



National Banker Call

Consumer Financial Protection Bureau's Significant Mortgage- Related Proposals

Wednesday, October 10, 2012

Presenters

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Agenda

- Introduction
- TILA/RESPA Integration
- Ability to Repay/ Qualified Mortgage
- Higher-Priced Mortgage Loan Escrow Requirements
- Home Ownership and Equity Protection Act of 1994 (HOEPA) Amendments (High-cost mortgages)

Introduction

Remember –

- Most proposed rules being discussed were issued by the Consumer Financial Protection Bureau (CFPB)
- These are *proposed*, not final rules. Portions of them could change
- If you have specific comments on any open proposed rulemaking, please submit them by following the instructions included in the proposal.

TILA/RESPA Integration Rule

TILA/RESPA Integration Rule

Background and Statutory Mandate –

- **RESPA** – Focus on the price at the front end of the transaction
-- the settlement costs.
- **TILA** – Focus on overall price tag and key terms of the contractual obligation the consumer is about to take on.
- **Statutory Mandate** – Integrate both the early estimates and the closing disclosures.

TILA/RESPA Integration Rule

- ***Applies to:***
 - Most closed-end consumer mortgage loans.
- ***Would not apply to:***
 - Home-equity lines;
 - Reverse mortgages;
 - Mortgages secured by mobile homes or other non-real property dwellings; or
 - Creditors who make five or fewer mortgages a year.

TILA/RESPA Integration Rule

FICUS BANK
4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED	7/23/2012	LOAN TERM	30 years
APPLICANTS	John A. and Mary B. 123 Anywhere Street Anytown, ST 12345	PURPOSE	Purchase
PROPERTY	456 Somewhere Avenue Anytown, ST 12345	PRODUCT	Fixed Rate
SALE PRICE	\$180,000	LOAN TYPE	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/>
		LOAN ID #	123456789
		RATE LOCK	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, until 9/21/12 at 5:00 p.m. EDT

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 8/6/12 at 5:00 p.m. EDT

Loan Terms	Can this amount increase after closing?	
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <small>See Projected Payments Below for Your Total Monthly Payment</small>	\$761.78	NO
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments		
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82	+ —
Estimated Escrow <small>Amount Can Increase Over Time</small>	+ 206	+ 206
Estimated Total Monthly Payment	\$1,050	\$968

Estimated Taxes, Insurance & Assessments <small>Amount Can Increase Over Time</small>	\$206 a month	This estimate includes <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <small>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</small>	In escrow? YES YES
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Cash to Close	
Estimated Cash to Close	\$16,054 Includes \$8,054 in Closing Costs (\$5,672 in Loan Costs + \$2,382 in Other Costs - \$0 in Lender Credits). See details on page 2.

Visit www.consumerfinance.gov/learnmore for general information and tools.

LOAN ESTIMATE PAGE 1 OF 3 • LOAN ID # 123456789

TILA/RESPA Integration Rule

Loan Estimate – Timing and Delivery

- Combines and revamps former early Truth in Lending disclosure and Good Faith Estimate
 - Within 3 Days of “application.”
 - Delivery by broker or creditor to consumer
 - Creditor responsible for accuracy in either case

TILA/RESPA Integration Rule

“Application” -- Definition

- **Same first 6 items as current rule:**
 1. The borrower’s name;
 2. The borrower’s monthly income;
 3. The borrower’s social security number to obtain a credit report (or other unique);
 4. The property address;
 5. An estimate of the value of the property; and
 6. The mortgage loan amount sought.
- **Leaves out the 7th item: “any other information deemed necessary”**

TILA/RESPA Integration Rule

Restrictions on Increases in Closing Costs from Estimate to Closing

- Current 0% tolerance fees would be expanded to include
 - Fees paid to affiliates
 - Fees paid to unaffiliated third parties IF consumer is not permitted to shop for the services.
- Estimate of third-party fees must be in “good faith.”
- Revised estimates allowed under certain circumstances and within time limits.

