IT'S NOT OVER
NEW MORTGAGE FORMS REQUIRED IN 2015

Christopher K. Loftus Simmons Perrine Moyer Bergman PLC

January 2014 marked a new day for mortgage lenders as most of the Consumer Financial Protection Bureau's ("CFPB") new mortgage rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") were implemented. The CFPB introduced new regulations changing the way financial institutions underwrite, disclose and service their consumer mortgages. While financial institutions are wiping their brows in exhaustion following months of implementing new policies and procedures to keep up with these regulations, their rest will be brief as the CFPB has more to come in 2015.

Effective for most closed-end consumer mortgage applications received after August 1, 2015, lenders will be required to use two disclosure forms: (1) the Loan Estimate and (2) the Closing Disclosure. These two forms, part of the CFPB's "Know Before You Owe" campaign, are easy-to-read and easy-to-understand forms that replace the four existing disclosures (i.e., Good Faith Estimate ("GFE"), HUD-1 and the two Truth-in-Lending forms) currently used by lenders. The CFPB found that the current forms were difficult for consumers to understand and contained redundant information. Based upon its extensive research, the CFPB believes these new forms will make the terms of the mortgage easier for the consumer to understand, and less burdensome for lenders and settlement agents to provide and explain to the consumer.

While most closed-end mortgages secured by a dwelling are included in this new rule, the rule does exempt home equity lines of credit ("HELOCs"), reverse mortgages or mortgages that are not secured by property attached to land. Further, lenders should take note that the new disclosures are required for mortgage applications received on or after August 1, 2015. There may be an overlap period where lenders will be using both the old disclosures (i.e., for applications submitted before August 1, 2015, but for which the closing occurs after August 1, 2015) and the new disclosures (i.e., for applications submitted on or after August 1, 2015) during the application and closing process.

LOAN ESTIMATE

The first form that is part of the new "Know Before You Owe" campaign is the Loan Estimate form. The Loan Estimate is a three-page document that consolidates and replaces the GFE and the initial Truth-in-Lending form ("Initial TIL") for covered transactions. The Loan Estimate must be delivered or mailed to the consumer within three business days on receipt of a loan application. If there is a change to the Loan Estimate, the lender must deliver a revised estimate to the consumer within three business days of the change and no later than seven business days prior to consummation.[1]

The CFPB consolidated the GFE and Initial TIL into one form and placed what it deems to be the most pertinent loan information at the beginning of the form. The first page of the Loan Estimate provides the consumer with the essential information in regard to the mortgage (e.g., loan amount, interest rate, monthly principal and interest, estimated closing costs, etc.), which previously was disclosed in the first pages of the GFE and Initial TIL. Similar to the GFE, the first page also highlights less desirable loan terms such as a prepayment penalty and/or balloon payment, and whether the loan amount, interest rate, or monthly principal and interest may change following consummation.

The first page contains a section designed to assist the consumer in understanding the total amount of their projected loan payments. Here, the lender will have to disclose the principal and interest, mortgage insurance, estimated escrow, estimated monthly payment, taxes, insurance and assessments. If the periodic payment may change over the life of the loan due to certain events (e.g., negative amortization, interest only payments or a balloon payment), the lender will have to disclose what the periodic payment will be following the triggering event. For adjustable rate mortgages ("ARMs"), the lender must disclose what the maximum payment could be, assuming the interest rate will rise as rapidly as possible under the terms of the loan.

The second page of the Loan Estimate details the projected costs associated with the loan, similar to the information previously found on the second page of the GFE. Here, the consumer receives a breakdown of the projected costs, including: a good-faith itemization of the loan costs; a table calculating the amount of cash needed to close; and a table for loans with adjustable payments or interest payments containing relevant information as to how the monthly payment or interest rate will change. Loan costs are broken into three separate categories: origination charges; services for which the consumer cannot shop; and services for which the consumer can shop. For each category, the lender will disclose the individual fees and charges for various services (e.g., appraisals, credit reports, closing agent fee, etc.). The total from all three categories will be added up and listed for the consumer as the "Total Loan Costs." A fourth table, entitled "Other Costs," details other associated costs to be paid by the consumer at consummation, including transfer taxes and government fees, pre-paids (e.g., insurance premiums and property taxes) and the initial escrow payment.

