experience for consumers. As a first step, the Bureau will seek out innovative technological solutions in the market and work with industry to design pilots around these solutions. The Bureau has three core objectives for its pilot program:

- The CFPB will collect data to examine the potential benefits and risks of current eClosing solutions and potential new functionalities aimed at helping the consumer play a more active role in the closing process.
- The CFPB hopes to highlight successful solutions in the marketplace to gain a better understanding of how these actors have overcome barriers to adoption and to demonstrate how viable solutions could be adopted more broadly.
- The CFPB hopes that the pilot will enhance industry dialogue around eClosing, bringing stakeholders together to tackle barriers to adoption, dispel myths, and foster greater collaboration to improve the closing process.

The purpose of this report is to share the CFPB's preliminary research on the current closing process, to lay out a plan for further exploration of eClosing, and to begin the conversation among key stakeholders on the benefits, opportunities, and risks of increased eClosing adoption. The first portion reviews the Bureau's research on the closing process; the focused discussion of eClosing as a potential solution begins in Chapter 6.

2. Approach and methodology

2.1 Background and context

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[3] required that the CFPB publish a single, integrated disclosure for mortgage loan transactions that combines the documents required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).[4] In response, the CFPB launched the "Know Before You Owe" project to design the prototype integrated disclosures. For two years, the Bureau conducted extensive quantitative and qualitative testing to produce disclosures that present the relevant mortgage loan information in plain language, in a format that is easy to follow, and with the costs and risks of the loan made clear. In November 2013, the CFPB released the Loan Estimate and Closing Disclosure forms, which will allow the consumer to better compare the final terms and costs of the loan to the terms and costs he or she received in the estimate. The new changes will also help to highlight the most important information, warn the consumer of

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[3] Pub. L. 111-203, 124 Stat. 1376-2223 (2010).)

[4] Dodd-Frank Act section 1032(f); 12 U.S.C. 5532(f); 15 U.S.C. 1604(b); 12 U.S.C. 2603(a).

The Congressional mandate to combine these forms to simplify the mortgage process is not new. In 1996, the Economic Growth and Regulatory Paperwork Reduction Act required the Federal Reserve Board (Board) and HUD to investigate combining and improving the disclosures. Unfortunately, the two agencies determined that impactful changes were not possible without legislative changes, which they presented to Congress in the 1998 Board-HUD Joint Report. By 2009, the Board agreed in a proposed rule on closed-end mortgages to work directly with HUD toward integration, but efforts were interrupted by the financial crisis and passage of the Dodd-Frank Act. *See also* 78 FR 79730, 79738 (December 31, 2013).

dangerous products, and limit the types of costs that can increase from the original estimate.[5] These disclosures will take effect in August 2015.

As part of its regulatory implementation efforts, the CFPB has also decided to take a broader look at the mortgage process. Improving the closing process will directly serve the CFPB's mission of ensuring that markets are fair, transparent, and competitive and that consumers receive timely information in order to make informed decisions. This current phase of the "Know Before You Owe" project involves engaging a small subset of relevant stakeholders in a pilot program with the goals of evaluating the impact of current solutions and helping to spur innovations that can further improve the closing process for consumers.

2.2 Approach

The CFPB followed a three-step approach to analyze potential improvements to the mortgage closing process:

1. Identify obstacles for consumers and industry stakeholders
2. Identify feasible, impactful solutions to address these obstacles
3. Determine how the CFPB can accelerate implementation of consumer-friendly solutions

Identify obstacles for consumers and industry stakeholders: The CFPB began by building a baseline understanding of the closing process as it stands today, including typical steps in the process, the stakeholders, and the documents. Then the CFPB identified obstacles and key challenges in the process for two groups: consumers and industry stakeholders. These obstacles were linked to the content, process, and technology involved in the closing process.

Identify feasible, impactful solutions to address these obstacles: The Bureau used a hypothesis-driven approach that focused on direct interaction with consumers and industry through interviews and through eliciting comment letters. The CFPB used this research to

[5] 78 FR 79730 (December 31, 2013). Disclosures available at: http://www.consumerfinance.gov/knowbeforeyouowe/#disclosure.

identify potential solutions to the aforementioned challenges and evaluated this list of potential solutions for feasibility and impact.

Determine how the CFPB can accelerate implementation of consumer-friendly solutions: Finally, the Bureau evaluated how the CFPB can play a role in accelerating adoption of consumer-friendly solutions. The CFPB believes that it can act as a leader by launching a pilot program to gather additional insights and by convening industry stakeholders to collaborate on voluntary improvements to the closing process.

2.3 Data sources and methodology

The analysis relied on seven main data sources, described below:

- **Literature review:** The CFPB reviewed existing literature to understand the regulations impacting the package of closing documents, the history of these documents over time, and the general process followed by consumers.
- **Analysis of closing packages[6]:** The CFPB reviewed 10 closing packages, roughly representative of the market, provided by lenders and settlement agents and evaluated each document based on purpose, length, and relative clarity for consumers. Additionally, the Bureau compared the closing packages to understand the differences in the loans that drove variations in the documents included in the packages.
- **Review of consumer complaints[7]:** The CFPB reviewed approximately 3,000 consumer complaints, analyzing a subset to build and refine hypotheses about key obstacles in the closing process identified by consumers.

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[6] Example packages include a conventional fixed purchase loan from North Dakota, a conventional fixed purchase loan from Maryland, a conventional fixed purchase co-op stock trust loan from New Jersey, an FHA fixed refinance condo trust loan from New York, and a conventional ARM refinance co-op trust co-borrower loan from New York. These five packages represent four different lenders.

[7] CFPB collected complaints in CFPB database on settlement process from 7/26/11 (onboard date) to 6/30/13 (n=2995); limited its observation to complaints with verified customer relationship (n=2466); limited its observation to a random ~10% sample (n=254); and dynamically created 14 categories for complaints.

- **Preliminary industry interviews**[8]**:** The CFPB completed more than 20 interviews with different industry stakeholders. These interviews captured industry concerns and challenges, views on potential solutions, and potential barriers to adoption of eClosing solutions.
- **Targeted interviews:** After the CFPB identified potential solutions and barriers to adoption of eClosing solutions, it collected additional information from consumers and stakeholders to further test these hypotheses. The Bureau conducted in-depth interviews with stakeholders, including nine consumers that had completed a standard paper closing, nine consumers who had experienced electronic closing, and over 20 other professionals involved in the closing process (e.g., settlement agents, realtors).
- **Request for Information (RFI)**[9]**:** The CFPB published an RFI in the Federal Register, open for 35 days, from which it collected consumer and industry comments on obstacles in the current process and potential solutions to drive improvements, including those leveraging technology. The Bureau received ar0und 450 public comments from a broad range of stakeholders, including consumers, lenders, settlement agents, notaries, attorneys, industry trade groups, consumer advocates, technology providers and others. These comments were critical to enhancing the CFPB's understanding of the key issues around the closing process.
- **Demonstrations with technology companies:** The CFPB held discussions and product demonstrations with six lenders or technology companies that are spurring innovation of eClosing solutions and paperless closing processes.

Leveraging these data sources, the CFPB narrowed down a list of potential solutions that were both feasible and potentially able to impact the identified obstacles. The Bureau determined feasibility by asking stakeholders about key barriers to implementing a solution (e.g., legal,

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[8] Interviews included mortgage lenders, technology vendors, settlement closing agents, warehouse lenders, investors, government agencies, fair lending, civil rights, and consumer and community advocates, housing finance professionals, housing attorneys, brokers and services providers in the residential real estate industry, trade associations for bankers, real estate, and settlement closing agents. The number of interviews was limited by resource and legal constraints.

[9] CFPB collected responses that were sent electronically or mailed into the RFI from 1/3/14 to 2/7/14 (n=449) and created 36 discrete buckets of challenges and allocated all challenges mentioned by respondents (n=1480). It catalogued consequences based on 5 categories (stress, time pressure, confusion, cost delays) and recorded any suggested solutions.

coordination, and operational barriers) and evaluating the size and scope of these barriers. In parallel, we assessed the potential impact of solutions by considering the percentage of consumers and industry stakeholders that could be affected by the change and the time needed to realize change (i.e., long-term vs. short-term impact). As the Bureau narrowed down the solutions, it continued to conduct additional consumer and industry interviews to further refine its hypotheses and findings.

This paper serves as a preliminary assessment[10] of the CFPB's findings for the purpose of starting a conversation around opportunities to improve the closing process. The data sources reviewed provided sufficient information and public feedback to identify potential solutions and map out next steps for the CFPB. Going forward, the CFPB will conduct further research through a pilot program to *assess* potential solutions that could spur progress toward its vision for an efficient, consumer-friendly closing process and an empowered, knowledgeable homebuyer at the closing table.[11]

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[10] The data collected from the RFI represents a limited sample of the full market and may be more likely to include negatively-charged responses.

[11] In this paper, the term "closing table" refers to the meeting attended by the borrowing consumer to sign documentation to close the mortgage. The other parties at this meeting (e.g., seller, attorney) will vary by state. Some states require that an attorney is present at the closing. In other states, there are separate seller and borrower meetings, both attended by an escrow officer.

3. Closings today: a process with many forms, regulations, and stakeholders

For consumers, mortgages are often the largest financial commitments that they will make in their lifetime. In September 2013, consumers who closed conventional loans had an average housing-related debt-to-income (DTI) ratio of 23 percent, indicating that about one-fourth of their future income would be needed to pay off principal, interest, and other mortgage-related expenses.[12] Mortgages also have a large impact on the U.S. economy – a fact underscored by the recent economic crisis when the collapse of the housing bubble sparked the most severe recession since the Great Depression.

The closing process is the last step of the mortgage origination cycle, as shown below.[13] Most of the consumer's direct interaction with the process happens during application and again at closing. The closing is particularly important for the consumer because it (1) involves the final documents requiring signature and (2) is the point of binding legal commitment. Closing presents the last opportunity to educate the consumer about the obligations that he or she will agree to as part of the mortgage.

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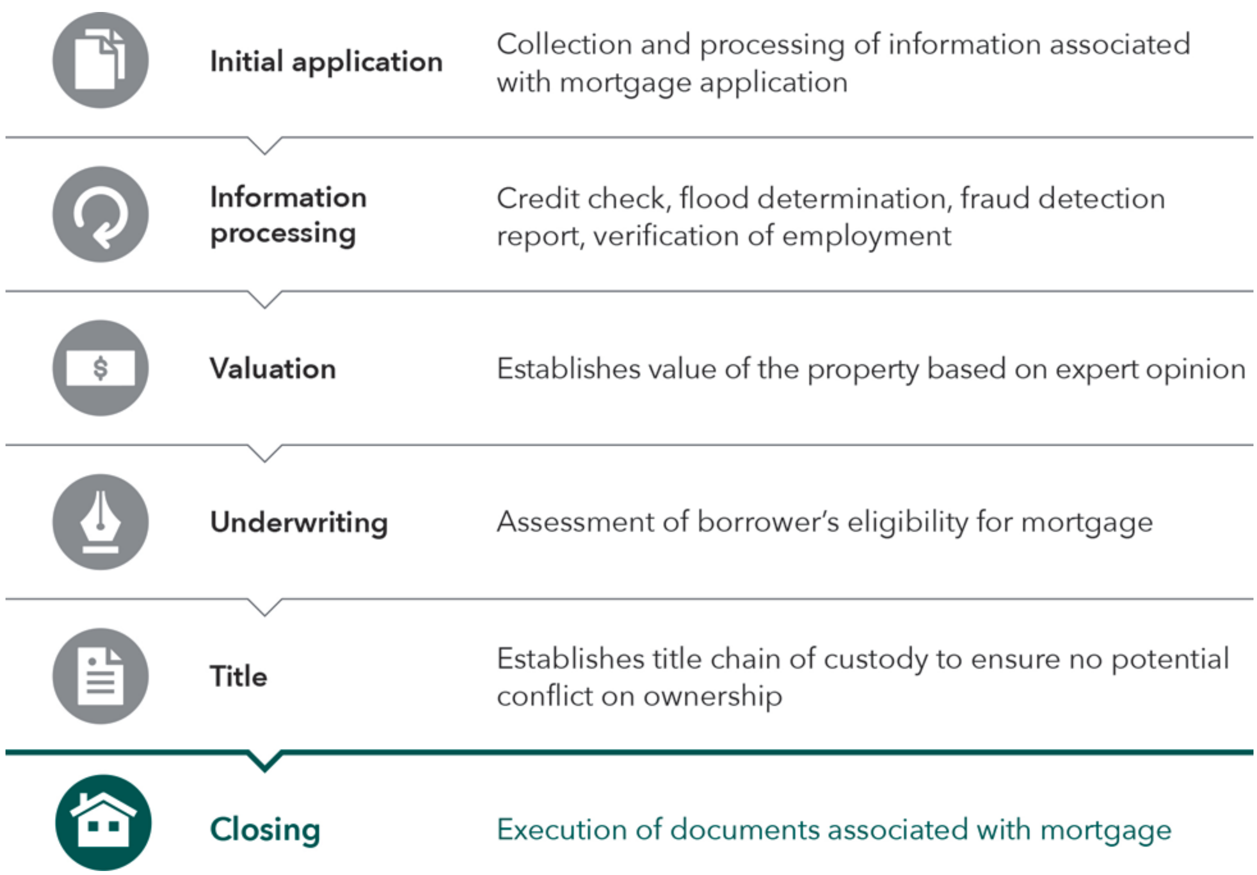
[12] Ellie Mae (2013, September). Origination Insight Report, available at http://www.elliemae.com/origination-insight-reports/origination-insight-report-september-2013/#?page=4

[13] The graphic shows a linear process for the steps of the closing process. In some cases, the process may be more circular and/or repeat steps, such as if there are errors or simultaneous processing by two actors.