TILA/RESPA Integration Rule

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Disclosure

Closing Information		Transaction Information		Loan Information	
Date Issued	9/10/2012	Borrower	John A. and Mary B.	Loan Term	30 years
Closing Date	9/14/2012		123 Anywhere Street	Purpose	Purchase
Disbursement Date	9/14/2012		Anytown, ST 12345	Product	Fixed Rate
Agent	Epsilon Title Co.	Seller	Steve C. and Amy D.	Loan Type	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #	12-3456		321 Somewhere Drive		<input type="checkbox"/> VA <input type="checkbox"/>
Property	456 Somewhere Ave	Lender	Anytown, ST 12345	Loan ID #	123456789
	Anytown, ST 12345		Ficus Bank	MIC #	000654321
Sale Price	\$180,000				

Loan Terms	Can this amount increase after closing?	
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <i>See Projected Payments Below for Your Total Monthly Payment</i>	\$761.78	NO

Does the loan have these features?	
Prepayment Penalty	NO
Balloon Payment	NO

Projected Payments		
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount Can Increase Over Time</i>	+ 206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26	\$967.91

Estimated Taxes, Insurance & Assessments <i>Amount Can Increase Over Time</i> <i>See Details on Page 4</i>	\$356.13 a month	This estimate includes	In escrow?
		<input checked="" type="checkbox"/> Property Taxes	YES
		<input checked="" type="checkbox"/> Homeowner's Insurance	YES
		<input checked="" type="checkbox"/> Other: Homeowner's Association	NO

See page 4 for escrowed property costs. You must pay for other property costs separately.

Cash to Close	
Cash to Close	\$14,272.35 Includes \$9,729.54 in Closing Costs (\$4,694.05 in Loan Costs + \$5,035.49 in Other Costs - \$0 in Lender Credits). See details on page 2.

CLOSING DISCLOSURE PAGE 1 OF 5 - LOAN ID # 123456789

TILA/RESPA Integration Rule

Closing Disclosure – Timing and Delivery

- Combines and revamps former HUD-1 and final Truth in Lending disclosures
- Reconciling accountability for delivery.
- Two alternatives proposed:
 - Alternative #1 -- Lender is responsible for delivering the Closing Disclosure to the consumer.
 - Alternative # 2 -- Lender may rely on the settlement agent to deliver the disclosure.
- In either case, the lender would be responsible for disclosure's accuracy.

TILA/RESPA Integration Rule

Additional Disclosures:

- New statutory disclosures built into new integrated model forms, e.g.
 - Limited information about state law anti-deficiency protections.
 - Creditor's policies regarding partial payment and escrows.
 - "Total interest percentage" ("TIP") and "Approximate Cost of Funds" (ACF)
 - CFPB proposes to eliminate these two new statutory disclosures & asks for comment.
- "Preliminary Estimate" – unofficial, shopping estimate
 - Disclaimer, to distinguish estimated loan information given for shopping purposes from the formal Loan Estimate that is subject to legal "good faith" requirement.

TILA/RESPA Integration Rule

New Non-disclosure Provisions

- Inclusive Finance Charge/APR
 - Renews FRB's 2009 proposal.
 - Impact on other provisions triggered by APR?
 - e.g. higher-risk appraisals, higher-priced mortgage loan escrows, HOEPA.
 - CFPB proposal renews discussion of FRB's proposal to use "Transaction Coverage Rate" (TCR) as alternative to APR to determine coverage for the rate-spread provisions.
 - CFPB asks for data & comment on impact, whether adjustment to metric is needed, and if so, how.
- Recordkeeping
 - Loan Estimate – 3 years.
 - Closing Disclosure – 5 years.
 - "Machine readable format."

