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Integrated Mortgage Disclosure Forms and H.R. 3192 and S. 1484/S. 1910: In Brief

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Background

Relatively high default and foreclosure rates in the housing market have led some to question whether borrowers were fully informed about the terms of their mortgage loans. Mortgage lenders and consumer advocates have been concerned that mortgage disclosure forms are confusing and not easily understood by borrowers. In addition, it has been argued that greater transparency and knowledge of mortgage terms could enhance consumer choice and discourage predatory, discriminatory, and fraudulent lending practices.

On November 20, 2013, the Consumer Financial Protection Bureau (CFPB) issued the TILA-RESPA Integrated Disclosure (TRID) Final Rule that would require mortgage lenders to use more easily understood and streamlined mortgage disclosure forms.¹ The Truth in Lending Act (TILA)² and the Real Estate Settlement Procedures Act (RESPA)³ have long required lenders to provide consumers disclosures about the estimated and actual real estate settlement costs and financial terms of the mortgages they offer. These disclosures are intended to help consumers compare the terms and make informed decisions regarding the suitability of various mortgage products and services they are offered. However, TILA and RESPA required disclosures of duplicative information while using inconsistent language, which might have led to increased regulatory costs and consumer confusion.⁴ In light of these concerns, Sections 1098 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act⁵ required the CFPB to develop “a single, integrated disclosure for mortgage loan transactions ... to aid the borrower ... in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures” that remains compliant with both TILA and RESPA.⁶

The TILA-RESPA Final Rule is the culmination of more than two years of study through, among other things, consumer testing and a Small Business Review Panel.⁷ The Board of Governors of the Federal Reserve System and the Department of Housing and Urban Development, which prior to the Dodd-Frank Act implemented TILA and RESPA, had attempted but failed to make similar changes to these disclosure forms. In short, combining these mortgage disclosures into a single form was a massive undertaking, and, upon taking effect, the TILA-RESPA Final Rule will have a significant impact on consumers, lenders, and other participants in the mortgage market.

The CFPB chose to give the industry until August 1, 2015—nearly two years from the date on which the Final Rule was first publicly released—to comply. In spite of this lead time, mortgage bankers and lenders in recent months have expressed concern about their inability to update software and make other necessary changes to meet the compliance deadline.⁸ This led some to plead with CFPB Director Richard Cordray for additional time to get into compliance before the

¹ The Consumer Financial Protection Bureau (CFPB), “Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 79730, December 31, 2013.

² 15 U.S.C. §§1601 et seq.

³ 12 U.S.C. §§2601-2610.

⁴ CFPB, “Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z),” 78 *Federal Register* 79734, December 31, 2013.

⁵ P.L. 111-203.

⁶ P.L. 111-203, §1100A.

⁷ CFPB, “Know Before You Owe,” at <http://www.consumerfinance.gov/know-before-you-owe/>.

⁸ Lisa Prevost, “Request for Delay of Mortgage-Disclosure Rule,” *The New York Times*, May 29, 2015, at <http://www.nytimes.com/2015/05/31/realestate/request-for-delay-of-mortgage-disclosure-rule.html>.

CFPB starts enforcing the law.⁹ Those pleas went unheeded until it was discovered that, because of an “administrative error,”¹⁰ the August 1 effective date would violate a provision of the Congressional Review Act¹¹ (CRA) that prevents a *major rule*¹² from going into effect until at least 60 days from the date on which the rule was published in the *Federal Register* or was formally reported to Congress, whichever is later. The CFPB recently announced that, “[t]o comply with the CRA and to help ensure the smooth implementation of the TILA-RESPA Final Rule, the Bureau is extending the effective date ... [from August 1 to] October 3, 2015....”¹³

The CFPB has also announced what some have characterized as a restrained enforcement period related to the integrated disclosures.¹⁴ In a letter to Members of Congress, the CFPB stated that its “oversight of the implementation of the Rule will be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the Rule on time.”¹⁵ The CFPB also announced that it sent a letter to industry trade groups in which it stated that

During initial examinations for compliance with the rule, the Bureau’s examiners will evaluate an institution’s compliance management system and overall efforts to come into compliance, recognizing the scope and scale of changes necessary for each supervised institution to achieve effective compliance. Examiners will expect supervised entities to make good faith efforts to comply with the rule’s requirements in a timely manner. Specifically, examiners will consider: the institution’s implementation plan, including actions taken to update policies, procedures, and processes; its training of appropriate staff; and, its handling of early technical problems or other implementation challenges.¹⁶

Legislation

Some in Congress argue that an additional two months is insufficient for lenders to make the upgrades needed to satisfy the deadline and that the restrained enforcement period does not address several underlying concerns. Several bills respond to these concerns:

⁹ Letter from industry groups to Richard Cordray, Director of the CFPB, March 18, 2015, at <https://www.mba.org/Documents/Comment%20Letters/03-18-15sign-onlettertoCFPBonTILA-RESPA.PDF>.

¹⁰ CFPB, “2013 Integrated Mortgage Disclosures Under RESPA and TILA; Delay of Effective Date,” at http://files.consumerfinance.gov/f/201507_cfpb_2013-integrated-mortgage-disclosures-rule-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z-and-amendments-delay-of-effective-date.pdf.

¹¹ 5 U.S.C. §801, et seq.

¹² For the definition of *major rule*, see 5 U.S.C. §804.

¹³ CFPB, “2013 Integrated Mortgage Disclosures Under RESPA and TILA; Delay of Effective Date,” at http://files.consumerfinance.gov/f/201507_cfpb_2013-integrated-mortgage-disclosures-rule-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z-and-amendments-delay-of-effective-date.pdf.

