Part One

How to Combine Your Disclosures

Originators must prepare their businesses for the new disclosure-integration rule that will take effect in August

By Richard Horn

Nine months from now, on Aug. 1, 2015, the final rule integrating the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) mortgage disclosures will become effective. The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated the Consumer Financial Protection Bureau (CFPB) to integrate these disclosures, a mandate that was a reaction to the financial crisis as well as to the decades of frustration with the current disclosure forms and processes.

The TILA-RESPA disclosure-integration rule is a major new piece of regulation, and it promises to affect the operations of mortgage banks and brokerages in a wide variety of ways. What are the details that you should be aware of, and how can you prepare your business? Read on for the first in a two-part series examining the new rule.

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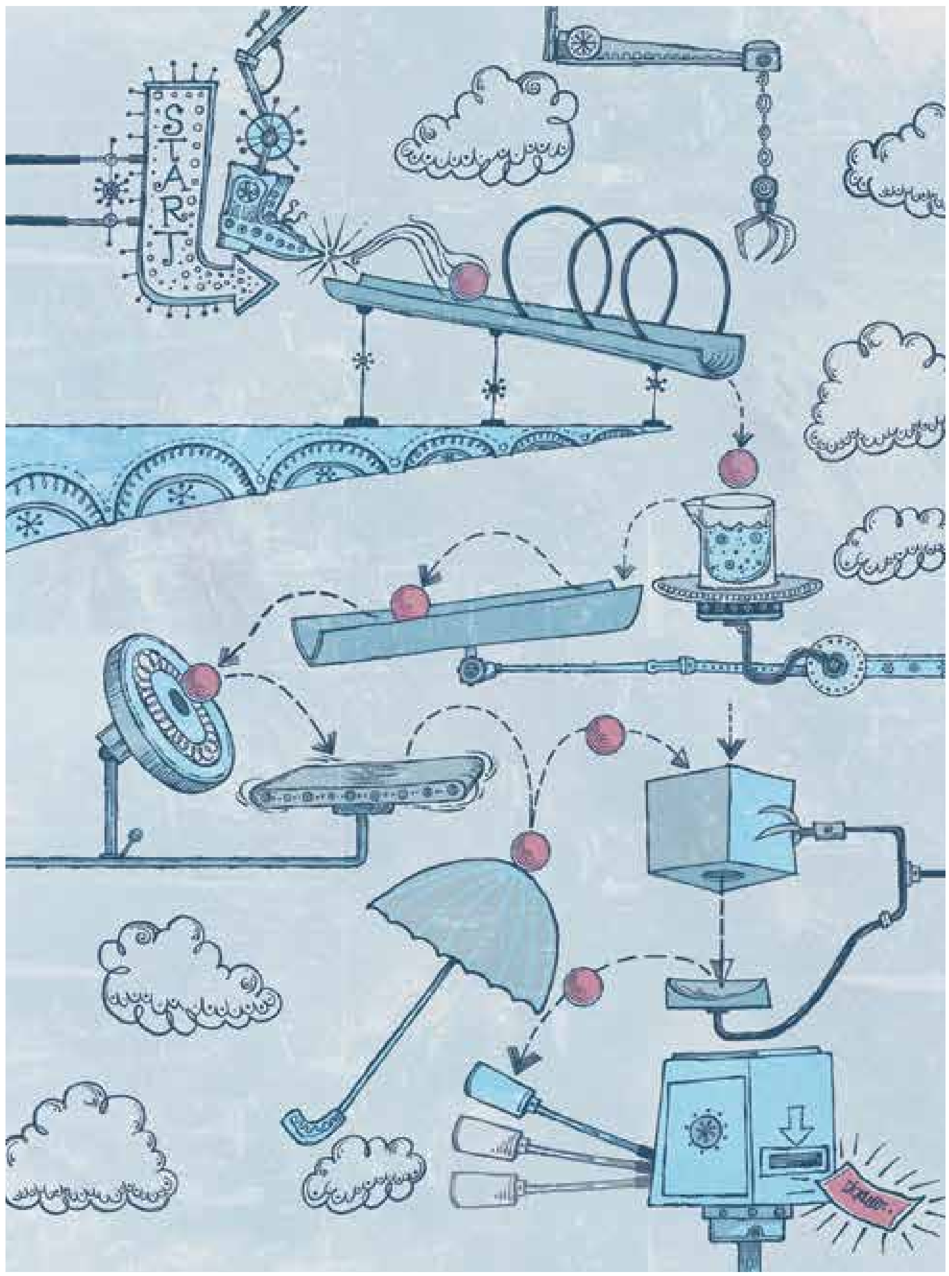

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However well-intentioned the CFPB's disclosure-integration mandate was, it came not long after the industry implemented revisions to the origination disclosures. In November 2008, the Department of Housing and Urban Development (HUD) issued its final rule revising the Good Faith Estimate (GFE) and the HUD-1 settlement statement. Soon after those revisions became effective in 2010, the Board of Governors of the Federal Reserve System issued a rule requiring a new payment-schedule disclosure.

Then, in 2013, the CFPB issued new mortgage rules under Title XIV of Dodd-Frank — including the ability-to-repay rule and the qualified mortgage standard — which the industry had to implement in about a year. This implementation was made more difficult by the many amendments that the CFPB made to the rules after they were issued, even as late as October 2013.

With all of these issuances, it would be an understatement to say that the forthcoming TILA-RESPA rule offers no rest for the weary. This rule weighs in at about 1,900 pages and represents an almost complete overhaul of the residential mortgage loan-origination process. The rule will require significant revisions to your policies and procedures — and your vocabulary.