FIGURE 1: ORIGINATION PROCESS



The closing process is particularly complex due to the number of stakeholders involved. In addition to the borrower and the seller (in a purchase transaction), other key stakeholders during the closing include the lender, the settlement agent, and the realtor. Each of these stakeholders has specific responsibilities during the process, which vary by transaction and state; but some may also play other informal roles, such as advisors to the borrower. Additionally government agencies, investors, mortgage insurers, warehouse lenders, document preparation companies and technology vendors, among others, can influence the closing documents and overall process.

3.1 Documents during the closing process

The closing process is not only complex because of the number of players involved; complexity also stems from the number and variety of documents. The Bureau has sought to understand what drives the size of the closing package. After analyzing 10 closing packages across lenders, product offerings and geographies, and interviewing stakeholders, the CFPB determined that the documents in the closing package fall into four categories:

1. **Federally-mandated documents:** documents to fulfill federal requirements, generally for the purpose of collecting information and/or protecting the consumer (e.g., Truth in Lending (TIL) Disclosure or HUD-1)
2. **State/local government-mandated documents:** documents to fulfill state and local government requirements, generally for the purpose of collecting information and/or protecting the consumer (e.g., Septic System Disclosure, Massachusetts)
3. **Contractual documents:** core documents forming the legal contract between the lender and the consumer (e.g., Note)
4. **Lender documents:** documents added by the lender to manage risk (e.g., Occupancy Affidavit)

The number of documents in each of the above categories will vary between consumers' closing packages. Sample closing packages reviewed by the CFPB ranged from 25 forms (about 40 pages total) to 50 forms (more than 100 pages total). The Bureau found that the documents in a closing package act as a complex set of alternating pieces, contingent on many variables associated with the mortgage transaction. For example, one difference between purchase and refinance transactions is that a Notice of Right to Cancel is generally only included in refinance loans according to TILA (Regulation Z).[14] The table below includes a non-exhaustive list of the key differentiators that determine which documents are in a particular closing package, including loan, property, borrower, and lender attributes.

[14] 12 C.F.R. § 1026.23

FIGURE 2: DRIVERS OF DOCUMENT VARIATION

Category	Variable (not exhaustive)
Loan attributes	▪ Purchase or refinance ▪ Conventional, Federal Housing Administration (FHA), or Department of Veterans' Affairs (VA) ▪ Fixed rate or ARM
Property attributes	▪ Property state (e.g., California) ▪ Property type (e.g., co-op, condo) ▪ Primary residence vs. non-owner-occupied
Borrower attributes	▪ Presence of a co-borrower ▪ First time home buyer ▪ Trust
Lender	▪ National or state-chartered ▪ Discretionary forms

The CFPB's research indicated that two of the largest contributors to the variability of forms, based on the number of potential additional forms and percentage of mortgages affected, are (1) the state in which the property is located and (2) Federal Housing Administration (FHA) or Department of Veterans' Affairs (VA) loans. Property location is an important variable because about 95 percent of mortgages are originated in states that require additional state-mandated documentation, according to the database of one top lender. FHA and VA loans are also a key driver of variability because different versions of forms are sometimes required for conventional, FHA, and VA loans. The FHA and VA programs accounted for roughly 15 percent and seven percent of mortgage loans, respectively, in 2012.[15]

[15] Home Mortgage Disclosure Act (HMDA) 2012 via CFPB data tool, available at: http://www.consumerfinance.gov/hmda/; only includes data for first-lien, owner-occupied, 1-4 family homes (including manufactured housing).

4. Reported challenges and frustrations: consumers and industry are both dissatisfied with current closing process

To understand the challenges in the current closing process, the CFPB collected comments and feedback from consumers and industry stakeholders through three sources[16]:

1. Responses to the CFPB's public request for information (RFI) through the Federal Register

2. Review of consumer complaints

3. Interviews with consumers and industry stakeholders (e.g., lenders, settlement agents)

Based on these data sources, the Bureau focused on identifying the types of challenges that may lead to negative experiences or outcomes for consumers. In general, the CFPB identified five direct outcomes: confusion, stress, time pressure, cost, and delays.[17] The Bureau's research indicated a high degree of consensus among consumers and industry in their beliefs about the

[16] These data sources provided sufficient information to confidently form and test hypotheses, but they are not a representative sample to extrapolate findings to the entire market.

[17] In general, there is some overlap between the outcomes for this analysis. Confusion represents a lack of understanding of the document content and terms of the contract. Stress represents general concern about agreeing to a contract that the consumer is unable to pay or does not understand. Time pressure represents the feeling that the consumer cannot stop to digest the information and ask questions or that the consumer will not successfully complete the transaction by a certain deadline.

key challenges that drive these outcomes.[18] The top issues cited by these groups include the following:

Timing of document delivery

The timing of document delivery was the most commonly cited challenge in the RFI responses, appearing in **43 percent** of comments. Specifically, 31 percent of consumers, 51 percent of notaries, and 58 percent of settlement agents that responded to the RFI mentioned this challenge. Before closing, each document passes through multiple stakeholders. A common issue reported by stakeholders was that the previous party at each step of the process sometimes delivered documents behind schedule. Delayed document delivery can create a ripple effect through the process that can push back each subsequent step. Furthermore, forcing each party to rush through the documents to send them to the next party in line can lead to errors and stress.

Many documents do not reach the consumer until the closing meeting. With close to 100 pages to review and sign during a meeting that is typically no longer than an hour, consumers find it difficult, if not impossible, to read and digest all of the documents. For this reason, and others, **every** consumer during the targeted interviews confirmed that they would prefer to receive the documents at least two days prior to closing. In particular, consumers wanted to review documents to see if the fees and rates on the HUD-1 received at closing match the quotes provided in their Good Faith Estimate. In fact, 27 percent of RFI comments from consumers mentioned concerns about surprises in costs at the closing table. This challenge was the second most frequently cited by consumers in the RFI responses and a common topic during the consumer interviews.[19] Even if consumers encountered discrepancies that result in unease at the closing table, they often felt pressured to sign documents during the allotted time in order to avoid risking delays or even losing the house. In the words of one borrower, *"since the loan documents showed up at the last minute, I had no choice but to sign, even though the terms were different than was promised."*

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[18] Consumers and industry have unique issues of concern, which are specifically discussed in sections 4.1 and 4.2 below; this section covers a few areas where concerns of consumers and industry overlap.

[19] As mentioned above, these numbers come from a subset of the population. It is important to note that these samples may not necessarily reflect the general population of homebuyers.

The CFPB has already taken actions to help mitigate this frustration for consumers. The new "Know Before You Owe" rule that will go into effect in August 2015 established new disclosure requirements and forms for most closed-end consumer credit transactions secured by real property. Specifically, this rule requires a new Closing Disclosure form that combines the HUD-1 and TIL Disclosure. The design of this form is very similar to the Loan Estimate that the consumer will receive after application, so it will be easier to compare changes in costs prior to closing. Furthermore, the CFPB added new restrictions on which costs can change and by how much, limiting surprises at the closing table. Lastly, the new rule requires that the consumer receive the Closing Disclosure at least three business days before closing, providing more time to review and ask questions. The CFPB hopes that these changes in the regulation will incentivize earlier delivery of most, or all, of the closing package to further empower consumers.

Errors in documents

Stakeholders also noted the existence of errors in the closing documentation, which can lead to additional delays. This frustration was the fourth most commonly mentioned challenge in the RFI response, cited by 24 percent of consumers, 31 percent of settlement agents, and 42 percent of notaries. Even a small error in the paperwork can result in long delays. One document generation provider[20] explained that the most common errors, such as a misspelled name or omitted spouse, require closing agents to send back and correct the entire closing package. Consumers and industry stakeholders were particularly frustrated if these errors occur at the closing table when all parties have reserved the meeting time and expect to complete the transaction. One consumer stated that, "*even though we had repeatedly noted during the paperflow process that one of our last names was spelled incorrectly, the final documents came to us with a still-incorrect, albeit differently incorrect, spelling.*" Stakeholders expressed a general concern that additional errors directly result in delays, which may raise costs for all parties.

[20] Document generation providers are vendors that provide a package of documents to lenders and/or settlement agents for each individual mortgage. These providers generally have a library of standard documents for each state and can add specific custom documents for individual clients.

Large number of documents

Another frequently cited challenge was the large number of documents included in the closing package. In the RFI responses, 33 percent of all stakeholders stated this issue, including 18 percent of consumers, 41 percent of settlement agents, and 22 percent of notaries. One consumer interviewee explained, "*I would describe the process as tedious and kind of stressful. I was just trying to figure out what it is I was signing and slow the [settlement agent] down a little to explain it sufficiently. At the same time though, you also get tired and sick of it, so you want to fly through it too.*"

Additionally, in both the interviews and the comments, consumers said that they find the sheer size of the closing package overwhelming. One homebuyer simply said, *"It felt like you're signing your life away."* It is important to remember that when consumers come to the closing table, they are at the end of a long, stressful mortgage journey. By this point, they have already had to go through pre-approval, application, and underwriting phases, which all require consumers to provide and review a large amount of documents. By closing, some consumers claimed to be drained before they sat down at the table. According to one interviewee, "*By the time people close, they can't wait to get through it.*" Even those who started out reading all the documents said that they were tired or impatient by the end and stopped engaging.

Industry participants were also sensitive to this frustration because they deal with multiple mortgages every day. They reported that unnecessary duplication was one driver of document proliferation. For example, one settlement agent explained that, *"there are far too many redundant papers and it is overwhelming for most borrowers."* Additionally, industry stressed that the large number of documents may also cause a higher likelihood of errors.

4.1 Consumer-specific challenges and frustrations

In addition to these general challenges, certain frustrations are uniquely relevant to consumers. Consumers were particularly concerned about understanding mortgage terms and having enough information to enter into a large financial commitment with confidence. Therefore, key consumer challenges focused on content comprehension, including the following:

Documents are difficult to understand

Consumers frequently argued that the documents in the closing package were difficult to understand, making it hard to focus on the most pertinent information. This issue came up in a majority of the interviews with consumers, and 38 percent of consumer RFI responses mentioned confusing documents. Consumers stated that many documents seem designed for lawyers and not the average borrower. In particular, consumers identified the Note, security instrument, TIL Disclosure and HUD-1 as documents that are heavy with "legal jargon" or confusing terms.[21] This is critical to highlight because many of the most important borrower commitments and requirements are outlined in these documents. In the words of one consumer, *"the print is font-size 'flyspeck' and the language is boilerplate--not necessarily relevant to the closing at hand."* In interviews, many consumers said that they did not read most of the closing documents at the closing table. Even those who said they started off reading the documents confessed that they stopped reading by the end of the stack. They said, "*Whatever they were putting in front of me and explaining, I just signed*." Industry professionals shared these sentiments. One industry professional said, "*I feel like most people don't read [the documents]; they either lean on their attorney or don't have an attorney."*

The CFPB conducted extensive consumer research to design the new integrated Closing Disclosure in the "Know Before You Owe" rule with a consumer-friendly format, but many other forms in the closing package are still difficult for consumers to understand. This lack of understanding results in confusion and stress for the borrower at the closing and potentially creates future default risk if the borrower is unable to meet the agreed-to obligations.

