

# TILA-RESPA Combined Disclosures: The Executive Perspective

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# 1/2-Way Point & What We Will Cover

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- We are at the halfway point of TILA-RESPA Integrated Disclosure (“TRID”) implementation and we are considering what is important NOW, so we will cover –
  - New risk environment and why it matters
  - Special challenges for mortgage lenders
    - Relying on others
    - Costs to be incurred in 2015 and beyond = budgeting for next year
    - Investor expectations
    - Looking ahead at the 1/2-way point
      - Vendor arrangements, including functionality, terms of agreements, costs and liability
      - Other compliance components
      - Handling the “off ramp” of post-close corrective actions – what can be done to minimize liability? When, who, how and at what cost?

# NEW RISK ENVIRONMENT

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- Now, RESPA disclosure violation = no private right of action; TILA disclosure violation = private lawsuits, damages, attorneys' fees, etc.
- TRID: codified in Regulation Z/TILA, so TILA liability will become “order of the day” – “every closing a potential lawsuit”
- THE BUCK STOPS WITH THE LENDER – responsible for timing, completeness and accuracy of TRID disclosures
- Investors know this and will be even more careful about compliance - buyback risk could increase under TRID
- Basic TRID compliance will be 3-fold: (1) were the disclosures given on the proper forms (Loan Estimate (“LE”) & Closing Disclosure (“CD”)), (2) were they given on time, and (3) was each disclosure item on the LE disclosed within “variation” tolerances on the CD?

# THINKING ABOUT RISKS FOR 2015

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- Game plan now: what are your TRID implementation plans?
- Will you “build” (adapting your own systems) or “buy” (primarily rely on others, such as vendors) for 2015 TRID compliance?
- If something goes wrong, who bears the risk?
  - Borrower?
  - Vendor?
  - Mortgage broker?
  - Settlement agent? Other settlement services providers?
  - Real estate agent?
  - Investor?
- In the end, risk falls to originating lender under TRID Rule

# Business Challenges and Your Bottom Line

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- Expecting perfection in a historically “imperfect” process, with brand new forms and processes that need to be in place on time
  - Déjà vu all over again from 2010 RESPA discl reform, but stakes higher this time
- “Perfection” = higher costs to originators, so it is time to consider impact on 2015 budgets
- Examples of impact on lender budget planning for 2015
  - Increase cost of vendor-provided resources – higher licensing fees and transaction/usage costs?
  - Internal resources needed for compliance, testing & monitoring, as well as staff training – for “the hardest rule of all”
  - Outside professional fees for technologists, attorneys, compliance consultants
  - Resources (cash) needed for the disclosure liability “off ramp” – see below

# What is Behind TRID?

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- CFPB is driving overall, end-to-end electronic workflow for residential mortgage loans, not just e-signatures, but entirely electronic processes
  - CFPB has (too much) faith in the inerrability of computer systems, particularly systems that collect and manage data
- Obviously, requires close cooperation, especially for Closing Disclosure, among lender, settlement agent & title co.
- So, connectivity and communications among the settlement-side parties will be key
- CFPB believes long timeline to implementation justifies the effort, expenditure

# Communications Plan?

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- CFPB erred on the side of CONSUMER PROTECTION and gave too little regard to CONSUMER CONVENIENCE
- Consumers and their representatives, particularly real estate brokers, will be frustrated – plan on it now, and be ready to communicate with customers and others about the “new world”
- The extended (and possibly repeated) waiting periods for Closing Disclosures likely, at the beginning, to disrupt expectations of the parties, particularly in purchase money transactions
- Larger mortgage originators are working on communication plans now, to educate customers, real estate agents and their own staff on process changes
  - Real estate agents seem to know little now about what is ahead



# “We’ll Rely on Our Vendors”

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- Some mortgage lenders are saying, “we’ll rely on our vendors” for TRID compliance – what does this mean?
- Many types of vendors are or may be offering TRID solutions of one kind or the other to mortgage lenders
  - LOS
  - Title/settlement services providers
  - Document prep companies
  - Workflow management providers
  - Providers offering integration of one or more of these functions
- Still not clear who will be the “frontrunners” but many lenders right now are thinking of “the usual suspects” (existing vendors)
- There are time and expense limitations, growing more difficult as time goes by, to selecting new vendors

# Questions to Ask Now of Vendors

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- For engaging in diligence now, let's look at examples:
  - For existing vendors, how will the solution be modified to accommodate TRID? Will the solution be adequate in terms of scope and functionality?
  - For new vendors, what is the scope of the offering? End-to-end TRID compliance, including generation of compliant disclosures, or just component parts?
  - When will the solution be available? In time to fully test in your user environment?
  - How is the solution integrated and connected with other workflow components, including connectivity between settlement agent, title company, doc prep and lender?
  - Will a new or amended services agreement be required?
  - Will pricing for services increase next year, as TRID comes online?
  - Under an existing services agreement or a new one, will the reps and warranties cover TRID violations due to system failure or inadequacy? Who bears the risk of non-compliant results?

