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CFPB: Know Before You Owe Proposed Amendment Q&A (Part 1)

QUESTION #1

Can the settlement agent provide the Closing Disclosure (CD) and Seller's CD to the borrower, seller and their respective real estate agents and brokers and mortgage brokers?

ANSWER #1

Yes. Unless the creditor's closing instructions prohibit the settlement agent from providing such disclosure to other parties, the Bureau clarifies in the amendment that the CD, whether combined or separate forms, meets the Gramm-Leach-Bliley Act (GLBA) exception in sections 502(e)(1) and 509(7)(A). However, it is still a best practice to obtain borrower and seller authorization for such disclosure. And remember, some states have laws that have stricter requirements than GLBA, which must be complied with when sharing disclosures and private financing information.

The Bureau received many questions about whether lenders and settlement agents are permitted to share these disclosures with other parties to the transaction, including the seller and real estate brokers. Regulation P, which implements GLBA privacy provisions, prohibits financial institutions (including lenders and settlement agents) from disclosing customer personal, non-public information without providing notice of the information sharing and an opportunity to opt out to borrowers. GLBA provides an exception if the customers' personal, non-public information is required, or is a usual, appropriate or acceptable method, to provide the customer or the customer's agent or broker.

According to the CFPB, the disclosures are a record of the transaction that may be informative to real estate agents and others representing the borrower, seller and creditor. The Bureau "understands it is usual, appropriate and accepted for creditor or settlement agent to provide a CD to the borrower, sellers and their real estate agents or other agents." Therefore, the Bureau proposes additional comments to clarify how a creditor may provide a separate disclosure form to the borrower and the seller.

QUESTION #2

Is a creditor allowed to modify the CD to provide a separate borrower CD without seller information?

ANSWER #2

Yes, but the proposed amendment is very specific about how the creditor may modify the disclosures without seller information. Regardless, the settlement agent must provide to the seller either a copy of the borrower's CD or a permissible separate CD reflecting the actual terms of the seller's transaction under 12 CFR §1026.19(f)(4)(iv).

QUESTION #3

Are cooperatives treated as personal property under state law covered by "Know Before You Owe"?

ANSWER #3

Yes. All cooperatives are covered regardless of how they are treated under state law in the proposed amendment. A buyer becomes a shareholder in a corporation that owns the property in a cooperative. The buyer is entitled to exclusive use of a housing unit in the property. Currently, the rule only covers cooperatives secured by real property as defined by state law. However, cooperatives are sometimes treated as personal property under state law. This resulted in confusion over whether the disclosures must be applied only to transactions secured by real property as defined under state law. In order to clarify, the Bureau would simplify compliance by requiring all Cooperatives to comply with the TILA-RESPA Integrated Disclosure rule, regardless of how these units are treated under state law.

QUESTION #4

Will we see more housing assistance loans as a result of the proposed amendment?

ANSWER #4

It is likely that we will see more, because the proposed amendment excludes from loan qualification requirements the recording fees and transfer taxes from the 1% threshold of total costs payable by the borrower at consummation. These are limited term loans without any interest for the specific purpose of down payment, closing costs or similar home buyer assistance, including property rehabilitation and energy efficiency assistance, foreclosure avoidance or prevention, as provided by certain housing finance agencies.

QUESTIONS #5

What is the TILA-RESPA Disclosure Rule's "Black Hole"?

ANSWER #5

The "black hole" occurs because of strict timing requirements for the Loan Estimate and CD. For example, the borrower requests a change in the loan or an extension of the closing after they have received the CD. The proposed amendment states "if there are fewer than four business days between the time the revised disclosure is required" and consummation or the CD has already been provided to the borrower, the creditor may correct the CD to reset tolerances, as long as the corrected CD is provided to the borrower within three business days of the creditor learning of a changed circumstance, as defined by the rule. The creditor must learn of the changed circumstances after the initial disclosures have gone out to the borrower. This does not apply to rate locks because the rule specifically excludes tolerance resets based on rate locks. The Bureau restates that any disclosure provided to the borrower must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the borrower, regardless of the purpose of the revised disclosure.

QUESTION #6

Does the Bureau propose any changes to the disclosure of the simultaneous issuance of title insurance premiums?

ANSWER #6

No. Despite repeated comments from the American Land Title Association and industry leaders voicing borrower confusion over this in the final rule, the Bureau is not proposing any changes to the disclosure of the simultaneous issuance title insurance premiums. The Bureau believes that borrowers continue to be unclear about title insurance costs at the closing table and the rule for disclosure of simultaneous issuance is consistent with their mission to better inform borrowers. Without specific data on borrower understanding, the Bureau has made it clear that this is not a policy decision that they are willing to address beyond what is already in the original rule.