This article is the first in a two-part series to address the rule's major provisions and provide banks and brokerages with some idea about what they should consider during implementation.

What does the rule do?

To begin, let's briefly review the central details of the rule. The rule creates a new disclosure provided at application called the Loan Estimate, replacing the early Truth in Lending disclosure and the GFE under TILA and RESPA. The rule also creates a new disclosure provided at closing called the Closing Disclosure, replacing the final Truth in Lending disclosure and the HUD-1 settlement statement under TILA and RESPA.

These new forms are substantially different from the current disclosures. The rule also changes the timing of the disclosures, the definition of an "application," the tolerances for the estimated costs, and the terms and closing-cost categories on the disclosures. In addition, the rule contains new requirements for worksheets. Even the disclosure-related requirements that essentially remain the same will receive new attention from lenders and investors, because they will have new regulatory text and commentary examples behind them.

Originators should know that the rule increases the potential liability for the industry. The current disclosure requirements under RESPA — e.g., the GFE instructions and the tolerance requirements — are not subject to borrower lawsuits under RESPA, because that law does not provide for a private right of action for violations of its disclosure requirements. Many of the new rule's requirements rely on TILA authority, however, which does provide for borrower lawsuits against lenders and investors.

What loans does the rule apply to?

The rule applies to all closed-end credit transactions secured by real property, including timeshare plans. The rule excludes reverse-mortgage transactions, however, which the CFPB states will be tackled in a future rule making.

The scope of the rule includes some types of loans not currently exempt from the RESPA disclosures — for instance, loans secured by real property of 25 acres or more, vacant real property, and construction-only loans. If you offer these products, you should revise your policies and procedures to apply the new disclosure requirements to them. You also should ensure that your software will be able to accommodate the products you offer on Aug. 1, and that you will have adequate time to test the software for your products.

Finally, keep in mind that for the loan products not covered by the rule, you will need to continue providing the current disclosures. This includes home-equity lines of credit, reverse mortgages, and loans secured by dwellings and not real property (e.g., mobile homes or houseboats).

What can I do before the Loan Estimate?

The rule contains three restrictions on what you can do before providing a Loan Estimate. Two are similar to current rules, but one is new.

Similar to the current rules, the new TILA-RESPA rule prohibits charging fees before the consumer has received the Loan Estimate and indicated intent to proceed. A bona fide and reasonable credit-report fee is the only exception to this stipulation. Also similar to current rules, the new TILA-RESPA rule prohibits requiring an applicant to submit documents verifying information before the Loan Estimate is provided.

The rule's new requirement is that a statement must be placed on the top of any worksheet provided to a consumer before provision of the Loan Estimate. This applies to worksheets provided by mortgage brokers, as well as lenders. The statement, which must be in at least 12-point font, is as follows: "Your actual rate, payment and costs could be higher. Get an official Loan Estimate before choosing the loan." The intent is to help consumers distinguish worksheets from the Loan Estimate. To that end, the rule also prohibits worksheets from looking like the Loan Estimate or Closing Disclosure.

When do I have an application?

The new rule changes the definition of "application" to remove the flexibility that lenders and mortgage brokers used to have in defining when an application was received. To do this, the rule deletes the so-called seventh catch-all item from the current definition of an application under Regulation X, which is, "Any other information deemed necessary by the loan originator."

Under the new TILA-RESPA rule, an application will be considered to be received when you receive just the following six items:

- **Name;**
- **Income;**

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- **Social Security number to get a credit report;**
- **Property address;**
- **Estimate of the value of the property;** and
- **Mortgage loan amount sought.**

The rule permits you to collect the additional information before receiving these six pieces of information, which it calls "strategically order[ing] information collection." Originators should keep two things in mind, however. First, this permission to collect additional information is subject to the prohibition on requiring verifying information that's described above. Second, once you have the six items, even if you haven't received all of the additional information you requested, you have received an "application" and must provide the Loan Estimate.

With all of this in mind, banks and brokerages will need to revise their application processes, including online applications, to be triggered by the aforementioned six items. Also, it will be important to conduct staff training around this new requirement.

Can I provide the Loan Estimate?

If you're a broker asking this question, the answer is "yes" — the rule allows mortgage brokers to provide the Loan Estimate. Under the rule, when a mortgage broker receives an application, either the broker or the lender must provide the Loan Estimate. If the broker provides the Loan Estimate, however, the lender is still ultimately responsible for the disclosure.

Although this rule is similar to the current rule for the GFE, there are some important differences between the current rule and the new TILA-RESPA rule. First, the Loan Estimate contains more information than the GFE, which a mortgage broker would have to complete accurately. This includes the loan's annual percentage rate, the Projected Payments disclosure (i.e., the payment schedule), the new Total Interest Percentage and In 5 Years disclosures, other TILA disclosures, and an itemized list of closing costs that is subject to the new tolerance requirements.

The lender remains responsible for ensuring that all of this information is disclosed accurately. In addition, because the rule relies on TILA statutory authority for many of the Loan Estimate's requirements, lenders and investors may face borrower lawsuits for violations by mortgage brokers, which wasn't the case with the GFE under RESPA.

Because of this increased amount of information and potential liability, lenders may limit the number of mortgage brokers that they do business with or require more extensive approval procedures. If you are a mortgage broker or a correspondent lender, you should begin talking to your lenders or investors about the new rule.

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There are certainly many more details to cover when it comes to the TILA-RESPA disclosure-integration rule, and next month's issue of *Scotsman Guide* will examine a few more of the rule's most salient requirements. Among them, the second-part in this two-part article series will go into the details of the rule's tolerance requirements and the ins and outs of the new Closing Disclosure. Be sure to read the December issue of *Scotsman Guide* — online or in print — to learn more. ■