Lack of available education and resources

In addition to the complexity of the documents, consumers reported that sufficient resources were not available to provide explanations or answer clarifying questions. Twenty-seven percent of all RFI respondents mentioned that no one was available to explain the process or content to them, and 18 percent noted that key participants (e.g., loan officers) were difficult to reach throughout the process. Consumers commented that they felt a power imbalance at closing and

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[21] As mentioned above, CFPB's recently issued rule integrating disclosure requirements under TILA and RESPA, which applies to most closed-end consumer credit transactions secured by real property, will take effect on August 1, 2015. It will replace current federal disclosure forms with two new forms: the Loan Estimate, given three business days after application, and the Closing Disclosure, given three business days before closing.

recognized that they lacked relevant knowledge. One consumer described an experience: "*[He] would explain, but not with much interest or effort. Sometimes when I asked for an explanation of a form, [he] would blow through it. I was getting impatient.*" The lack of explanation or education can exacerbate the consumer's feeling of stress given the importance and magnitude of a mortgage transaction. Even if they were stressed at the closing table, many consumers stated that they still felt pressured to sign the documents. Consumers described feeling that there was no advocate at the table to listen to their concerns and fight for their position. One homebuyer explained that, *"They just shoved the paperwork in my face...It was just me against them. I just took it on faith."*

4.2 Industry-specific challenges and frustrations

Similar to consumers, each group of industry stakeholders (e.g., lenders, settlement agents, notaries) reported certain challenges that create unique frustrations for them during the closing process. The list varies for each stakeholder, but the challenges most frequently cited in industry interviews and the RFI responses included:

Lack of standardization

While consumers likely only need to read and understand one closing package, industry stakeholders, including lenders, settlement agents, and notaries, need to be familiar with a large variety of documents. Because standardization of documents in the closing package is rare, documents will vary based on the borrower, loan, property, and lender attributes. For example, a settlement agent working with multiple lenders or completing transactions in multiple states deals with an exponentially larger set of documents, few of which are standardized. Managing thousands of different documents increases cost and effort for these stakeholders, which can lead to higher closing costs and delays for the consumer. One interviewee explained that, *"the reality is that settlement is so detailed. [It has] so many players with different levels of understanding and expectations that the chances of nothing going wrong is extremely low."*

Perceived legal risk

In interviews with the CFPB, lenders consistently mentioned concerns with perceived legal risk throughout the mortgage process. Since the financial crisis and its aftermath, lenders' risk sensitivities have been heightened. As a result, many lenders include supplemental forms in the closing package to protect themselves during foreclosure proceedings and ensure that they are in compliance with federal and state regulations. Examples of additional lender forms include a separate occupancy affidavit that repeats the language in the security instrument or a fee itemization addendum to the HUD-1 that presents the closing costs in a different format. In some cases, lenders' risk management processes have prevented them from streamlining closing packages. One lender explained that it tried to add a consumer-friendly summary at the front of its closing package, but the *"legal department was completely against it"* – they were afraid to supplement the exact forms suggested in the regulations.

5. Our long-term vision: an empowered, knowledgeable homebuyer experiencing a more efficient, consumer-friendly process

Based on a preliminary review of the current closing process, the CFPB believes that opportunities exist to improve the current process and address the obstacles felt by both consumers and industry participants. The Bureau's long-term vision is for an efficient, consumer-friendly process with a more informed homebuyer at the closing table.

To evaluate any proposed changes to the closing process, the CFPB devised a set of defining criteria. Successful solutions should:

- Improve consumer understanding of key information at closing
- Empower consumers to ask questions and play an active role in the closing
- Encourage reduction of the size or complexity of the closing package, where appropriate
- Reduce cost and/or burden for both industry stakeholders and consumers
- Increase the efficiency and convenience of closing for all stakeholders while still maintaining the "ceremony" of the event

Equally important, the Bureau created guidelines for what a successful solution should **not** do. Going forward, the CFPB will carefully consider these limits to ensure that solutions do not create "change for the sake of change" or result in harmful, unintended consequences. The Bureau believes that solutions should **not**:

- Remove language or documents that help the consumer understand key information
- Implement technologies that eliminate opportunities for consumers to ask questions/gain information or remove the "ceremony" of the closing process that indicates the importance of the transaction (i.e., a *faster* closing or a *remote* closing[22] is not necessarily a *better* closing)
- Implement technologies without offering a "hard copy" alternative for consumers who are not comfortable with an electronic process or do not have access to necessary technology
- Add complexity, confusion, or cost to other stages of the origination process (e.g., remove purposefully identical language across application and closing documents)

Through its interviews and research, the CFPB identified seven potential actions to address key obstacles in the closing process, which it evaluated using the above criteria. The potential actions include:

1. Simplify and streamline documents
2. Reduce number of documents
3. Standardize forms
4. Digitize the process
5. Alter order/presentation of documents
6. Improve process and timing
7. Add educational tools

To assess these potential actions, the CFPB considered its ability to meet most, if not all, of the criteria for successful solutions. As a result of this exercise, the Bureau grouped these actions

[22] "Remote" closing refers to a mortgage closing in which the borrower does not physically attend a meeting to review and sign documentation. In some cases today, the borrower attends the meeting via audio and/or video conference.

into two broader solutions. First, it combined (1), (2), and (3) into an overarching solution of **reduction/simplification of the closing package**. The Bureau focused the second solution on (4), which it defined as **leveraging technology-driven eClosing solutions**. The CFPB expanded this second solution to include the remaining actions, (5), (6), and (7) because it believes these actions could be successfully incorporated into eClosing solutions. For example, altering the presentation by grouping documents (e.g., all lender discretionary forms at end), facilitating earlier delivery of documents to consumers, and providing interactive educational tools are all potential functionalities of an eClosing solution.

The following sections provide a further evaluation of the feasibility and impact of these two combined potential solutions.

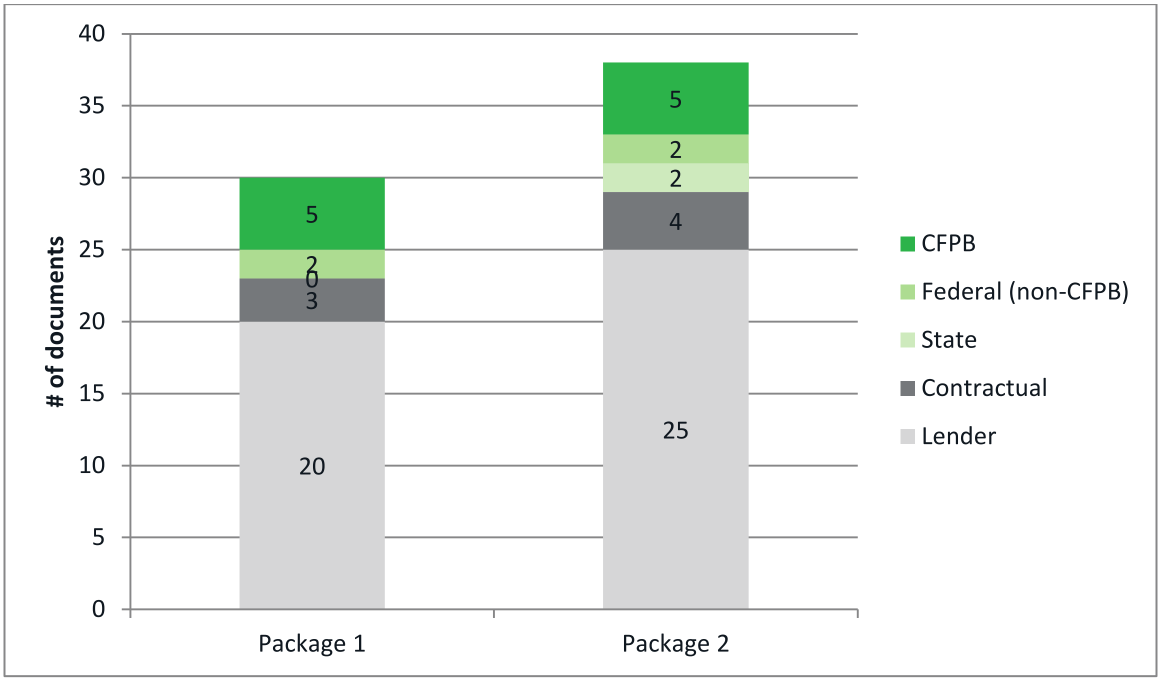
5.1 Reduction / simplification of the closing package

Reducing or simplifying the package of documents associated with closing a mortgage could ease the information overload that consumers face at closing. To be clear, the CFPB believes that removal of a document simply to reduce the number of pages may not be a good solution if the document informs or protects the consumer. However, removal of duplicative or confusing information is likely to have a beneficial impact on consumer stress and confusion during closing.

As discussed previously, the CFPB's preliminary research included an in-depth review of 10 closing packages in order to understand the key drivers of the number and complexity of documents. The graph below shows examples of two closing packages that the CFPB analyzed during its research[23]:

[23] Package 1 is a conventional fixed purchase loan from North Dakota. Package 2 is a conventional ARM refinance co-op trust co-borrower loan from New York. Both packages are from the same top 5 lender. Document counts do not include additional copies of identical documents or additional copies for separate borrowers.

FIGURE 3: DOCUMENTS CONTROLLED BY EACH ACTOR IN SAMPLE CLOSING PACKAGES



The Bureau also spoke with stakeholders about the obstacles to reduction and simplification. This research, paired with a subsequent exercise of evaluating barriers and potential actions, netted key insights about the potential impact and feasibility of this solution.

First, it is clear that the CFPB has direct authority over only a small portion of the documents found within a closing package. Examples of documents under the CFPB's authority in the above graphic include the HUD-1 and TIL Disclosure (which will be combined into the new Closing Disclosure), the Notice of Right to Cancel, and the Initial Escrow Account Disclosure. A substantial majority of the remaining forms are legally controlled or regulated by other entities and require both willingness and coordination of these actors to remove, edit, or standardize the forms.

For documents outside the CFPB's direct authority, there may be other challenges to reduction and simplification that depend on the document's owner. For example, changing federal documents may be challenging if it would require statutory changes (e.g., US Patriot Act form), or if the documents also have non-mortgage uses (e.g., 4506-T IRS form). Attempts at standardization of state-mandated documents are also challenging given the specific needs and geographical differences across states (e.g., homestead laws in Texas). The CFPB's research revealed that lenders generally add documents, as a result of legal risk assessments, to protect themselves during foreclosure proceedings and to ensure the loans are sellable on the secondary market; but practices vary greatly by lender. In one example, a lender required about 100 pages in a closing package for an identical loan (e.g., same loan program and state) that only required 40 pages for another lender. Additionally, the cost of change may deter some lenders from reducing documents. One large lender indicated that any changes to documents require about three months of time and resources, accounting for legal review, departmental approval, and technology implementation.

Finally, the CFPB's research clearly indicated that the market does not have a "typical" closing package. The list of documents that appear in every mortgage, in the same format, is extremely limited. For example, a ubiquitous document like the Note still has varying text depending on the state of origin and mortgage program (e.g., conventional or FHA). One document generation vendor claimed that its mortgage database contained about 5,000 different documents due to all the various combinations of mortgage characteristics and lenders. Therefore, streamlining or simplifying the closing package in a way that positively impacts a large number of consumers will require commitment and cooperation across a large number of stakeholders.

5.2 Leveraging technology-driven eClosing solutions

While conducting research with industry on options to reduce/simplify the closing package of documents, the CFPB encountered a number of examples of how a more paperless process could contribute to the broader goals for closing. To be clear, simply moving the 100-plus pages in a closing package online will not address all of the identified problems. However, electronic solutions could be an important building block toward the Bureau's vision for a process that empowers consumers via education and transparency. A more paperless process could change how and when the consumer receives the documents by providing them electronically for review before the closing, which may reduce anxiety and surprises at the closing table. Additionally, eClosing may provide new opportunities to embed educational tools into the closing process in order to increase understanding and further enable the consumer to play a more active role. The use of technology could also reduce time and burden for industry, which could yield savings for consumers. For all of these reasons, the CFPB will focus efforts over the next year on further investigating eClosings and their potential to improve the closing process. The remaining sections in this report outline more details about these solutions and the next steps for the CFPB.