QUESTION #7

Does the Bureau propose any changes to remove "optional" from the Owner's Policy of title insurance on the disclosures?

ANSWER #7

No. The Bureau does not propose to remove "optional" after the Owner's Policy on the disclosure as currently required in the final rule. The Bureau believes the information they have provided to the borrower about the nature of title insurance and the costs in the 'Your Home Loan Toolkit' on the Bureau's online tools provide answers to the borrower's questions about title insurance products and services.

QUESTION #8: Does the Bureau propose any additional cure provisions for errors made on the disclosures to address issues in the secondary market?

ANSWER #8

No. The Bureau states that it is "not proposing additional cure provision" for errors made in the Loan Estimates or CDs, despite feedback that errors are creating a liquidity problem in the secondary market. The Bureau indicates that there is little data supporting a liquidity problem in the secondary market. The Bureau is "concerned that further definition of cure provisions would not be practicable without substantially undermining incentives for compliance with the rule."

QUESTION #9

Are there are other changes in the proposed amendment?

ANSWER #9

Yes. This Q&A document only details those that are most applicable to title and settlement agents. The proposed amendment also includes minor changes and technical corrections to a variety of topics, including:

- Calculating cash to close table
- Decimal places and rounding
- Expiration dates for the closing costs disclosed on the Loan Estimate
- Gift funds
- "In 5 Years" calculation
- Model forms
- Non-obligor borrowers
- Partial payment policy disclosures
- Payment ranges on the projected payments table
- Rate locks
- Summaries of transactions table
- Total interest percentage calculation

The proposed amendment would also now include tolerance provisions for the total of payments that parallel existing tolerances for finance charges and disclosures affected by the finance charge. This would make the treatment of total payments consistent with its treatment prior to the final rule. Before the TILA-RESPA Integrated Disclosure rule, total payment disclosure was the sum of the amount financed and the finance charge. The final rule changed the total payments calculation sum to include the principal, interest, mortgage insurance and loan costs, so that the total payments were more understandable to the borrower. The Bureau found the change led to some confusion, and so proposes to provide borrower paid loan costs as the only loan costs that are included in total payments. The Bureau is also seeking comments to provide a tolerance for the total payments that are already applied to finance charge.

QUESTION #10

What is the settlement agent's responsibility for providing the Seller's CD in a purchase transaction with simultaneous loan for subordinate financing?

ANSWER #10

In a purchase transaction with a simultaneous loan for subordinate financing, the Settlement Agent complies with the requirement to provide the seller with a copy of the CD by providing the seller with only the CD for the first lien transaction, if the CD records the entirety of the seller's transaction. If the first lien CD does not record the entirety of the seller's transaction (which may occur when, for example, the seller contributes to the costs of the simultaneous loan for subordinate financing), the CD for the simultaneous loan for subordinate financing must be provided to the seller reflecting the seller's transaction. In this case, the settlement agent must provide the seller with a copy of the CD for both the first lien and the simultaneous loan for subordinate financing.

QUESTION #11

I heard the proposed amendment would cover trust established for tax and estate planning purposes. Is this correct?

ANSWER #11

Yes. The rule currently covers land trusts which extend credit to a borrower. The proposed amendment would amend comment 2(a)(11)-3 to clarify that, in addition to credit extended to land trusts, credit extended to trusts established for tax or estate planning purposes is also considered to be extended to a natural person for purposes of the definition of borrower in 12 CFR §1026.2(a)(11), consistent with comment 3(a)-10.

QUESTION #12

Does the rule address the uncertainty regarding how recording fees are to be disclosed on the CD?

ANSWER #12

Yes. The Bureau understands that there is uncertainty as to how recording fees should be disclosed on the CD. The Bureau proposes to amend the rule to clarify that the total amount of fees for recording deeds and the total amount of fees for recording security instruments must each be disclosed on the first line under the subheading "Taxes and Other Government Fees" before the columns on the CD. The Bureau also proposes to amend the rule to clarify that the total amounts paid for recording fees (including, but not limited to, fees for recording deeds and security instruments) must be disclosed in the applicable column on the CD. Finally, the Bureau proposes to add a new comment to clarify the labels for recording fees on the CD.

The CFPB seeks input from a wide range of stakeholders and invites the public to submit written comments on the proposal. Visit www.regulations.gov and follow the instructions for submitting, or email federalregistercomments@cfpb.gov; include Docket Number CFPB-2016-0038 in the subject line. Comments are due by October 18 and will be weighed carefully before final regulations are issued.