# Questions to Ask Now cont'd

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- Examples of questions – cont'd
  - Will system architecture support the special requirements of TRID, such as time-stamping and retaining each and every disclosure and revised disclosure? Does the system include adequate database functionality (v. “flat file” format)?
  - Are other features being added, such as e-signature capability? Additional cost?
  - Are system results capable of being reproduced easily and audited later by lender, investors and regulators (like banking agencies and CFPB)?
  - Is the solution compatible with current MISMO standard (3.3) or reliant on previous version?
  - Does vendor have customer service bandwidth, particularly as “go live” date approaches and in the early going post-August 1, 2015?
  - Will the system support post-consummation corrective measures, to help the lender avoid TRID liability?

# Vendors: Only Part of the Solution

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- Vendors delivering workflow-based solutions will provide only PART of what is need for compliance with TRID
  - Just getting the process right will not be enough, according to the regulators
- CFPB and banking regulators still will be looking for compliance with all aspects of the rule and Exam Guidelines
  - Compliance management system and management buy-in
  - Specific, documented policies, procedures and controls, in particular QC tailored to TRID
  - Training
  - VENDOR MANAGEMENT (see below)
  - Monitoring and audit, to demonstrate compliant results
- Investors also will expect compliance to be consistent with compliance with other mortgage rules

# Vendor Management

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- Important part of compliance for banks and non-banks alike
- For new vendors, the path is well travelled, per CFPB and banking agency guidance
  - Vetting, diligence, monitoring and corrective action
- Revisions to existing vendor functions are not immune from enhanced vendor management duties, especially for “core” consumer-facing activities such as TRID disclosures
- Expect the CFPB and banking regulators to pay attention to this in future inquiries and examinations
- Vendors should be ready for increased customer due diligence

# What Else Might We Expect?

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- Given the enhanced liability for TRID violations and operational challenges (e.g., connectivity and data transfer) , lenders may desire to shorten the list of approved vendors such as title companies and settlement agents
  - Important to consider impact of borrower selection of settlement service providers
- Still a little early to tell, but lenders may wish to consider whether buyback and indemnity reserves will need to be adjusted
- Compare current incidence and cost of issuing post-closing corrected RESPA disclosures with future expectations
  - Root cause analysis of current redisclosures?
  - What do you know that may “help” or “hurt” when TRID becomes effective?
- Obviously, pay close attention to investor guidance – so far, pretty scarce

# TRID Liability “Off Ramp”

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- CFPB justification for strict disclosure rules in TRID: POST-CLOSING CORRECTIVE ACTIONS
- For TRID disclosures, compliance will be determined based on a comparison between the content of the final LE and the final CD
- TRID Rule says that violations of “good faith disclosure” requirements for LE may be cured if the lender takes action WITHIN 60 DAYS OF CONSUMMATION
- This is in contrast with the other TRID “correction” rules:
  - (1) post-consummation events affecting borrower costs on CD may be cured by redisclosure and refund not less than 30 days of receiving knowledge of the post-consummation increase, AND
  - (2) redisclosure for “non-numeric clerical errors” that do not result in change to amounts paid by borrower, within 60 days of consummation

# The Workings of Corrective Actions

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- If the borrower actually pays more (on the CD) than disclosed on the LE, the lender then must refund the increased amount to the borrower and submit a new (revised) CD to the borrower
- Timeframe is no later than 60 days after “consummation” (not necessarily closing)
- Consideration of advantages of the liability limiter, through enhanced QC comparing final LE & final CD
  - This process similar to the current RESPA disclosure rule, but harder to do under TRID because of rounding rules, alphabetization requirements, “flow through” impacts on “Cost to Close” + changes to tolerance rules (called “variations”) that have not yet been interpreted by the CFPB
  - In the early going, consider enhanced size of QC sample, if not 100%



# Further Considerations for Off-Ramp

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- Overall, similar to current redisclosure rule, but the stakes for legal liability (TILA violations) are higher
- Investors, warehouse lenders or MI's may conduct the “comparison” within 60 days, but redisclosure and refund will be on the lender
- For getting it done, lenders will have options
  - Internal review/QC, with the need for “expert” staff to conduct the reviews
  - Retaining diligence firms to conduct the reviews
  - Relying on vendors to “get it right” and check their own work
  - Automated compliance solutions are emerging and could be best choice based on cost and efficiency
- Remember that the “ off ramp” doesn't cover all CD disclosures, such as APR, and timing errors generally are not correctable post-closing

# Further Considerations for Off-Ramp (cont'd.)

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- Coordination with settlement agent, as is the case now under RESPA, will matter under TRID
  - Who will send out the revised Closing Disclosure to the borrower?
- For changes to amount paid by seller, the redisclosure requirement is on the settlement agent, but TRID Rule doesn't say who is responsible for refund to seller
  - Again, coordination will be needed – lenders and settlement agents should have clear understandings on redisclosure duty and who pays
  - Coordinated redisclosure for changes in borrower (buyer) payments and seller payments is permitted