6. Exploring electronic closings: use and adoption of technology to address obstacles in the closing process

6.1 What is eClosing?

The term "eClosing", or electronic closing, refers to a mortgage closing that relies on technology for stakeholders to view and/or sign documents electronically. This report will refer to eClosing solutions as any solution that shifts closings toward a paperless process by utilizing any or all of the following technology components:

eDocuments

The key difference between a traditional and an electronic closing is the use of electronic documents. Electronic documents can be as simple as a scanned PDF version of the traditional paper documents or as sophisticated as a SMART Doc®.[24] SMART Doc® is a standards-based

[24] SMART Doc® is a registered trademark of MISMO, the Mortgage Standards Maintenance Organization.

document view like PDF, HTML or TIFF that is complemented with specific document level meta-data, tamper-evident seals, audit trails, electronic signature attributes, and easily accessible data. An example of an eDocument is an eNote, which is an electronic version of the Note; it differs slightly from the paper form because it contains additional information and language regulating electronic transfer.[25]

eDelivery

In an eClosing, documents can be electronically delivered by email or by the consumer accessing an online portal within the vendor platform. eDelivery impacts two stages of the closing process. First, documents can be sent electronically to the consumer *prior to closing* for review and acknowledgement of receipt. Second, documents, particularly the eNote and security instrument, can be delivered electronically *after closing* from the settlement agent to downstream stakeholders, including the lender, investor, and county recorder. Interviews conducted by the CFPB indicate that eDelivery is still not widely available for the closing process. However, one limited industry study indicates that eDelivery is more common across the industry during other stages of the mortgage process, including for delivery of disclosures to consumers during the application stage (57 percent of industry survey respondents) and delivery of closing documents from lenders to settlement agents prior to signature at the closing (54 percent).[26]

eSignatures

During an eClosing, the consumer can electronically sign the documents that are traditionally signed by hand with "wet signatures". eSignatures can be collected in multiple ways, such as using a digital signature pad or by clicking to add a computer-generated graphic signature. The

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[25] Both Fannie Mae and Freddie Mac accept eNotes that follow certain criteria outlined in guides to selling electronic mortgages, available at: https://www.Fannie Maemae.com/content/technology_requirements/emortgage-delivery-guide.pdf and http://www.Freddie Macmac.com/singlefamily/elm/pdf/eMortgage_Guide.pdf.

[26] Xerox Mortgage Services (2013, Volume 9). The Path to Paperless: 2013 Industry Barometer on Paperless Mortgages (n=72), available for purchase at: http://www.xerox-xms.com/resource-library/.

Note: limited research and data is available in the market today on the use of electronic processes in mortgages, particularly in the closing process closing agent collects the electronic signature and electronically "attaches" it to each of the forms. The legal framework governing electronic signatures is the Electronic Signatures in Global and National Commerce Act ("ESIGN") and the Uniform Electronic Transaction Act ("UETA"). [27] Additionally, a group of industry leaders created the Standards and Procedures for Electronic Records and Signatures (SPeRS)[28] to articulate guidelines for following ESIGN and UETA.[29]

eClosing platform

In a traditional mortgage, the consumer meets with the settlement agent and other parties at the closing table to complete the transaction by wet signing all of the documents. This in-person meeting to walk through the documents still usually occurs in an electronic closing, but the parties will complete the transaction through an eClosing platform based in either a software program or online, rather than by exchanging paper documents. In this platform, the documents are electronically reviewed and signed at the closing table. In many cases, the consumer can access this electronic platform prior to closing to preview the documents.

eNotarization

On certain closing documents, such as the security instrument, the borrower's signature requires notarization. In a traditional mortgage, a notary will apply his or her seal directly to the paper documents. However, notaries can also apply these seals electronically in certain jurisdictions. Regulations and requirements for eNotarization of electronic documents vary by state. Areas of variability include requirements to earn eNotary certification, the physical location of the notary during the transaction, and how an eNotary affixes the tamper-proof seal to the eDocument.

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[27] UETA was issued in 1999 by the Uniform Law Commission (ULC) and was adopted by 47 states. ESIGN is a federal law enacted in 2000 and codified at 15 U.S.C. §§ 7001-7031. Both UETA and ESIGN provide for creating an electronic record with the equivalent enforceability of a mortgage note.

[28] SPeRS is a technology-neutral set of guidelines and strategies for industry use in designing and implementing systems for electronic transactions under the federal Electronic Signatures in Global and National Commerce Act (ESIGN) and state adoptions of the Uniform Electronic Transactions Act (UETA).

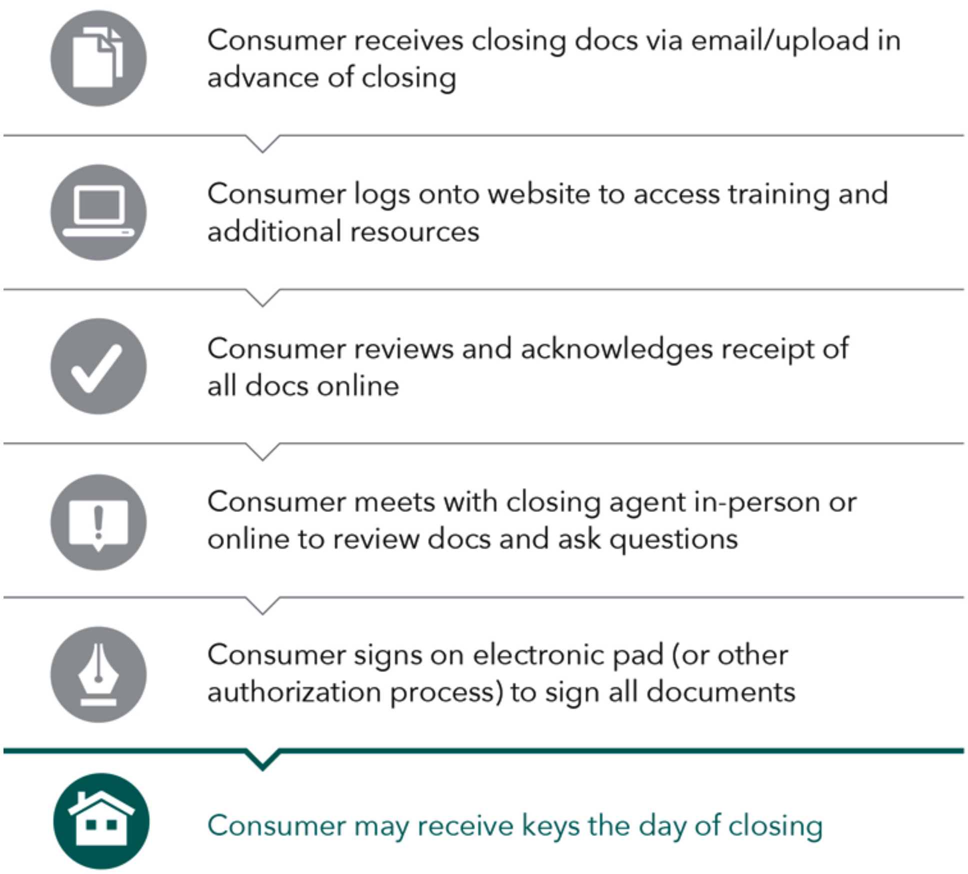
[29] SPeRS guidelines are available for purchase at http://spers.org/spers/SPeRSOrderForm.htm.

eStorage

Most end-to-end solutions utilize a secure eVault to store the documents; this eVault can be accessed by consumers, lenders, investors, and other downstream stakeholders. For example, a lender can register an eNote with Mortgage Electronic Registration Systems (MERS)[30] and store the Note in its eRegistry. Any time an eNote transfers to a different eVault, the movement and ownership is tracked by MERS.

The graphic below depicts an example of a potential end-to-end eClosing process that would include all of these components:

FIGURE 4: EXAMPLE ECLOSING PROCESS



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[30] MERS is a public company that operates a national electronic registry system that tracks the changes in servicing rights and beneficial ownership interests in mortgage loans that are registered on the registry. Additionally, it operates a national database that provides free public access to servicer information for registered home mortgages.

Electronic closing solutions are not a new concept in the mortgage market. Prior to the financial crisis, various players in the mortgage industry started to examine and develop eClosing solutions. A few lenders implemented full eClosing solutions, and some of the country's largest originators started to build internal capabilities. Fannie Mae received its first electronically closed mortgages in 2000, and signs indicated that the market would shift quickly toward paperless processes. In fact, in a 2007 Fannie Mae survey of 169 lenders, 72 percent expected their companies to adopt eSignatures, and 44 percent expected them to adopt a full eClosing solution.[31] Furthermore, in a March 2007 interview, Mark Oliphant, Fannie Mae's director for the single-family mortgage business, stated that Fannie Mae consulted with external industry analysts on the adoption of eClosing processes, and the consensus was that broad adoption was about three to five years away.[32] Despite this strong optimism, adoption slowed when the housing market crashed and industry diverted its energy and resources toward weathering the financial crisis.

In the years since the recovery, the mortgage industry has renewed interest and adoption of eClosing solutions. Therefore, the Bureau wants to fully understand how eClosing can best work for consumers. The following sections include the CFPB's current hypotheses about how eClosing may affect consumers; additional research will be needed to examine these points more fully.

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[31] Fannie Mae (2007, January), *eMortgages*: *Research Findings on the State of Industry Adoption*. From presentation by Fannie Mae to the Mortgage Bankers Association eMortgage Adoption Task Force on January 29, 2007.

[32] Garritano, A. (2007). The Business Value of eMortgages. Mortgage Technology, 14(2).

6.2 What are the potential benefits of eClosing?

6.2.1 Consumers

The CFPB believes that eClosing solutions could contribute toward the long-term vision of improving the closing process and providing specific benefits to consumers. These benefits include the following:

Increased understanding and empowerment

The Bureau's long-term vision is for an educated and empowered consumer who feels in control throughout the mortgage process. eClosing solutions could potentially provide these benefits for consumers in three different ways. First, electronic delivery could increase the flexibility to provide many of the documents to the consumer prior to closing, since there is no time delay to mail documents between stakeholders and the consumer. Early delivery can give the consumer more time to read the documents and consult with family members or professionals, which will empower them to ask questions and play an active role at the closing. Second, electronic documents could provide an opportunity to embed educational tools that highlight key information or link to additional resources (e.g., Ask CFPB) for consumers. Consumers would be able to reference these tools when reviewing the documents both before and during the closing. Third, customers that utilize an eClosing solution are likely to have access to an eVault throughout the life of the loan, allowing for easy document retention without needing to locate a paper copy if they need to refer to the documents.

Increased convenience

Technology could also make the closing process less arduous and more convenient for the consumer. If consumers receive the documents in advance, they can review them at home and on their own schedule. Effectively, eClosing allows consumers several days to do some of the tasks that would otherwise be condensed into an hour-long meeting at the closing table, such as reviewing the documents and asking questions.

eClosings also open the door for remote closings. Remote eClosings may be an attractive option for certain populations who cannot attend physical closings, such as members of the military on deployment. However, there are benefits to an in-person meeting that are missing in a remote closing. For example, by not traveling to an office for a formal meeting, a consumer may miss out on the "ceremony" and/or importance of the transaction and they may be less inclined to play an active role.

Decreased delays and cost

Another benefit of shifting to an electronic process is an increase in consistency and accuracy throughout the closing process. The automation of electronic processes can result in fewer errors and easier detection of discrepancies compared to a manual process. Errors and delays were frequently-cited frustrations expressed in interviews and public comments. These process improvements could reduce the amount of time required to close and decrease the cost of closing for industry participants; these cost savings may be passed on to the consumer in the long-term.

Reduced consumer anxiety

Another advantage of eClosing is that it could transform the closing experience in ways that may lead to less anxiety for consumers. The large stack of complex documents is clearly a source of stress for many people, who indicated that they often do not read part or all of the documents set in front of them but are concerned about what may lurk within the contents. The volume of documents also tends to obscure which items are more crucial to the process and can lead to confusion or oversight amidst all the “fine print.” A less anxiety-inducing closing process could lead to increased understanding and a more positive consumer experience.