¹⁴ Trey Garrison, “Industry Welcomes TRID Grace Period But Congress Says It’s Not Enough,” *Housingwire*, June 3, 2015, at <http://www.housingwire.com/articles/34086-industry-welcomes-trid-grace-period-but-congress-says-its-not-enough>.

¹⁵ Letter from Richard Cordray, CFPB Director, to Rep. Barr and Maloney, June 3, 2015, at http://www.cfpbmonitor.com/files/2015/06/2015-06-03-RC-to-Barr-Maloney-et-al_TILA-RESPA.pdf. Also see, CFPB, “Know Before You Owe: You’ll get 3 days to review your mortgage closing documents,” June 3, 2015, at <http://www.consumerfinance.gov/blog/know-before-you-owe-youll-get-3-days-to-review-your-mortgage-closing-documents/>.

¹⁶ CFPB, “CFPB Sends Industry Letter on Know Before You Owe Mortgage Disclosure Rule Compliance,” press release, October 2, 2015.

- The Homebuyers Assistance Act (H.R. 3192) was reported by the House Committee on Financial Services on October 1, 2015.
- The Financial Regulatory Improvement Act of 2015 (S. 1484) was reported by the Senate Committee on Banking, Housing, and Urban Affairs on June 2, 2015.
- The Financial Services and General Government Appropriations Act, 2016 (S. 1910) was reported by the Senate Committee on Appropriations on July 30, 2015.¹⁷

H.R. 3192 as reported would prevent the integrated disclosure requirements from being enforced until February 1, 2016. It would also prohibit anyone from filing a suit against a lender related to the TILA-RESPA integrated disclosure forms during that time period so long as the lender has made a good-faith effort to comply with the requirements.

Similarly, Section 117 of S. 1484 and Section 918 of S. 1910 would provide a safe harbor for lenders related to the integrated disclosure forms. The bills would make a lender that provides the required disclosures not “subject to any civil, criminal, or administrative action or penalty for failure to fully comply.”¹⁸ The safe harbor would be in effect until one month after the CFPB director certifies that the new disclosures “are accurate and in compliance with all State laws.”¹⁹ In addition, S. 1484 and S. 1910 would eliminate the requirement that a mortgage closing be delayed three days if the lender offered the borrower a mortgage with a lower annual percentage rate than the rate that was originally offered.

Supporters of a safe harbor contend that lenders should have to use the new disclosure forms and procedures but should have a grace period to test out the new systems.²⁰ The grace period that supporters are seeking would not just apply to actions taken by the regulators but would also protect lenders from being sued by borrowers claiming that the correct disclosure forms and procedures were not followed. The threat of this private litigation risk, supporters argue, is not addressed by the CFPB’s extension and could cause some lenders to delay or cancel mortgage closings if there is uncertainty about how the new process should be implemented.²¹ In addition, supporters of a delay argue that there is uncertainty as to whether the rule conflicts with state law, and the potential conflicts should be clarified prior to implementation.²²

Critics of delaying the implementation argue that the actions already taken by the CFPB are sufficient to protect lenders from the risks that they face and that the extended implementation timeframe allows lenders enough time to adopt the necessary systems and processes. They also argue “that private liability works to ensure that regulated entities are diligent in complying promptly with the new TRID disclosures” and that the private liability should not be delayed.²³

¹⁷ The text of S. 1484 was among the financial regulatory changes included in the FY2016 Financial Services and General Government Appropriations Act (S. 1910), reported by the Senate Appropriations Committee on July 30, 2015. See CRS Insight IN10278, *Financial Regulatory Improvement Act Included in Senate Appropriations Bill*, by (name redacted), (name redacted), and (name redacted)

¹⁸ S. 1484, §117 (S. 1910, §918).

¹⁹ Ibid.

²⁰ Rep. Andy Barr, “Barr Responds to CFPB’s New TRID Effective Date,” press release, June 18, 2015, at <https://barr.house.gov/media-center/press-releases/barr-responds-to-cfpb-s-new-trid-effective-date>.

²¹ Ibid.

²² Mortgage Bankers Association, “TILA-RESPA Integrated Disclosure Rule,” at <https://www.mba.org/issues/residential-issues/tila-respa-integration-rule>

²³ Attributed to Rep. Maxine Waters by CQ Congressional Transcripts, “House Financial Services Committee Holds Markup on Financial Services Bills, Day 1,” July 28, 2015, at <http://www.cq.com/doc/financialtranscripts-4736108?0>.

Critics also note that the litigation risk “that [is] part of the new TRID rule has been overstated, as private litigants rarely bring actions that prevail under the provisions of TILA that are implicated by the new TRID disclosures.”²⁴ The delay that some are hoping for, according to critics, “is unnecessary in light of the limited liability for disclosure-related violations under TILA and the steps already taken by the CFPB.”²⁵ If a further delay was put in place, some argue that homeowners “who would receive false or misleading mortgage cost disclosures during such a period would have no remedy.”²⁶

The Congressional Budget Office (CBO) estimates that H.R. 3192 as ordered reported would result in an increase in direct spending that would be negligible.²⁷ The bill would not affect revenues or discretionary spending. CBO did not provide a specific cost estimate for Section 117 of S. 1484.²⁸

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²⁴ Ibid.

²⁵ Ibid.

²⁶ Letter from consumer groups to Members of Congress, July 27, 2015, at <https://www.nclc.org/images/pdf/legislation/letter-opposing-hr3192-2015.pdf>.

²⁷ Congressional Budget Office (CBO), *Cost Estimate of H.R. 3192*, September 28, 2015, at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr3192.pdf>.

²⁸ For the cost estimate for S. 1484, see CBO, *Cost Estimate of S. 1484*, July 29, 2015, at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s1484.pdf>.

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