2015
Fun in the
Regulatory Mortgage Industry!

Colorado Mortgage Lenders Association
Denver Luncheon
September 4, 2014

Presented by: Julie Piepho, CMB
President of National Operations
Cornerstone Home Lending, Inc.
& MBA’s Colorado Ambassador
Overview:

- The Regulatory Landscape
  ✓ Year of implementation (2013) → year of compliance (2014)

- RESPA–TILA Integration
  ✓ A summary of the new rule’s requirements/challenges
    (Next MAJOR focus – 2015)

- How to Best Prepare?
  ✓ MBA’s Compliance Essentials products help you implement Dodd-Frank
The Regulatory Landscape
2013: A Year of Implementation

Final Dodd-Frank Mortgage Rules Effective in 2014:
- Ability to Repay/Qualified Mortgage
- HOEPA/High Cost Mortgage Loans
- Loan Officer Compensation Rule
- National Servicing Standards (Two Rules: RESPA & TILA)
- Escrow Rule
- ECOA Appraisal Disclosure Rule
- Appraisals for High Risk Mortgage Rule

4250+ Pages of FINAL CFPB Rules…
- Plus proposed rules, small entity compliance guides
- Official and unofficial guidance
- But still many uncertainties

...not to mention BASEL III
2014: A Year of Compliance

 Biggest Known Impacts:

 ✓ Uncertainty: Industry remains cautious, risk taking remains constrained
   ▪ Lack of written guidance PLUS
   ▪ Ability to cure?
     o CFPB has proposed possible cure for QM-intended loans that exceed QM’s point and fees cap; also considering possible cure for loans that accidentally exceed QM’s 43% DTI threshold (Proposal a major MBA victory)
     ▪ For now, everyone stays well inside the edges of the QM boundary

 ✓ QM/QRM: Tighter Credit
   ▪ Fed Data: 20+% of purchase mortgages > 43% DTI
   ▪ ComplianceEase: 20% of loans in 2013 not QM
   ▪ Fees and Points Cap: affiliate fees, small loan impact
   ▪ Implications for LMI, minority borrowers

 ✓ National Servicing Standards: Higher Costs
   ▪ Sharply higher costs of servicing, especially for small servicers
   ▪ Reconsolidation of market
...and More is Coming

- **Risk Retention/Qualified Residential Mortgage**
  - Re-proposed (505 pages)
  - **GOOD NEWS:** QRM = QM likely to prevail; major MBA victory

- **HMDA Amendments**
  - CFPB proposed rule issued in July 2014 would greatly expand HMDA reporting requirements; implementation of final rule expected by 2016
  - Comments on proposal still open, due October 22, 2014

- **Reg AB II (New Asset-Backed Securities Disclosure Rule)**
  - Final rule released by SEC last week

- **Ongoing GSE Strategic Alignment and FHA Program Changes**
  - FHFA requested input on proposal for Fannie Mae/Freddie Mac single security
  - Comments on proposal still open, due October 13, 2014

- **State-Specific Laws on Mortgage Servicing, Ability to Repay?**
  - Potentially conflicting with, and/or divergent from, federal standards

- **AND MORE?!** CFPB has authority to issue rules to address “risks to consumers” it identifies without waiting for Congress to act
Overall Impact: The Unknown

➢ Unknowns:
  ✓ QM: availability and cost of non-safe harbor lending, non-QMs
  ✓ Enforcement? CFPB, AGs and plaintiffs bar

➢ Are Lenders, Servicers and Vendors ready?
  ✓ CFPB says supervision and enforcement will be “measured”…
  ✓ But what about the federal banking agencies? DOJ?
  ✓ AGs and state regulators?
  ✓ The plaintiffs bar?

➢ How do Community Lenders Remain Competitive?
  ✓ Will the costs become prohibitive (especially on a per unit basis)?
  ✓ Too small to comply?
  ✓ Re-aggregation of market?
  ✓ Implications for competitiveness, ability of market to expand/contract

BUT the BIGGEST Unknown…
Cumulative Impact of Regulation

- Basel III
- QM
- QRMP
- Points & Fees
- LO Comp
- FHA
- False Claims & Enforcement
- The Fed & QE
- Mortgage Banking Association (MBA)

Risks to Recovery

- Disparate Impact
- CFPB Exams and Enforcement
- GSE Reform Debate
- Loan Officer Licensing
- Eminent Domain

Debate
The Regulatory Ecosystem

...for what has become a very complicated web of relationships and interdependencies.

DISCLAIMER: The policies/rules/regulations shown, as well as the corresponding authors/stakeholders, are illustrative and thus may not be an exhaustive list.

- Author of Policy/Rule/Regulation
- Stakeholder of Policy/Rule/Regulation
The industry has a lot on its plate.

And over the next year, arguably the largest industry focus must be...
**RESPA-TILA Integration Rule**

*Dodd-Frank Wall Street Reform Act* required CFPB to propose rules and model disclosures to combine and integrate required disclosures under the *Truth in Lending Act* (TILA) and the *Real Estate Settlement Procedures Act* (RESPA)

- Final rule released November 20, 2013
- Nearly 1900 pages in length
- Requires new forms and associated rules implemented by August 1, 2015
- Industry given 20-month implementation period

...and only ELEVEN months remain
RESPA–TILA Sea Change

- Far more than a new set of disclosures
- Ushers in new responsibilities for lenders that may bring benefits to the market, but also may bring liability and enforcement risks
- Challenges include major systems and business process changes, training and monitoring to operationalize forms and requirements
- Have to embed the forms into systems
- Resolution of major issues imperative

Implementation requires TIME… and we are only eleven months out
New Forms: The Loan Estimate