6.2.2 Industry participants

In addition to these potential improvements for consumers, the CFPB believes that benefits can also exist for other industry participants (e.g., lenders, settlement agents, notaries). These benefits include the following:

Increased efficiency and decreased cost

The CFPB believes that a more paperless process could generate efficiencies and reduce costs. First, it is easier to send documentation between lenders, investors, and other stakeholders if the forms are already in electronic form before and after they have been signed. Since an electronic process eliminates certain steps, there could be tangible monetary benefits for lenders. One technology vendor estimated during an interview that 30 percent of the loan cost comes from post-closing activities, which could be minimized through automation with an eClosing solution. For example, lenders can eliminate the step of scanning paper documents to send the loan file and can automate some time-consuming quality control checks. Stakeholders can also decrease costs simply by reducing paper. According to a leading title company, an individual mortgage generates on average about 6,000 pieces of paper across all stakeholders from start to finish. The paper and storage costs for this title company amount to $20 to 30 million annually.

Furthermore, lenders that sell to the secondary market may benefit from additional cost savings. Since investors could review eClosing files prior to purchase, the time to fund the loan could decrease, which reduces reliance on warehouse lines of credit.[33] Additionally, lenders have more control and visibility over an electronic process leading up to the closing table. This may allow lenders to switch from a "best efforts" pricing to a "mandatory delivery" pricing structure with investors.[34] In some cases, the lender may pass these potential cost savings onto consumers. One lender who spoke with the CFPB claimed that his company used the reduction in post-closing costs and improved secondary market pricing from eClosing to reduce prices for its customers.

Increased automation

As mentioned above, one of the potential results of increased use of technology in the closing process is increased automation of process and documentation. This can be helpful for industry because it would reduce operational errors and increase data quality compared to a manual system, potentially leading to monetary and legal benefits for the stakeholders involved. For lenders, in particular, it may be easier to explain automated business processes to regulators during exams.

[33] A warehouse line of credit is used by mortgage originators to fund a loan during the time between closing with the borrower and selling the loan to a secondary market investor. The warehouse lender will hold the mortgage note as collateral until the investor completes its review and provides funds to pay off the line of credit. A typical cycle can range from 10-20 days, but is often shorter for eClosings largely due to the speed of sending electronic documents.

[34] With "mandatory delivery" the lender agrees to deliver a certain amount of loans to the investor on a specific date in exchange for a lower price on the loan due to lower interest rate risk. With "best efforts" pricing, the lender has fewer terms to meet for delivery, but also often receives a higher price.

6.3 What are the potential risks of eClosing?

Depending on how it is handled, eClosing may also create additional risks to the consumer during the closing process. Interviews with and comments from consumer advocacy groups raised concerns that providers should address if eClosing is to achieve its potential as a consumer-friendly process. The CFPB will encourage further research to assess these concerns and test potential mitigation strategies.

Decreased time reviewing documents

Although many consumers indicated that they do not read part or all of the documents that are presented to them in a traditional closing, there is a risk that switching to an electronic process could reduce the amount of time consumers spend reading and understanding the closing documents. In a typical eClosing process, the consumer reviews and/or acknowledges receipt of the documents in his or her home in advance of the closing, though the consumer also has the option of waiting to review them at the closing table. It is possible that the consumer will simply "click through” the documents to acknowledge receipt without fully reviewing the material. Most consumers today are accustomed to seeing a lot of information in an electronic format through work or browsing the web, so they may be inclined to skip through documents quickly. This presents a risk to consumer understanding, particularly if the settlement agent does not fully review the documents with the consumer at the closing table.

Consumer consent to electronic process

Some consumer groups have highlighted the potential for additional risk to the consumer from the use of eSignatures. For example, ESIGN requires that a consumer “consent electronically, or confirm his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is subject of the consent."[35] However, a consumer consenting in this manner, in

[35] 15 U.S.C. § 7001(c)(1)(C)(ii).

compliance with ESIGN, could be at risk if he or she loses the ability to electronically access documents after the transaction. For context, the 2011 Census data showed that the "digital divide" is shrinking, but 16 percent of the US population still does not have a computer at home and does not have access to Internet elsewhere.[36] In addition, while mobile options are narrowing the digital divide, the small screen format of mobile devices (i.e., smart phones) may present particular challenges for eClosings. Some consumer groups are concerned that if consumers cannot access their documents and do not otherwise have the terms of their transaction readily available, there could be increased opportunities for unscrupulous lenders to commit fraud and less of an ability for consumers to seek recourse against these lenders.

Document access and security

The impact of eClosing solutions on document access for consumers is two-sided. On the one hand, there are risks to paper storage since consumers can easily misplace or damage paper documents. On the other hand, there is a different set of risks for electronic storage. For example, depending on the format of storage, there is a risk that the consumer's computer may crash or the consumer will forget the necessary identification and password information to access the documents. There is also a risk of that the software necessary to open or access the documents could become outdated throughout the life of the loan. Furthermore, electronic solutions bring risks to document security since consumer information could be hacked. Many of the closing documents contain personally identifiable information, which is why eClosing platforms and eVaults currently in the market go to great lengths to ensure data security and minimize these risks.

6.4 What solutions are available today?

Various eClosing solutions are available in the marketplace today. In some cases, lenders have partnered with settlement agents to design an end-to-end solution. To date, most lenders that

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Note: 15 U.S.C. § 7001(c)(3) states that the “legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).”

[36] Internet use is no longer a yes or no question given the variety of methods of connectivity – there is a spectrum of connectivity. See US Census Bureau (2013, May), Computer and Internet Use in the United States: Population Characteristics (Thom File), available at: http://www.census.gov/prod/2013pubs/p20-569.pdf.

provide eClosing solutions are small and medium-sized originators. However, many different types of lenders have expressed interest in exploring paperless closing solutions. A number of technology vendors have created solutions and are actively marketing them to industry participants with an interest in more paperless processes. MERS reported that 11 technology systems were integrated with their eRegistry as of October 2013.[37]

The CFPB's interviews with eClosing vendors and users reveal three key points of variability among most of the solutions currently used across the market.

- First, solutions vary in the level of access that they provide the consumer prior to closing. Some systems allow the consumer to view the documents before the closing and acknowledge receipt of them at the closing table, while others allow for acknowledgement of documents at home. Additionally, the time between document receipt and the closing table varies by system from one day to about one week.

- Second, eSignatures are applied to the documents in a variety of ways. Some systems utilize a signature pad similar to the technology used at a grocery store, and others rely on a graphic image of the signature or click-to-sign. Depending on the system, the signature can be applied to all documentation with one click or it could need to be applied separately to each document. Most systems today that only require one physical signature still require that the borrower click to accept each document. Generally, when lenders add this requirement, they do so based on their assessment of risk, and to meet the demands of downstream investors.

- Third, different forms of technology can be used to access the closing platform. Some technology vendors present the documents on a generic computer or tablet, while others have a proprietary viewing table designed specifically for the closing experience. Furthermore, the program for the eClosing platform may be based in desktop software or an online site.

In addition to these differences, some lenders may use a fully electronic solution, while others turn to paper documents for a few signatures to avoid certain document-specific barriers. For

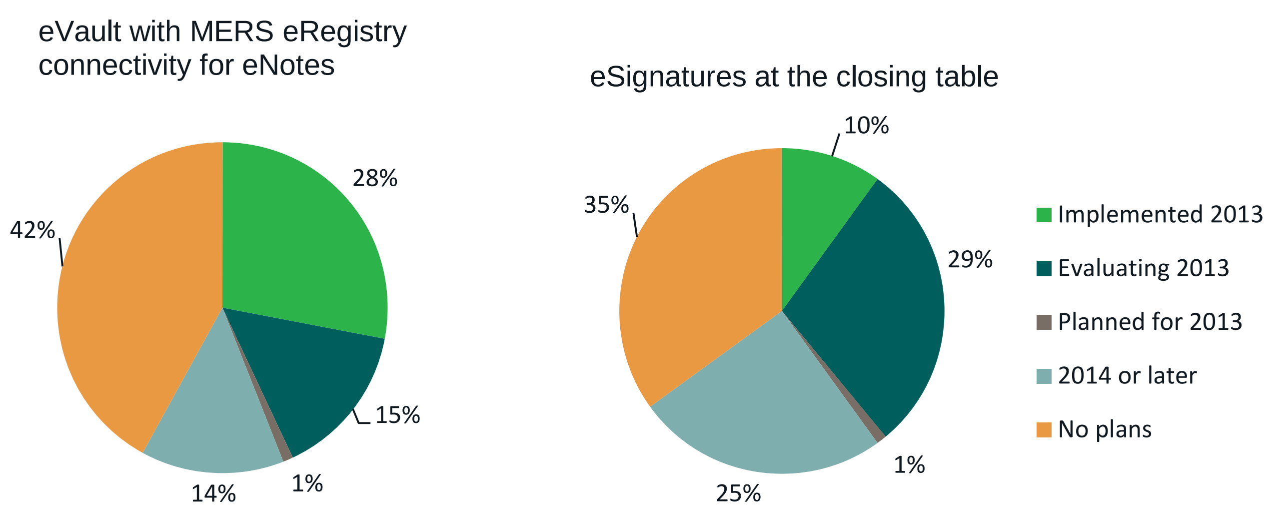
[37] MERS (2013, October). Technology System Providers Integrated with MERS® eRegistry. Available to MERS members at: http://www.mersinc.org/.

example, some lenders use paper documents for the Note and security instrument, but provide the consumer with a paperless eClosing experience for the remainder of the process.

6.5 Who offers eClosing solutions today?

Despite the variety of technologies available, industry adoption of eClosings is still moving at a slow pace. Available data on eClosing adoption is limited, but Xerox conducted a limited study (n=72) in 2013 on the use of paperless mortgages. The results, in the graph below, shows that only 10 percent of mortgage industry employees surveyed worked at institutions that already offer eSignature at the closing table.[38]

FIGURE 5: INDUSTRY ADOPTION OF ECLOSING



While a sizable increase from the seven percent of respondents in the 2012 version of the study, the 10 percent figure underscores the challenges that remain in order to broaden market adoption. Further, the percentage with "no plans" to implement eClosing only dropped from 36

[38] Xerox Mortgage Services (2013, Volume 9)

percent to 35 percent.[39] A larger percentage of respondents (28 percent) work at institutions with an eVault connected to the MERS eRegistry for eNotes – a substantial increase from just 13 percent in the prior year.[40] According to MERS, about 45 lenders currently integrate fully with the eRegistry and can deliver eNotes (including two of the top banks) with about five other lenders publically involved in integration.[41] These numbers have continued to increase, and the Bureau is interested in exploring eClosing further to understand why lenders do and do not choose to adopt eClosing solutions.

[39] Xerox Mortgage Services (Volume 9, 2013)

[40] Xerox Mortgage Services (Volume 9, 2013)

[41] MERS (2013, October). Lenders & Investors Integrated with MERS® eRegistry. Available to MERS members at: http://www.mersinc.org/.

7. eClosing potential barriers to adoption and myths

The previous section described the benefits and risks of eClosing solutions and outlined promising technologies available in the marketplace. However, adoption of eClosing solutions is still fairly limited. During its research, the CFPB spoke with lenders, investors, settlement agents, and other stakeholders about the barriers preventing them from adopting a paperless process. These barriers fall into three categories: legal, coordination, and operational. The following section outlines seven specific barriers that the CFPB believes to be most noteworthy. While not inclusive of all barriers, tackling these hurdles could drive significant progress toward broader adoption of eClosing solutions.

It is important to note that while some of these barriers apply to *all* eClosing solutions, most are only obstacles to what might be considered a "fully paperless" closing in which the consumer electronically signs **all** documents. In fact, several successful eClosing solutions in the market today are "mostly paperless," with the exception being that the consumer signs the Note and/or security instrument by hand – a wet signature. The use of a wet signature on these contractual documents, which constitute a very small portion of the overall closing package, is a successful way to circumvent several of the barriers that are outlined below.

7.1 eClosing barriers to adoption

7.1.1 Legal barriers

Barrier 1: Different state laws and requirements

The first legal barrier to increased adoption of eClosing is the heterogeneity of relevant laws across states. The variety of legal structures creates complexity and confusion, particularly for large lenders and other stakeholders that operate in many states. Key differences include the legal framework that states have adopted around eSignatures. In particular, states have different regulations around electronically enabled notarization and are at varying points of implementation. For example, the commonwealth of Virginia allows the use of a remote notary, but other states expressly restrict this practice. This example represents a small fraction of the variation, which needs to be well understood by stakeholders and built into their internal mortgage processes in order to implement an electronic solution across states.

