

M E M O R A N D U M

To: Members of the Committee on Financial Services

From: FSC Majority Staff

Date: May 11, 2015

Subject: May 14, 2015, Housing and Insurance Subcommittee Hearing on “TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process”

The Subcommittee on Housing and Insurance will hold a hearing entitled “TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process” on Thursday, May 14, 2015, at 2:00 p.m. in Room 2128 of the Rayburn House Office Building. This hearing will provide Subcommittee Members with a better understanding of the TILA-RESPA Integrated Disclosure rule (TRID) promulgated by the Consumer Financial Protection Bureau (CFPB). Testimony will focus on the impact of TRID on the real estate market, implementation and compliance costs associated with TRID, and a comparison of those costs to the benefits consumers and industry participants are expected to derive from the rule.

This will be a one-panel hearing with the following witnesses:

- Ms. Cynthia Lowman, President, United Bank, Mortgage Corporation, United Bank of Michigan, on behalf of the American Bankers Association
- Ms. Diane Evans, Vice President, Land Title Guaranty Company, on behalf of the American Land Title Association
- Ms. Laurie Goodman, Center Director, Housing Finance Policy Center, Urban Institute
- Mr. Chris Polychron, Executive Broker, 1st Choice Realty, on behalf of the National Association of Realtors

Disclosures under RESPA and TILA

The TRID Rule is intended to fulfill disclosure requirements established by the Real Estate Settlement Procedures Act of 1974 (RESPA) (P.L. 93-533) and the Truth in Lending Act of 1968 (TILA) (P.L. 90-321). Both laws provide consumers with information regarding real estate transaction costs.

RESPA requires standardized disclosures about settlement and closing costs, such as loan origination fees or points, credit report fees, property appraisal fees, mortgage insurance fees, title insurance fees, homeowners and flood insurance fees, recording fees, attorney fees, and escrow account deposits. RESPA requires that the providers of settlement services supply a good faith estimate of the costs that borrowers should expect to pay at closing. RESPA also requires that a list of closing costs, commonly known as the HUD-1 document, be provided to borrowers at closing. RESPA prohibits “referral fees” or “kickbacks” among settlement-service providers to prevent unnecessary increases in settlement fees.

TILA requires lenders to disclose the cost of credit and the repayment terms of mortgage loans before borrowers enter into a transaction.

Joint RESPA/TILA Disclosures and the CFPB

In 1996, Congress directed the Department of Housing and Urban Development and the Federal Reserve Board to simplify and improve RESPA and TILA disclosures. The agencies were also asked to create a single RESPA/TILA disclosure form that would meet the purposes of both statutes and to recommend any necessary legislative changes. The agencies failed to develop a joint disclosure form and concluded that change could come only through legislation.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) transferred rulemaking authority for both RESPA and TILA to the CFPB. The Dodd-Frank Act directed the CFPB to propose an integrated mortgage disclosure form and accompanying rules that satisfied the requirements of both RESPA and TILA by July 21, 2012. In advance of its formal rulemaking, the CFPB solicited feedback from consumers, businesses, and government officials on prototype forms that combined RESPA and TILA disclosures. The CFPB sought to create a combined disclosure form that both makes mortgage terms more transparent to consumers and makes it easier for industry to comply with various federal laws. The CFPB also is working to meet the Dodd-Frank Act’s requirement that it form a Small Business Review Panel and issue a report as part of its TRID rulemaking process.

On July 9, 2012, the CFPB issued the proposed TRID Rule that developed both a model Loan Estimate form and a model Closing Disclosure form intended to satisfy the TILA and RESPA requirements as well as other disclosure requirements under the Dodd-Frank Act. Under the proposed rule, borrowers would receive one Loan Estimate form within three business days after applying for a mortgage loan, and one Closing Disclosure form at least three days before the borrower closes on the loan.

The model Loan Estimate form is a three page document that would replace the Good Faith Estimate form developed by HUD and the early TILA form developed by the Federal Reserve System. The proposed disclosure is intended to facilitate comparison with competing loan offers and provides information concerning, among other items, loan terms, projected payments, loan and closing costs, appraisals, and refinancing.

The model Closing Disclosure form is a five page document that would replace the HUD-1 Settlement Statement and the revised TILA disclosure. The proposed disclosure provides information on the loan terms, projected payments, cash needed to close, and a breakdown of closing costs and other costs. It also provides a summary of the transaction as well as additional information about the features of the loan, such as whether there is an escrow account and how late or partial payments will be addressed.

On November 20, 2013, the CFPB finalized its mortgage disclosure rule and released “Know Before You Owe” forms that replaced TILA and RESPA forms with two consolidated mortgage disclosures: the Loan Estimate and the Closing Disclosure. The effective date for the new disclosure forms is August 1, 2015.

Almost a year after the CFPB issued its rule, the CFPB proposed two substantive revisions after receiving comments from industry participants and consumer advocates. The CFPB’s rule had required lenders to provide consumers with a revised Loan Estimate on the same day that the loan’s interest rate was locked in. The revised rule gives creditors until three business day to issue the revised Loan Estimate. The second revision facilitates lenders’ ability to issue a revised Loan Estimate for new construction loans in cases where loan consummation is expected to occur at least 60 calendar days after provision of the original Loan Estimate; previously, the rule did not readily provide a mechanism for lenders to reserve the right to issue the revised estimate. Both of these proposed updates would take effect on August 1, 2015.

H.R. 2213

Stakeholders have implemented changes to technology platforms, staff training, and business practices in advance of the TRID Rule’s August 1, 2015, effective date. However, the new integrated disclosure forms may not be used prior to August 1, 2015, which does not give consumers, industry, or the CFPB an opportunity to test the new closing process in real time. H.R. 2213, introduced by Congressman Steve Pearce (R-NM) and co-sponsored by Congressman Brad Sherman (D-CA), prevents enforcement of the integrated disclosure requirements and the filing of any related lawsuit if (1) the person has made a good faith effort to comply with the requirements and (2) the conduct alleged to be in violation of the requirements occurred on or before December 31, 2015, thus allowing stakeholders and the CFPB to test the effective operation of the rule.