TILA/RESPA Integration Rule

CFPB Proposed Rule – Timeline

- **Issuance date:** July 9, 2012.
 - 77 Federal Register 51116 (August 23, 2012)
- **Comments due by:** November 6, 2012.
- **Effective date:**
 - No deadline for adopting the integrated disclosures in final form.
 - CFPB proposes to delay the effective date of the RESPA-TILA changes to give adequate lead time for changes and to avoid requiring industry to make changes to systems and processes more than once.

Ability to Repay / Qualified Mortgage Rule

Ability to Repay / QM Rule

Background

- Dodd-Frank Act requires prudent underwriting of all segments of the lending market.
 - Based on verified and documented information
- Applies to closed-end mortgages secured by a dwelling
 - *Excludes* Home Equity Lines of Credit (HELOCs), time-shares, reverse mortgages and temporary loans.

Ability to Repay / QM Rule

Proposed General Ability to Repay (ATR) Rule:

- A creditor cannot make a loan unless it
 - ***“makes a reasonable and good faith determination at or before closing that the consumer will have a reasonable ability, at the time of consummation, to repay the loan, according to its terms, including any mortgage-related obligations.”***
Proposed Reg Z, 1026.43(c)(1).
- FRB Proposal: Four ways to comply with the Ability to Repay Rule

Ability to Repay / QM Rule

Option # 1: General ATR Standard --

Consider & Verify 8 Underwriting Factors

1. Income or assets relied upon in making the ATR decision
2. Current employment status
3. Monthly payment on mortgage
4. Monthly payment on simultaneous second creditor knows or has reason to know of
5. Monthly payment on mortgage-related obligations (Principal, Interest, Taxes, and Insurance (PITI), condo & similar fees)
6. Current debt obligations
7. Monthly debt-to-income or residual income, and
8. Credit history

Plus: Underwriting payment for ARMS must be based on fully indexed rate.

Ability to Repay / QM Rule

Option # 2: Make a “Qualified Mortgage” –

- Qualified mortgages are entitled to a presumption that they comply with the ability to repay rule.
- Statutory Presumption of Ability to Repay
 - Creditor or assignee “may presume” compliance with ATR if the loan is a Qualified Mortgage
- FRB proposed two *alternative* definitions of “Qualified Mortgage,” tied to whether the presumption would be a “safe harbor” or a “rebuttable presumption.”

Ability to Repay / QM Rule

Option # 2 (con't) – Qualified mortgage definition

Alt. # 1 – tied to the presumption as a “Safe Harbor”

- No negative amortization, balloon payments, or loan term exceeding 30 years
- Limit 3% points and fees (*some points & fees excluded from 3% calculation, e.g. 1-2 qualifying discount points to buy down interest rate; government guaranty fees and qualifying PMI premiums*)
- Income or assets relied on in making ATR determination are considered and verified, and
- Underwriting based on max. interest rate during first 5 years with fully amortizing payments, taking all mortgage-related obligations into account (*PITI, condo fees, etc.*)

Ability to Repay / QM Rule

Option # 2 (con't)– Qualified Mortgage definition

Alt.# 2 – tied to the presumption as a “rebuttable presumption”

- Same criteria as for “safe harbor” QM definition above, plus
- Consider & verify: employment status, monthly payment for simultaneous mortgage, current debt obligations, monthly DTI or residual income, and credit history.
 - No specific DTI, credit score, etc specified – that’s up to the creditor under the proposal

Ability to Repay / QM Rule

Option # 3: “Qualified Balloon Mortgage”

- Generally, balloon mortgages cannot be qualified mortgages, but...
- Certain creditors operating primarily in rural or underserved areas can make qualified balloon mortgages with minimum term of 5 years if it meets the other QM criteria and underwrites based on scheduled payment except for the balloon payment.
- Rule will define “rural and underserved” and other qualifying factors.

Ability to Repay / QM Rule

Option # 4: Refinancing Non-Standard Mortgage

- Intended to preserve access to streamlined refis – permits refinance of non-standard mortgage to standard mortgage
- New loan
 - Has limits on fees and does not contain negative amortization, interest-only or balloon features;
 - Creditor considers and verifies 7 of the 8 general ability to repay factors (income or assets excepted); and
 - ARM underwriting based on maximum rate that can apply in first 5 years.

