NAR Issue Summaries

Business / RESPA/TILA Harmonization

NAR Committee:

Business Issues Policy Committee

What is the fundamental issue?

For a number of years, the Consumer Financial Protection Bureau (CFPB) has been working to harmonize the *Real Estate Settlement Procedures Act* (RESPA) and *Truth in Lending Act* (TILA) disclosures and regulations. The final Know Before You Owe (KBYO or TRID) rule has helped clarify real estate sales transactions, but initially faced many questions, complications, and costs related to the implementation that began on October 3, 2015.

I am a real estate professional. What does this mean for my business?

The new KBYO integrated disclosures replace the long-standing Good Faith Estimate (GFE) and HUD-1 settlement statement. Like any new process, there has been a learning curve with unanticipated hurdles. This uncertainty has generated a degree of risk aversion on the part of lenders that has led to a more tightly lender-controlled closing process. Of concern is a requirement that the Closing Disclosure (CD) be issued three days before closing, what adjustments can be made to the CD after it has been issued, and the potential delays that could result. Additionally, agents have reported reluctance by lenders and title companies to share the CD out of fear of liability for disclosing clients' nonpublic personal information. The CFPB has been working to address these outstanding concerns through subsequent rulemakings since 2015.

NAR Policy:

NAR supports a RESPA/TILA harmonization that adds transparency, simplifies disclosures, and reduces burdens to settlement service providers, including real estate professionals. RESPA and TILA are confusing statutes with sometimes conflicting disclosures and procedures. A single reformed set of rules and initial disclosures could benefit settlement service providers and consumers, ultimately improving the settlement process.

Opposition Arguments:

Opponents of NAR policy believe that each requirement imposed by the RESPA and TILA laws is necessary to ensure that consumers are adequately protected. Some would like to see more efforts to control costs. Some at the other end of the spectrum would simply like to get rid of this rule.

Legislative/Regulatory Status/Outlook

The final Know Before You Owe (KBYO) mortgage disclosure rule was issued November 20, 2013, and went

into effect on October 3, 2015.

In the final rule, the CFPB largely addressed NAR's major concerns regarding the proposed 3-day waiting period to close transactions and dropped many provisions including the "all in" APR that would have been problematic. However, concerns of possible closing delays and how the mortgage transaction interacts with the real estate transaction remained. For instance, real estate agent access to the CD continued to be problematic as lenders argued that the privacy requirements of the Gramm-Leach-Bliley Act (GLBA) or Regulation P prohibited them from releasing the CD to the real estate agent. However, an exception to the law and regulation already allows lenders to distribute the CD to third parties, including real estate professionals, which was eventually clarified by the Bureau thanks to advocacy efforts by NAR

Upon the proposal stages of the rule, NAR strongly advocated for a period of restrained enforcement and liability for the rule. It was through NAR member efforts during the 2015 REALTOR® Legislative Meetings that almost 300 U.S. Senators and Representatives signed a letter to CFPB Director Richard Cordray asking him to grant a period of restrained enforcement, which the CFPB subsequently granted. In June 2016, NAR sent a letter to the CFPB requesting guidance on several concerning issues still causing problems for consumers and industry, including seeking: clarity on lenders' ability to share the CD with third parties; insight on revising the CD to reflect changes in circumstances (the so-called "black hole"); and extension of post-consummation timelines to correct minor errors to reduce impact on the secondary market.

On July 29, 2016, the CFPB issued a proposed rule addressing some of these concerns. As advocated for by NAR, the CFPB included explicit language acknowledging that sharing the CD with real estate professionals is permitted under existing privacy laws (GLBA and Regulation P). Thus, the KBYO rule did not impact the existing privacy law exception that allowed for CD sharing. Therefore, lenders that continue to show reluctance in sharing the CD out of fear of liability for disclosing clients' nonpublic personal information remains unwarranted.

On October 18, 2016, NAR sent a letter to the CFPB commenting on the latest proposed rule urging the CFPB to: (1) emphasize that lenders and title agents should share the CD with real estate agents, in accordance with existing privacy law and regulation; (2) ensure lenders are able to revise the CD to reflect valid changes in circumstances; (3) extend post-consummation timelines to correct minor KBYO errors; and (4) implement additional modifications to decrease consumer and industry uncertainty.

On July 7, 2017, the BCFP released the final rule amending the "Know Before You Owe" (KBYO or TRID) mortgage disclosure rule and clarified the ability to share the CD with third parties - a victory for real estate professionals nationwide. The final rule was became effective on October 10, 2017, with mandatory compliance required by October 1, 2018.

At the same time as the final rule was released, the CFPB issued a proposed rule looking at the outstanding "black hole" issue related to creditors' ability to use a CD to reflect changes in costs imposed on consumers. On October 10, 2017, NAR sent a letter to the CFPB commenting on the proposed rule, advocating for lenders' flexibility in being able to reissue a CD to determine if a closing cost was disclosed in good faith, regardless of when the CD is provided relative to consummation. NAR explained the advantages to having information early on in the closing process, which helps facilitate improved communication and an overall

more transparent process for the consumer. A final rule was issued on April 26, 2018, and became effective June 1, 2018. Since that time, the CFPB has updated its 'TILA-RESPA Integrated Disclosure Frequently Asked Questions (FAQs)," which provides guidance to help ensure compliance with TRID-RESPA Integrate Disclosure Rule.

In the fall of 2019, the CFPB began its five-year assessment of the TRID rule, as mandated by law, to examine the implementation costs and regulatory benefits since the rule was enacted. A Request for Information (RFI) was issued, which NAR providedcommentsfollowing extensive outreach to members on the effect of the rule on consumers and their businesses. For example, there continues to be frustration with the mandatory three business-day waiting period that occurs when there are certain changes made after an initial disclosure has been provided. NAR advocated for more flexibility for consumer waivers to protect against unnecessary delays and frustrations with this waiting period. The Bureau issued the five-year lookback assessment on October 1, 2020, which reported how the TRID rule improved consumers' experience to locate key mortgage information and compare mortgage offers. The CFPB also published a*Data Point*that examined changes consumers face regarding terms and costs of a mortgage loan throughout the transaction. There, the CFPB reported that almost 90 percent of mortgage loans involved at least one revision, 62 percent received at least one revised LE, and 49 percent received at least one corrected CD. The Bureau will use this information in determining future changes to the rule, which NAR will continue to provide feedback.

Current Legislation/Regulation (bill number or regulation)

CFPB Final Rule

Public Law 111-203 (HR 4173, The Dodd Frank Wall Street Reform and Consumer Protection Act).

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