The third page provides the consumer with helpful information to consider prior to closing on the loan. For example, the lender must provide the consumer with the estimated amount of principal paid off, assuming the consumer makes his/her mortgage payment (i.e., principal, interest, mortgage insurance and loan costs) for five consecutive years. The lender must also disclose the annual percentage rate ("APR") (i.e., the costs over the loan term, expressed as a rate); the total interest percentage ("TIP") (i.e., the total amount of interest paid over the loan term, expressed as a percentage); and whether the lender will be servicing the loan or transferring its service rights to a third party. Lastly, the lender and/or mortgage broker must provide the consumer with sufficient information to identify and contact the agent (i.e., NMLS ID, email and phone number). The consumer is not required to sign the Loan Estimate; however, the lender may add a signature block for the consumer's signature to acknowledge receipt of the document.

CLOSING DISCLOSURE

The second form that is part of the new "Know Before You Owe" campaign is the Closing Disclosure form. The Closing Disclosure is a five-page document that replaces the HUD-1 and final TIL disclosure ("Final TIL") by combining the two documents into one form. For any federally related mortgage loan subject to Real Estate Settlement Procedures Act ("RESPA"), lenders must use the Closing Disclosure form issued by the CFPB. In contrast, for loans subject to RESPA that are not federally related mortgage loans, lenders do not have to use the Closing Disclosure, but the closing document must include the same headings, format, and information.

The Closing Disclosure must be provided to the consumer at least three business days before consummation. While lenders may rely upon the settlement agent to deliver the disclosure to the consumer, the lender is ultimately responsible for any errors or defects within the document.

The first page of the Closing Disclosure mirrors the first page of the Loan Estimate allowing the consumer to do a side-by-side comparison of the two documents. Within the Closing Disclosure, the creditor must disclose the actual terms and costs of the transaction (e.g., taxes and fees), disclosures that currently are included in the HUD-1. If the terms change after the Closing Disclosure is delivered to the consumer, a new disclosure must be provided. A new three-business-day waiting period will be required for all changes (1) to the loan's APR, (2) to the loan product or (3) that result in the addition of a prepayment penalty to the loan. For all other changes, creditors must ensure that the consumer receives a new disclosure at or before consummation. Furthermore, in instances where the amounts change for events that occur post-consummation (e.g., recording fees), a creditor will be required to provide the consumer with a revised disclosure reflecting the changed amount following consummation.

Additionally, the new regulations impose restrictions upon creditors with respect to certain fees they charge in relation to the loan. For example, creditors may not impose fees for the application, appraisal and underwriting until the borrower has indicated an intent to proceed with the loan. However, the lender may impose a fee for obtaining the consumer's credit report.

While much of the content of these disclosures is already contained within the current closing documents, the forms themselves are quite different and will require updates to a lender's policies and procedures and training to staff prior to the August 1, 2015, deadline. The CFPB has published guides, instruction manuals and examples, as well as the new disclosures themselves, on its website to assist lenders ahead of this transition.

Additional Resources: www.consumerfinance.gov/regulatory-implementation

Christopher K. Loftus is an attorney at Simmons Perrine Moyer Bergman PLC in Cedar Rapids, Iowa. He is engaged primarily in finance and financial institutions, banking litigation and bankruptcy law. Prior to joining the firm, Mr. Loftus served as associate general counsel for the Minnesota Credit Union Network.

1 Lenders should take note that the new regulations set the deadlines around the date of "consummation." While generally the same date, consummation is not considered the date of closing or settlement; rather, "consummation" is defined by the CFPB as the date when the consumer becomes contractually obligated to the seller under the transaction.