Ability to Repay / QM Rule

Proposed Rule Issued by FRB -- Timeline

- **Issuance date:** May 11, 2011
 - 76 Federal Register 27390
- **Original comment period closed:** July, 2011
- CFPB re-opened to request data on certain issues
 - **Comment period closed:** June, 2012
- **Final rule expected by:** January 21, 2013
- **Effective date:** To be determined

Higher-Priced Mortgage Loan Escrow Requirements

HPML Escrow Requirements

Background:

- In July 2008, the FRB amended Regulation Z to create a class of loans called higher-priced mortgage loans (HPMLs).
- The FRB prohibited extending HPMLs secured by a first lien, unless an escrow account is established before consummation.

HPML Escrow Requirements

Dodd-Frank Act Escrow Provisions

- Dodd-Frank Act created a new section of TILA.
- Substantially codifies the current requirement of mandatory escrows for HPMLs (1.5% above APOR – first liens).
- Established a higher rate threshold first-lien jumbo HPMLs. (2.5% above APOR).
- Lengthened the time for which escrow is required from 1 to 5 years
- Authorized exemptions to the escrow requirement.
- New disclosures are required explaining how escrow accounts work.

HPML Escrow Requirements

FRB's Final and Proposed Escrow Rules

- FRB implemented new 2.5% margin for jumbo first liens by final rule effective April, 2011.
- FRB issued a proposed rule to implement the rest of the other statutory amendments:
 - Mandatory escrow period expanded to 5 years, longer in certain cases (e.g. delinquency)
- Proposal would exempt creditors that operate in rural or underserved counties from the mandatory escrow requirements.
 - Rule would define qualifications for rural or underserved exception

HPML Escrow Requirements

FRB Proposed rule:

- 76 Federal Register 11598 (March 2, 2011)
- **Comment closed:** May 2, 2011
- Rulemaking authority transferred to CFPB on July 21, 2011.
- The Bureau has indicated publicly that it will finalize this rule by December 2012.
- **Implementation date:** To be determined

Home Ownership Equity Protection Act of 1994 (HOEPA)

HOEPA

HOEPA or “High-cost loans”

- Current law limits HOEPA coverage to closed-end refinance mortgages
- New law expands HOEPA coverage to include --
 - Purchase money mortgages
 - HELOCS
 - *(provided they meet one or more of the triggers)*

HOEPA

Changes to Triggers

APR Trigger

- First lien threshold 6.5% above APOR
- Subordinate liens, and first liens on dwellings that are personal property under \$50,000 – 8.5% above APOR

Fees & Points Trigger:

- 5%
- Some changes to definition of fees and points, e.g. excludes certain discount points and guaranty charges; adds certain prepayment liabilities.

Prepayment Penalty Trigger: *NEW*

- More than 2% of amount prepaid, or longer than 36 months

HOEPA

Key Substantive Provisions

Limitations & Restrictions Applicable to High-Cost Loans

- Generally prohibits balloon payments (with some exceptions)
- Prohibits prepayment penalties
- Prohibits financed points and fees
- Charging fees for loan modifications and deferrals
- Limits late fees to 4%
- Limits fees for payoff statements and imposes a deadline for responding to requests
- Pre-loan counseling by HUD-approved counselor required for HOEPA loans

Statute also provides creditors with special right to cure HOEPA violations.

HOEPA

CFPB Proposed Rule – Timeline

- 77 Federal Register 49090 (August 15, 2012)
- **Comments by:**
 - Comments on most parts closed September 7, 2012.
 - Comments on Paperwork Reduction Act analysis due October 15.
 - Comments on potential impact of TILA/RESPA “all-in” finance charge proposal on HOEPA APR trigger due November 6, 2012.
- **Final rule expected by:** January 21, 2013
- **Implementation date:** To be determined.

Questions and Answers

Thank You

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