Barrier 2: Understanding and defensibility of eSignatures

Despite the existence of laws that clearly articulate the legality of electronic signatures, including ESIGN and UETA, the mortgage industry has not fully adopted eSignatures in closing documents for two reasons. First, a gap still exists between the legal framework and its perception or understanding by industry. According to a survey conducted by one industry vendor, some settlement agents still believe that eSignatures are not fully legal in their state. In fact, eSignatures are legal in every state; but some stakeholders may not understand the legal framework surrounding eSignatures. For example, during interviews conducted by the CFPB, some industry stakeholders explained that the legal framework is particularly unclear in the situation in which an electronically signed document is printed for hand delivery.

Second, some downstream stakeholders have indicated that they are concerned about the defensibility of eSignatures in cases when there is uncertainty as to whether the original closing followed proper procedures, such as obtaining consumer consent consistent with applicable legal requirements. These stakeholders do not want the responsibility of monitoring the actions of other parties in the transaction. Some downstream investors and sub-servicers avoid this risk by simply not accepting electronically signed documents. Generally, the concerns of these stakeholders relate only to the two key contractual documents – the Note and the security instrument.

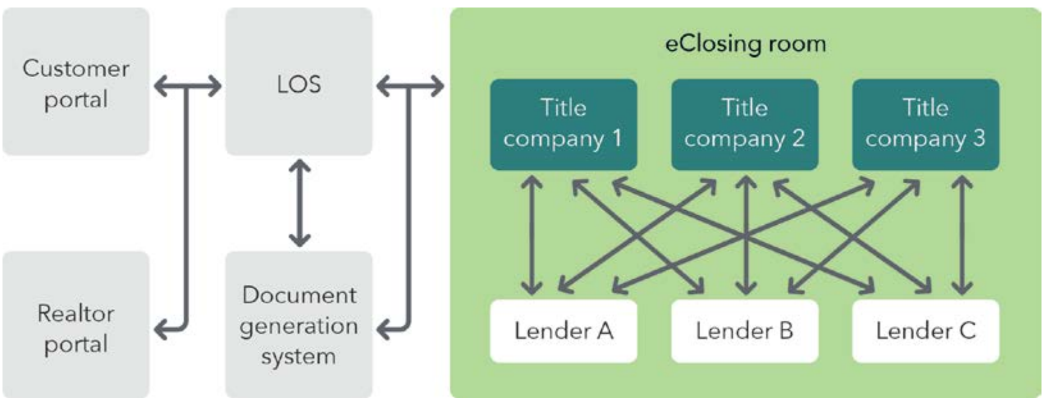
7.1.2 Coordination barriers

Barrier 3: Lack of data standards

The lack of mortgage data standardization across the industry, coupled with the multitude of actors involved in the mortgage closing, results in coordination challenges. To establish an eClosing system, a lender needs to integrate data across various technology platforms including the customer portal, loan origination system (LOS), and document generation system. All of these systems need to communicate and transfer information with an eClosing platform, which acts as a central repository for all closing documents.

The interaction between the lenders and title companies adds another layer of complexity, resulting in a web of relationships between lenders and title companies, as shown in the graphic below. Since the market does not have a clear integration standard, these stakeholders need to build separate integration systems to support each platform, which is both costly and technologically challenging. The organic emergence of a strong first-mover or actions by an industry body, similar to MISMO[42], could successfully establish these standards. Most eClosing lenders today circumvent this barrier by only using eClosing with a certain title company or training multiple title companies to use their platform.

FIGURE 6: INTERACTION OF MORTGAGE TECHNOLOGY SYSTEMS



Barrier 4: Required coordination across many players

The large number of actors that deliver and receive documentation in an electronic closing creates a significant barrier to adoption. All parties need to be both willing and able to handle electronic documentation in order to launch a "fully paperless" closing solution. For example, if a lender can produce, register, and deliver legal eNotes, but its sub-servicer is unable or

[42] The Mortgage Industry Standards Maintenance Organization (MISMO) is a voluntary technology standards development body for the residential and commercial real estate finance industries. It is a wholly owned subsidiary of the Mortgage Bankers Association. The standards allow mortgage stakeholders to exchange real estate finance-related information and eMortgages more securely, efficiently and economically.

unwilling to accept eNotes, the lender cannot use a "fully paperless" process. To date, it has generally been easier for smaller lenders to overcome this barrier since they are more likely to have a smaller network of third-party participants (e.g., fewer title companies or one sub-servicer).

Again, it is important to note that this barrier does not restrict lenders from implementing a "mostly paperless" process. In most paper transactions today, the lender scans the loan file and sends an electronic version to downstream parties. Generally, the only exception is the Note, which the lender mails in a paper format to preserve the wet signature. Therefore, many lenders who do eClosings today avoid this barrier by simply producing paper copies of a few key documents for the borrower to wet-sign after electronically signing the large majority of the closing package.

Barrier 5: Differing standards for GSE requirements

The government-sponsored entities (GSEs), which include Fannie Mae and Freddie Mac, have different requirements for the sale and delivery of electronically-signed mortgages. For example, Freddie Mac will only accept mortgages with a paper security instrument, but Fannie Mae will accept both an eNote and an electronic security instrument. The result of this variation is that some lenders are only able to sell electronically-signed mortgages to *either* Fannie Mae or Freddie Mac. These lenders are less likely to use eClosing solutions since they have fewer options in the secondary market and may be forced unwillingly to keep a mortgage on their books. As evidence, 74 percent of industry employees that responded to a 2013 study claimed that limited acceptance of eNotes on the secondary market limited their plans to implement electronic platforms.[43] Also, each of the GSEs has different requirements for transferring the location and control of eNotes, which is critical to resolve when the authoritative copy of the Note and proof of its current ownership need to be presented in foreclosure court. This dual system leads to confusion and complexity for lenders during foreclosure. But similar to the previous barrier, this obstacle is largely relevant to the Note, so it will not hinder the implementation of a "mostly paperless" eClosing solution in which the consumer signs the Note by hand.

[43] Xerox Mortgage Services (Volume 9, 2013).

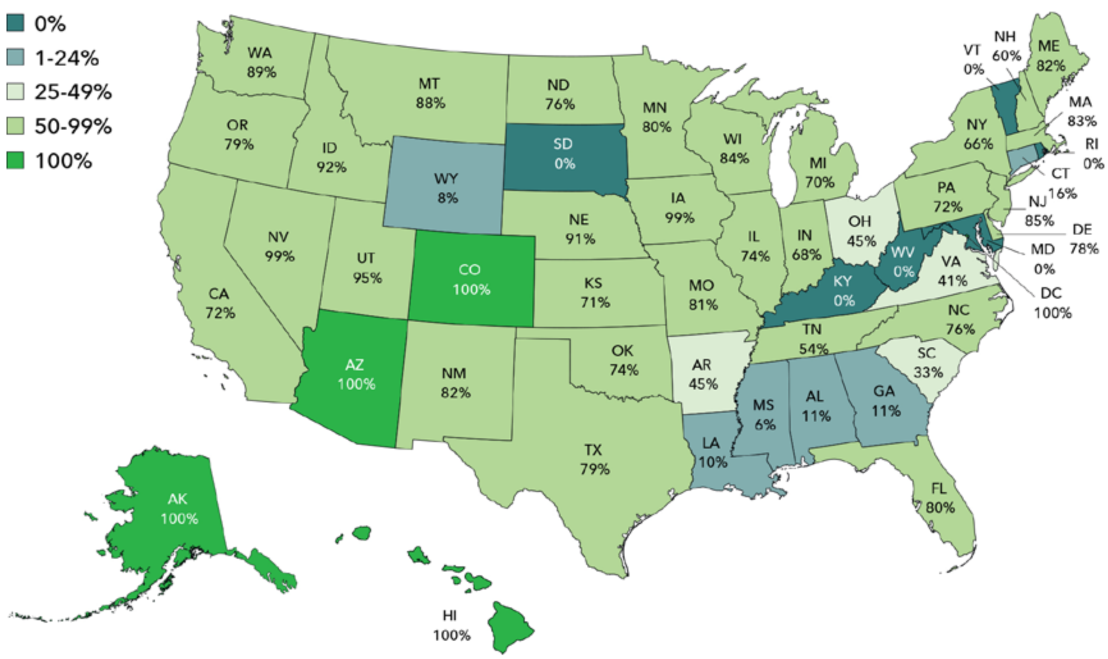
7.1.3 Operational barriers

Barrier 6: Limitations to expansion of eRecording

During its interviews, the Bureau found that many lenders are unwilling to convert to eClosing because all counties in their jurisdiction do not have eRecording capabilities. The map below shows that some form of eRecording is currently available in about 1,100 counties covering 65 percent of the population.[44] The following chart shows that the number of eRecording jurisdictions has steadily increased over the last four years, and industry experts expect this trend to continue.[45]

FIGURE 7: CURRENT COUNTY ADOPTION OF ERECORDING

% of population in jurisdictions with eRecordings:

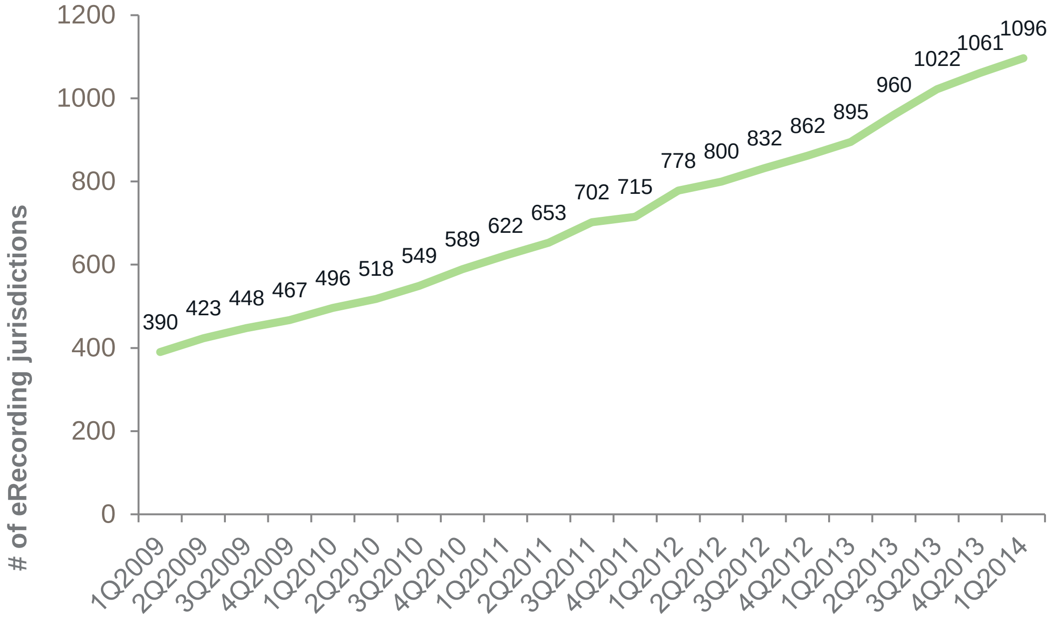


[44] Of the 1,100 counties that offer some form of eRecording, only 230 offer a "level 3" eRecording system that is capable of recording electronically signed and notarized documents that never existed in paper form. The remaining counties have a "level 2" eRecording system that can record scanned copies of wet-signed documents.

Property Record Industry Association (2014, February). List of eRecording Counties, available at: http://www.pria.us/files/public/Committees/Technology/eRecording_XML/eRecordingCountyListPublic.xlsx.

[45] Property Record Industry Association (2014, February).

FIGURE 8: TREND IN COUNTY ADOPTION OF ERECORDING



Despite this growth, some operational barriers are hindering the expansion of eRecording to all counties. While it usually does not cost counties anything to enter into an agreement with an eRecording vendor, their internal system needs to be compatible, which may require hardware and software upgrades. Furthermore, some counties are reluctant to change their processes because staff is not comfortable using technology, the county wants to avoid personnel changes, or they have other perceived concerns with eRecording. Most eClosing solutions today avoid this barrier by using wet signatures on the security instrument, which needs to be recorded with the county.