“Loan Estimate” combines RESPA’s Good Faith Estimate (GFE) and TILA’s Early Truth in Lending (TIL) forms

The Loan Estimate is generally structured as follows (can vary somewhat for different loan types):

- **First page includes:** (1) identifying information describing borrower and loan; (2) loan terms, amount, payments and rate; (3) particular loan features such as prepayment penalties and balloon payments; (4) projected monthly payments showing any increases; and (5) estimated cash to close and closing costs

- **Second page:** breaks down closing costs and includes details on prepaid and escrowed amounts and cash to close

- **Third page:** contains a series of additional disclosures regarding total payments over five years; APR; a new disclosure – Total Interest Payment (TIP); appraisal availability to borrower; whether loan is assumable; requirement for homeowner’s insurance; late payment policies; refinancing not guaranteed; and possibility of servicing transfer
New Forms: The Closing Disclosure

- “Closing Disclosure” merges and replaces the final TIL statement and the RESPA-required HUD-1 settlement statement

- Contents of the five-page Closing Disclosure:
  - **First page**: essentially the same as the first page of the Loan Estimate
  - **Second and third pages**: include closing cost details, a calculation of cash to close, and a summary of the real estate transaction
  - **Fourth and fifth pages**: provide several disclosures regarding whether loan is assumable; whether loan has demand feature; requirement for homeowner’s insurance; late payment policies; that refinancing cannot be guaranteed; **potential for servicing transfer**; appraisal availability to borrower; APR; finance charge; amount financed; and new disclosure of TIP that includes total amount of interest paid over loan term as a percentage of loan amount
Final rule tightens tolerances, restricting increases from Loan Estimate to Closing Disclosure for certain changes

- **Zero Tolerance Bucket** – No variations permitted
  - Lender or broker charges
  - Fees charged by affiliate of the creditor (NEW)
  - Fees charged by service providers selected by the creditor for services for which consumer is not permitted to shop (i.e., where consumer must select from list of providers furnished by the lender) (NEW)
  - Transfer Taxes

- **10% Bucket** – Variations permitted up to 10% overall of these charges
  - Other third party charges subject to 10% limit overall on increases from Loan Estimate

There are limited exceptions to 10% limit, including:
- Consumer requested change
- Consumer request for a service provider not identified by lender
- When information provided at application was or becomes inaccurate
- The Loan Estimate expires
- Other valid changes in circumstance occur
No Tolerance Bucket – Variations Permitted
- SSP shopped for by consumer
- Prepaid interest
- Property insurance premiums
- Escrow amounts, impound reserves
- Charges paid for third party services not required by lender (NEW)

“No tolerance” does not mean “no rules”
- Creditor still on the hook under “variations permitted” bucket
- “Best information reasonably available to the Creditor”
- Won’t get off scot-free if you intentionally lowball prepaid interest, escrow amounts, etc.
- Changed circumstances still exist to permit revisions to Loan Estimate fees
- But important timing implications
**CHALLENGE: “3 Day Waiting Period” After Providing Closing Disclosure**

- **Provision of Forms**: The rule makes lenders responsible for delivering the Closing Disclosure to the consumer, but lender may use settlement agent to provide form with lender retaining responsibility.

- **Rule requires creditor to provide Closing Disclosure to the borrower at least three business days before the consumer closes on the loan**.

- **If creditor makes certain specific changes between time Closing Disclosure form is provided and closing, a new form must be generated and it’s an additional 3 business days after receipt of the new form before closing. The following changes require re-disclosure:**
  - Creditor makes changes to the APR above 1/8 of a percent for most loans (and 1/4 of a percent for loans with irregular payments or periods);
  - Changes of the loan product; or
  - Addition of prepayment penalty to the loan.

- **Less significant changes can be disclosed without an additional 3 day period. Note that the final rule is an improvement over the proposal that would have required re-disclosure for nearly all changes.**
**KEY CHALLENGE: Calendar (With No Changed Circumstances)**

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MBA is Taking an Activist Role as Industry Prepares for RESPA–TILA Integration

- MBA conducted four forums this Summer with CFPB participation to focus on key implementation issues and offer options for resolution.

- Presentations concerning major RESPA-TILA issues are being offered at most MBA conferences and the Annual Convention.

- As questions arise from members, MBA is regularly submitting them to the Bureau.

- Going forward, MBA plans to conduct a new round of forums this Winter and involve its members, representatives of sister trades, and other stakeholders in the discussions.

- MBA’s efforts will continue through August 1, 2015 and beyond.

AND, importantly…
How to Best Prepare?

MBA’s Compliance Essentials Education Products

- **Resource Guides:**
  - Provide model policies/procedures for companies to incorporate specific Dodd-Frank rulemakings into large-scale compliance management programs
  - Audience is senior management, counsel, compliance, etc.
  - RESPA–TILA integration resource guide available FALL 2014 (pre-order available NOW)
  - RESPA–TILA guide will be issued in two parts this year (second part will include policies and procedures)

- **Self-Study Courses:**
  - Provide training for your FULL mortgage lending team on specific Dodd-Frank rulemakings, culminating in an exam
  - Exam passage results in a certificate of completion (use in AUDITS!)
How to Best Prepare?

- MBA–CMLA Agreement Provides Discounts on Compliance Essentials and other MBA Education Products
  - **Special Pricing Tier available for anyone who is a member of the Colorado MLA and is not a member of the National MBA:**
    - Between the MBA member and MBA non-member price point
    - To order, visit CMLA’s Website: [http://www.cmla.com](http://www.cmla.com) ("Program & Services" → MBA Compliance Essentials)
    - **You’re a member of BOTH?** Order at the above link anyway to support CMLA
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