



Process Improvement Finally Getting It Right

At long last the CFPB has released TRID 2.0 and many in the industry like the changes.

By Tony Garritano

The CFPB's announcement that it had finalized the long-awaited amendments to TRID, initially proposed in July 2016 and commonly referred to as "TRID 2.0," was a welcome surprise. The industry had been calling for updates, both in the way of substantive changes as well as clarifications of numerous ambiguities in the rule, since TRID's inception. With the finalization of TRID 2.0, the CFPB has at last answered those calls.

"While the yearlong delay since its initial proposal has been frustrating to many in the industry, I think it's clear from reading through the final rule that the changes ultimately adopted, and the Bureau's accompanying commentary, reflect a thorough and thoughtful consideration of all feedback received from consumers and industry in response to the updates initially proposed. The

"total of payments" disclosure; clarifying requirements around the disclosure of construction and construction-permanent loans; expanding the exemption for certain housing assistance loans; and clarifying and revising various calculations in the "Calculating Cash to Close" table. All of these changes are helpful, and should be welcomed by the industry. However, there are a few areas where I believe the Bureau missed the mark.

"One such area is the final rule's failure to add meaningful guidance regarding the extent to which settlement service fees may be itemized on a Loan Estimate (LE) or Written List of Providers (WLP). While the initial proposal included a helpful clarification that fees for certain "packages" of settlement services may be aggregated, the Bureau decided to drop this clarification from the final rule in favor of a comment clarifying that lenders

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Bureau clearly took their time to try to "get it right," and I think they should be commended for that," said Michael Cremata, Senior Counsel and Director of Compliance, ClosingCorp.

Headquartered in San Diego, Calif., ClosingCorp owns and operates the premier source of intelligence for closing costs and service providers in the U.S. residential real estate industry. Through innovative solutions, progressive technologies and strong alliances, the company delivers timely, accurate and transparent results that help optimize closing processes and services for mortgage lenders, title and settlement companies and real estate professionals. Clients rely on ClosingCorp to help improve efficiencies and mitigate risk.

"Some of the important changes made by the rule include: introducing a tolerance for the

need not include on the LE or WLP "related fees . . . not themselves required by the creditor . . . such as a notary fee, title search fee, or other ancillary and administrative services." Whether or not these fees are disclosed on the LE or WLP, though, the rule makes clear that they still must be included in tolerance calculations at closing if they fall in the "10% bucket." Therefore, no lender would intentionally exclude "related" fees from the LE or WLP and thus suffer a smaller "baseline" for purposes of calculating tolerances (and that's to say nothing of the context in which the fees are held to zero tolerance, in which case there's no clarity at all as to how they would be treated for tolerance purposes)."

However, John Levonick, Director of Regulatory Compliance at Clayton Holdings believes that as the industry digs through the new

2017 TILA-RESPA Integrated Disclosure Rule (TRID), or TRID 2.0, compliance and quality control service providers are left scratching their heads about the complexity, and possible confusion, that the rule's open adoption period is going to create.

"Based on our preliminary review of the 560 pages of "clarifications" that make up TRID 2.0, many if not most of the changes ease more onerous obligations from a timing, data, tolerance, content or calculation validation perspective," said Levonick.

"The TRID 2.0 rule has an effective date that is 60 days from the date on which it is published in the Federal Register. However, compliance with the rule is optional for creditors until the mandatory compliance date of October 1, 2018. This creates an open phase-in period from the publication date through October 1, 2018, whereby creditors are permitted to choose to handle certain origination practices and disclosures either (1) in the way that was in place prior to the TRID 2.0 effective date, or (2) in the way identified as appropriate in TRID 2.0. In other words, during this phase-in period creditors can selectively comply with whichever individual requirements within the original rule and the TRID 2.0 rule that they prefer. Good news for lenders; bad news for automated rules engines and QC personnel.

"From a technology standpoint, this will cause certain external automated compliance tools to falsely identify errors that prior to TRID 2.0 were "material" and are now no longer. Providers will then need to manually "clear" these non-material errors. Most of the TRID 2.0 changes will require only minor readjustments to current loan origination system configurations (although construction loans will require more). But even minor changes take development time. And, at the moment, with many lenders

focused on the coming Uniform Closing Dataset (UDC), the TRID 2.0 changes—which will not be subject to enforcement liability until the October 1, 2018 mandatory compliance date—will not go to the head of the queue."

The bigger question is how will the Secondary Market react to TRID 2.0? Will investors be concerned about liability, and whether consumers have a private right of action for errors arising during this 2017 TRID phase-in window? "This will remain an unknown, to be addressed on a case-by-case basis as issues are identified. While the CFPB has stated that its "clarifications" are not retroactive, what will become of pre-existing TRID errors that, had they occurred after TRID 2.0's effective date, would not be TRID errors?" answered Levonick.

"In the meantime, we all continue to work through the new rule, hopeful that, in the long run, its clarifications will reduce confusion, lead to fewer errors in origination, and increase secondary market pull through on loan acquisitions," he added.

Cremata agrees that TRID 2.0 has some flaws. "It's disappointing (although not surprising) that the Bureau refused to address simultaneous issue rates, additional cure mechanisms, or the so-called "black hole" (although the black hole is the subject of a new proposal, released at the same time as the final rule, on which the Bureau is currently seeking comments).

"Overall, the finalization of TRID 2.0 represents a significant positive development for the industry. Although it fails (or declines) to resolve several of what have been the industry's biggest

pain points with TRID, it nonetheless introduces a number of much-needed clarifications and amendments, and is unquestionably a step in the right direction by the Bureau," he concluded. ❖



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Tony Garritano is chairman and founder at PROGRESS in Lending Association. As a speaker Tony has worked hard to inform executives about how technology should be a tool used to further business objectives. For over 10 years he has worked as a journalist, researcher and speaker in the mortgage technology space. Starting this association was the next step for someone like Tony, who has dedicated his career to providing mortgage executives with the information needed to make informed technology decisions. He can be reached via e-mail at tony@progressinlending.com.