Barrier 7: Time / cost of change

Another barrier for stakeholders is the time and cost required to shift processes and policies to accommodate eClosings. Any large-scale operational process change is difficult, particularly for larger institutions that have multiple mortgage departments, a large number of vendor relationships, and complex internal technologies. A shift toward eClosings would require many steps including compliance and legal review, department approval, executive approval, and IT expansion, testing, and implementation. For context, a small financial institution that implemented a "mostly paperless" process took more than a year to transition. This timeline can vary depending on various circumstances (e.g., size, technology infrastructure). Furthermore, lenders will likely need to maintain their paper processes for customers that are not comfortable with an electronic process or do not have access to the necessary technology.

Despite these costs, each of the eClosing providers in the market today decided that it was worth the investment of resources to build and maintain these solutions. In fact, the CFPB heard from many lenders that they are interested in adopting eClosing solutions, but some do not feel that they have the resources available to make these changes given regulatory and compliance pressures. According to a limited recent study, 88 percent of industry participants surveyed claimed that their move toward a paperless mortgage process was restricted by continued regulatory and compliance priorities.[46] Of note, the "Know Before You Owe" integrated disclosures rule that will go into effect in 2015 may provide a well-timed opportunity for lenders and vendors to shift toward a paperless, consumer-friendly process while they have their origination systems open to complete the required regulatory changes.

7.2 eClosing myths

Though these barriers present legitimate challenges to further adoption of eClosing, the Bureau's research also revealed several myths that are prevalent across the industry. These myths effectively create false barriers to further adoption of eClosing.

Myth 1: eNotes are not legally valid

Some industry stakeholders are concerned that eNotes are not legally valid. However, the law is clear under ESIGN and UETA: eNotes can be originated, validated, and enforced on a nationwide basis, assuming stakeholders follow the legal requirements. [47] To date, all states have

[46] Xerox Mortgage Services (Volume 9, 2013)

[47] Requirements for an electronic record to be a negotiable promissory note include:

- Contains only the same terms and conditions that are permitted in a note governed by Article 3 of the UCC
- Contains an electronic signature
- The issuer of the record has agreed that it should be treated as a transferable record under the UETA
- The method used to record, register, or evidence a transfer of interests in the transferable record reliably establishes "control".

adopted the version of UETA approved by the Uniform Law Commission, a modified version of UETA, or another law that governs the general use of electronic records and signatures.[48] Furthermore, both Fannie Mae and Freddie Mac purchase eNotes, assuming the lender follows their respective eMortgage selling guides. At the end of 2013, the MERS eRegistry held 320,324 eNotes, and the number is continuing to grow.[49]

Myth 2: eClosings are not cost-effective for lenders until all counties accept eRecording

As described above, some lenders have reported that they have not seriously considered a shift toward electronic closings because they cannot be implemented in all counties. Lenders express concern that a dual process will be required for applicable and non-applicable counties, leading to significant additional processes and cost. In reality, only some contractual documents (i.e., security instrument and applicable riders) need to be recorded with the county. These constitute a very small portion of the documents in the overall closing package. Lenders can choose to implement a "mostly paperless" eClosing solution that utilizes eSignatures except for some documents, which are hand-signed by the consumer. During its research, the Bureau interviewed several lenders that claimed to have a successful, cost-effective solution by creating dual processes for these few documents or using some paper documents for all consumers to avoid any double processes.

Myth 3: eSignatures are not accepted for VA or FHA loans

During its research, the CFPB encountered some lenders and settlement agents that would not invest in eClosing solutions because they believed that electronic signatures were not accepted on VA secured or FHA loans. In the case of VA loans, this belief was a myth. For many years, the Department of Veterans Affairs (DVA) accepted eSignatures, but had not issued a statement articulating this policy to industry. This changed on August 22, 2013, when the DVA released a

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See Mortgage Industry Standards Maintenance Organization (MISMO®), the Electronic Signature and Records Association (ESRA), and the American Land Title, Association (ALTA), Case Closed: eNotes are Legal, An Analysis of eNote Enforceability Nationwide, available at:https://settleware.com/wpcontent/uploads/2012/12/eNoteWhitePaper.pdf.

[48] MISMO®, ESRA, ALTA, the Electronic Signature and Records Association (ESRA), and the American Land Title, Association (ALTA), Case Closed: eNotes are Legal, An Analysis of eNote Enforceability Nationwide.

[49] MERS (2014, March), MERS eRegistry Registrations. Available to MERS members at: http://www.mersinc.org/.

circular clarifying their acceptances of eSignatures. [50] It was true that the Department of Housing and Urban Development (HUD) did not accept eSignatures for FHA loans. However, HUD recently made a policy change, announcing on January 30, 2014 that it would accept eSignatures on most FHA loans effective immediately. HUD released a Mortgagee Letter (ML 2014-03) to inform lenders that the new policy "applies to FHA Single Family Title I and II forward mortgages and Home Equity Conversion Mortgages".[51] But, there may still be a process delay before Ginnie Mae is prepared to accept eSignatures on the Note. Given that 74 percent of industry participants had said in a recent study that HUD's previous lack of eSignature acceptance hindered plans to transition to paperless mortgages[52], this will be a key step towards wider adoption of electronic solutions.

[50] Department of Veterans' Affairs, Circular 26-13-13, *Use of Electronic Signatures in Conjunction with Department of Veterans Affairs (VA) Guaranteed Home Loans* (August 22, 2013), *available at:* http://www.benefits.va.gov/homeloans/documents/circulars/26_13_13.pdf.

[51] Department of Housing and Urban Development, Mortgagee Letter 2014-03, *Electronic Signatures* (January 30, 2014), *available at:* http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee.; *CFPB press release available at*, http://www.consumerfinance.gov/newsroom/cfpb-commends-huds-action-to-improve-mortgage-closing-process/

[52] Xerox Mortgage Services (Volume 9, 2013)

8. The road ahead

Additional research into the feasibility and impact of eClosing solutions is warranted. The CFPB aims to work with consumer and industry partners to facilitate innovative solutions to some of the problems outlined in its research. Therefore, as a next step, the CFPB will work with industry to launch a pilot program later this year to test the ability of eClosing solutions to educate and empower consumers at closing while simplifying and standardizing the process for all parties involved.

The pilot program will aim to work with a small set of partnerships that include lenders, technology vendors, settlement agents, and/or others who provide an eClosing solution to consumers. Each partnership will run its pilot for three months in collaboration with the CFPB who will compile and release findings to the public in 2015. [53] The CFPB will structure its pilot program for the purpose of answering three questions regarding eClosing:

(1) How can eClosing contribute to the vision of a more efficient, consumer-friendly closing process?

The CFPB's future vision is an empowered, knowledgeable homebuyer experiencing a more efficient, consumer-friendly closing process. The Bureau intends to conduct further research to determine how eClosing solutions can help achieve this vision. The first goal of the pilot will be to determine how particular types of eClosings can be positive solutions for consumers and how providers can mitigate the related risks. To answer these questions, the pilots will aim to have controlled experiments with multiple test groups, including consumers engaging in paper closings and eClosings. In addition to testing the impact of current eClosing features as they

[53] All tests during the pilot will still utilize the current HUD-1 and TIL federal disclosures. The new Closing Disclosure will not be tested during the pilot since institutions are not authorized to use the form until it is effective in August 2015.

compare to paper closings, the CFPB will encourage pilot participants to add new features and functionalities to test during the pilot. These additions will likely include tools that incentivize and empower consumers to take a more active role in the process and/or increase consumer understanding such as embedded educational materials. The Bureau is optimistic about the types of innovative solutions that already exist in the marketplace, albeit on a small scale. However, the CFPB believes that the pilot program will continue to encourage industry to explore further advancements that will benefit consumers and improve their overall closing experience.

(2) Is broader adoption feasible? Does it make good business sense?

If the pilot program helps determine how eClosings can achieve the vision of an empowered, knowledgeable consumer, widespread adoption may still not be feasible. Legal, coordination, and operational barriers are preventing industry from broadly adopting paperless solutions. Therefore, the CFPB will also utilize the pilot program to research how eClosing providers are overcoming these barriers and implementing cost-effective solutions today. These results will help current and future industry participants understand how eClosing solutions can work within their individual circumstances.

(3) How to best drive industry action?

The CFPB believes that the pilot program can serve as a vehicle to spur industry action and improvements around eClosing solutions. The CFPB hopes to use the results of the pilot to foster dialogue throughout industry on the benefits, opportunities, and risks of eClosings. In addition to starting the conversation, the CFPB hopes that the pilot can improve the quality of dialogue around eClosings. The pilot may help dispel some of the aforementioned myths about eCl0sing solutions and find new solutions that can further increase the goals set by "Know Before You Owe": a closing process that improves consumer understanding, reduces surprises at the closing table, and places the consumer more in control of his or her closing process.

During the pilot program, the CFPB aims to fulfill two roles in the effort to improve the mortgage closing process. First, the CFPB will act as a source for educational content. The Bureau's mission as an advocate for consumers uniquely positions itself to support the creation and sharing of educational tools. These tools can work in conjunction with the CFPB's existing initiatives to ensure that consumers have the information they need to make informed decisions at every stage of their mortgage journey. Additionally, the CFPB hopes to act as a convening organization and a promoter of new solutions, to bring all stakeholders together to work for coordinated change that improves the closing process.

The CFPB is focused on highlighting promising practices in the marketplace and driving additional research toward eClosing solutions. But the CFPB cannot succeed without sustained collaboration with its partners in industry, the consumer community, and government. The Bureau has already seen genuine enthusiasm, thoughtful analysis, and a promising willingness to explore new opportunities within eClosing solutions. With continued research through the pilot program and deeper industry engagement, the CFPB is optimistic about the potential for further expansion of these efforts to improve the closing process for consumers.

APPENDIX A:

Request for information

Bureau of Consumer Financial Protection

[**Docket No.:** CFPB-2013-0036]

Request for information regarding the mortgage closing process

Agency: Bureau of Consumer Financial Protection.

Action: Notice and request for information.

Summary: This notice requests information from the public about mortgage closing. Specifically, the Consumer Financial Protection Bureau (CFPB) seeks information on key consumer "pain points" associated with mortgage closing and how those pain points might be addressed by market innovations and technology.

The CFPB seeks to encourage the development of a more streamlined, efficient, and educational closing process as the mortgage industry increases its usage of technology, electronic signatures, and paperless processes. The next phase of CFPB's *Know Before You Owe* initiative aims to identify ways to improve the mortgage closing process for consumers. This project will encourage interventions that increase consumer knowledge, understanding, and confidence at closing.

This notice seeks information from market participants, consumers, and other stakeholders who work closely with consumers. The information will inform the CFPB's understanding of what consumers find most problematic about the current closing process and inform the CFPB's vision for an improved closing experience.

Dates: Submit comments on or before February 7, 2014.

Addresses: You may submit responsive information and other comments, identified by Docket No. CFPB-2013-0036, by any of the following methods:

- **Electronic:** http://www.regulations.gov. Follow the instructions for submitting comments.
- **Mail/Hand Delivery/Courier:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. Please note the number associated with any question to which you are responding at the top of each response (you are not required to answer all questions to receive consideration of your comments). In general, all comments received will be posted without change to http://www.regulations.gov. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Submissions will not be edited to remove any identifying or contact information.

For further information contact: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of Executive Secretary, at 202-435-7275.

Authority: 12 U.S.C. 5511(c).

Supplementary information: Buying a home is often a consumer's single largest financial purchase. According to the latest numbers from the National Association of Realtors, the median price of homes purchased in the United States is now $207,000. By comparison, the median household income is about $51,000, according to the Census Bureau. It is crucial that consumers consider the numbers carefully before making this potentially long-term commitment, and closing is often their last opportunity to do so.

However, closing can be stressful and confusing for consumers. The CFPB plans to conduct several initiatives in order to test and study various ways in which the closing process might be improved. This information will help inform those initiatives.

The Bureau encourages comments from the public, including:

- Consumers;
- Mortgage lenders and loan servicers;
- Housing finance professionals;
- Brokers and service providers in the residential real estate industry;
- Real estate agents;
- Housing attorneys;
- Fair lending, civil rights, and consumer and community advocates;
- Providers of financial and housing counseling;
- Settlement closing agents; and
- Other interested parties.

The Bureau is interested in responses in the following general areas, as well as specific questions below. Please feel free to respond to any of the questions outlined below.

Consumers and Closing

1. What are common problems or issues consumers face at closing? What parts of the closing process do consumers find confusing or overwhelming?
2. Are there specific parts of the closing process that borrowers find particularly helpful?
3. What do consumers remember about closing as related to the overall mortgage/home-buying process? What do consumers remember about closing
4. How long does the closing process usually take? Do borrowers feel that the time at the closing table was an appropriate amount of time? Is it too long? Too short? Just right?

5. How empowered do consumers seem to feel at closing? Did they come to closing with questions? Did they review the forms beforehand? Did they know that they can request their documents in advance? Did they negotiate?

6. What, if anything, have you found helps consumers understand the terms of the loan?

Errors and Changes at Closing

7. What are some common errors you have seen at closing? How are these errors detected, if at all? Tell us about errors that were detected after closing.

8. What changes, diverging from what was originally presented at closing, often surprise consumers at closing? How do consumers react to changes at closing?

Other Parties at Closing

9. How, if at all, do consumers typically seek advice during closing? In person? By phone? Online?

10. Where and to whom do consumers turn for advice during closing? Whom do they typically trust?

Closing Documents

11. What documents do borrowers usually remember seeing? What documents they remember signing?

12. What documents do consumers find particularly confusing?

13. What resources do borrowers use to define unfamiliar terms of the loan?

Improving Closing

14. What, if anything, would you change about the closing process to make it a better experience for consumers?

15. What questions should consumers ask at closing? What are the most important pieces of information/documents for them to review?

16. What is the single most important question a consumer should ask at closing?

17. What is the single most important thing a consumer should do before coming to the closing table?

Dated: December 13, 2013.

Christopher D'Angelo

Chief of Staff, Bureau of Consumer Financial Protection.

APPENDIX B:

Example interview guide

Illustrative interview guide for eClosing consumers - different variations used for paper consumers and industry stakeholders

Mortgage Closure Process, Stack, and Technology

a. Introduction (5 minutes)

b. Discussion Area 1: Shopping for a Mortgage (15 minutes)

c. Discussion Area 2: Negotiations and Working with a Broker (15 minutes)

d. Discussion Area 3a: Preparation/Description of the Closing **Process** (15 minutes)

e. Discussion Area 3b: Experience with the **Stack** (15 minutes)

f. Discussion Area 3c: **Technology** in the Closing Process (15 minutes)

a. Introduction (5 Minutes)

Hello, thank you for taking the time to meet here today. My name is [INSERT] and I will be leading this interview today. I will be asking you to answer some questions about your experiences with shopping for, purchasing, and closing a mortgage.

I want to mention a couple of things before we get started. We are making a video recording of this session. The recordings are used as a memory aid for me so I can go back later to recall what happened during each session. Only those of us associated with this project will see the recordings, and we will not share your name or personal information. There are a couple people observing from the other room, and they are just there to help take notes. Even though people are observing, please speak openly about your opinions and experiences.

As we talk today, I want to emphasize there are no correct or incorrect answers to the questions I ask you. I'm here to listen to you and get your perspective. We want to learn from you, so it is important that you share your honest opinions.

During the interview we may also pull up some materials online, or I may show you some prototypes so we can get additional feedback. If there are any questions that you feel uncomfortable providing an answer for, please let me know and we can move onto something else.

Do you have any questions so far?

This interview is going to be broken up into a few sections. Before we begin each section, I'll let you know what the topic area will be. The discussion areas are going to be:

1. Shopping for a mortgage
2. Negotiations and working with the broker/lender
3. Preparations for closing
4. Closing documents
5. Technology in the closing process

b. Discussion Area 1: Shopping for a Mortgage (15 Minutes)

To begin today's discussion, let's talk about shopping for mortgages.

1. First, tell me about your process when you obtained a mortgage.
    a. Had you started to look at homes before you talked to lenders?
    b. How did you know what price range to consider?
    c. Did you already have a realtor before finding a mortgage broker? How did your realtor help you in finding a lender?
    d. If you had already started to look at homes, was the price range you considered before finding a lender higher, lower, or about the same as the range you considered after finding a lender?
    e. Describe how you searched for your mortgage from start to finish?

f. How did you look around at different lenders?

    i. Did you look around at different lenders online, in-person, or both?

    ii. How many lenders/brokers did you get a quote from?

    iii. What led you to request a quote from each?

g. What factors did you compare when you were searching for your mortgage?

h. How did you decide on your lender/broker?

    i. Did you ever have thoughts about switching lenders after you started the process? [Probe about feelings by asking “Tell me more about that” – Trying to understand if they were uncomfortable, unhappy, etc. and if they understood that they could change.]

    ii. Did you switch lenders? Tell me about that experience [why or why not].

2. Did you do any background research before you started contacting lenders?

    a. What resources did you use to help you define unfamiliar terms? Who/what?

    b. What was the most helpful information that you encountered?

    c. What was the least helpful/most confusing?

3. What/who influenced your choice?

    a. Did you utilize friends and family? How?

4. In what state did you purchase your home?

    a. What type of mortgage did you choose?

5. Is there anything else you want to tell me about this process that you haven’t mentioned so far?

c. Discussion Area 2: Negotiations and Working with a Broker (15 Minutes)

Thank you for all of this feedback so far. Next I’d like to talk about the work that you did with your mortgage company after you chose them, but before you closed.

1. We talked about how you chose your lender. Now I would like you to tell me about your experiences actually working with your mortgage company. Describe the process and how you felt about the different stages or parts of the experience.
    b. What was the hardest part about working with your mortgage company?
    c. What was the easiest?
2. How did the loan officer convey information to you?
    a. How did you feel about the way he/she shared information with you?
    b. Did he/she explain things in ways that made sense to you?
    c. Was there anything that you felt was left unexplained or that was unclear? [If yes] how did that make you feel?
3. How did you feel about the amount of knowledge the loan officer had? Can you elaborate on that?
    a. Too much or too little?
    b. How confident were you in your loan officer and the information he/she provided?
    c. Did you feel like the information you gave to them was secure?
4. What did you think about the amount of time it took to get through the process?
    a. What did you wish you had more time to work on?
    b. If you had more time what would you have done?
    c. What do you wish went faster, if anything?
5. Do you feel like you understood all the terms of your loan?
    a. Did someone help you understand the terms? [If yes] who?
    b. Was there anything that you were still confused about or that you are still confused about?
6. What do you now know that you wish you knew before you sat down with your mortgage lender at closing?

7. Is there anything else you want to tell me about working with your lender before closing that you haven't mentioned so far?

d. Discussion Area 3a: Preparation/Description of the Closing Process (20 Minutes

Next, we're going to talk generally about your understanding of the mortgage closing process, any preparations you made, and what you would recommend for others.

1. Can you describe how you prepared for closing day?
    c. Did anyone help you prepare for the closing process? Describe that process [for both if they received help or did it on their own].
    d. Did you review any forms before the closing began? [yes] Which ones? Why?
    e. How far in advance did you receive those forms? And when did you read them? [e.g., when they received them or the morning of closing]
2. Did you have any questions when you were reviewing your documents at home?
    a. Who did you seek answers from? How?
    b. What could have been done to help you feel more prepared for closing?
    c. How far in advance would you have liked to receive these documents to review at home/your leisure?
3. Now I would like you to describe your closing process. Tell me about your experience on closing day. [Probe about who was present.]
    a. Why did you choose e-closing? Was it presented with other options?
4. Now that you've been through the process, what questions would you recommend someone ask at their closing or while they are reviewing their documents?
5. What could have helped you feel more prepared, if anything?
    a. How prepared do you think you would have felt if you did not go through e-closing?
6. How would you describe the closing process to someone who has never done it before?

a. What do you remember most about closing?

b. What advice would you give to a friend?

c. What are the most important pieces of information for them to review?

7. What is the most important thing a person should do before coming to the closing table? Why?

8. Is there anything else about how you prepared for closing that you would like to tell me about?

9. I'm going to give you a list of parties typically involved in the purchasing a mortgage. I'd like you to indicate how much you trusted that party during the closing process. If you are not sure what role a particular party plays, you can just leave it blank

    a. [Follow up with ALL responses] Why do you trust [PARTY] at [TRUST LEVEL]?

e. Discussion Area 3b: Experience with the documents (15 Minutes)

Now I'd like to talk a little bit about your experience with the documents that you encountered on closing day.

1. Did you have any questions at closing?

    a. Where or from whom did you seek information/advice? Why did you go to this person? [Probe about calling anyone who was not present.]

    b. You mentioned that _____ were present at closing. Who did you turn to with your questions? How did you choose this person?

2. Where there any forms that you paid particular attention to?

    a. Why did these ones stand out?

3. On what platform did you review your documents? What did you think of that presentation?

4. Were there any documents you remember that were particularly confusing?

    a. What were some "real estate" terms that were hard to understand?

    b. Were there any documents that were clear and easy to understand?

5. How long did the closing process take?
    a. Do you feel that the time at the closing table was an appropriate amount of time? Was it too long? Too short? Just right?
6. Did anything unexpected happen/did any numbers change at your closing or while you were reviewing your documents beforehand?
    a. [If yes] What was it and how did you learn about it?
    b. How did you work past it? How do you think that could have been avoided? What should have happened to make sure that problem didn't occur?
    c. What were some other issues that you faced?
7. Did you ever think about leaving?
    a. Did you know that you could leave a closing? Did you know you could negotiate at closing?
    b. [If yes] Why? Can you tell me more about that?
    c. [If not] Why not? [Probe about whether they knew they could leave.]
8. Describe the hardest part about closing?
9. I'm going to give you a list of emotions, and I'd like you to indicate how much you felt each of those emotions during closing.
    a. [Follow up with all responses of 4 or 5 or if time, with ALL] Why did you feel [INSERT EMOTION]?
    b. At what part in the process did you feel [NEGATIVE EMOTION]?
        i. How should that be changed?
10. Do you remember seeing forms like this? [Show promissory note, deed, HUD-1]
    a. What was particularly confusing about these forms?
    b. If this was an online document, can you highlight where you would want to click for more information?
    c. Can you highlight some confusing terms?

d. Is there anything here that is still not clear to you?

11. Is there anything else about the documents that you would like to tell me about?

f. Discussion Area 3c: Technology in the Closing Process (20 Minutes)

Ok, we are almost done. I have a few more things I want to touch on. You used e-closing, correct?

1. You mentioned _________ that seemed to be difficult parts of the process. How would you improve these? What would you change?
   a. What would make this a better experience for you?
2. How do you imagine the perfect closing process?
   a. What tools might help you prepare for closing?
   b. How did e-closing meet or not meet your expectations?
   c. What could have worked better? What worked well?
3. Can you describe the e-closing platform that you interacted with?
   a. How did you learn how to use this platform?
   b. When did you use the platform? For long chunks of time? At your leisure? At your office?
4. What do you think about when I say e-signature? How about electronic signature? [Probe: like checking a box on a website or on tablets at retailers]
   a. How did you sign your documents at closing? Did that feel secure?
   b. Did you sign any paper documents at your closing? Can you tell me why you signed paper documents?
      i. What do you think about electronic signatures? Do you think they are legal?

ii. Should they continue to be used in the closing process? [If not] What if they saved you time at closing? How much time would they have to save to make you want to use electronic signatures?

iii. Did you feel any ceremonial aspect during your e-closing?

iv. What could be done to increase trust for people who do not believe that e-signatures are valid?

5. Do you feel like one form of closing (e-closing vs. paper) is better than the other? Can you explain?
    a. What did you like about your closing process?
    b. Have you been part of a tradition closing before? How did it compare?
6. What type of closing would you recommend for first time home buyers? What's making you think that?
    a. What if it was the only way to close? (i.e., there were no more paper signatures) – how would you feel about that?
7. How would you feel about using an e-closing tool on a tablet or smartphone?
    a. Do you think you would use this on a mobile device, like a tablet?
    b. How do you think this type of e-closing process impacted your experience? What would you change for the next time you e-closed?
    c. What would you keep the same?
    d. What was the best part about e-closing?
    e. What was the worst?

This brings us to the end of the interview. Thank you for your willingness to participate today. The feedback that you've provided is very valuable. Do you have any last questions, or is there anything else you want to say before we wrap up the session?