

DON'T GET BLINDSIDED BY THIS NEW DISCLOSURE

Yet another disclosure has been created, required to be provided to consumers in connection with their mortgage loans. This comes in an effort to clarify the confusing world of transfers and assignments and the general shuffling of loans among the various players in the mortgage loan game.

The question: Is this going to be helpful to the consumer or just more paperwork that adds to the confusing pile already provided to consumers in connection with their mortgage loans?

More for Reg Zzzzzzzzzzz……:

On Nov. 20, the Federal Reserve Board announced an amendment to Regulation Z that implements a provision in the law that has been in effect since May 20, 2009. The relevant provision of the Helping Families Save Their Homes Act requires a disclosure notice to consumers of the sale or transfer of their mortgage loan within 30 days after the loan is sold or transferred.

In this case, a mortgage loan includes any personal-purpose loan secured by a consumer's principal dwelling, including home improvement loans, home equity lines of credit, refinancings, and, of course, purchase-money mortgage loans. The disclosure has to be mailed or delivered to the consumer whose loan has been sold or transferred and must contain specified information about the new owner of the loan; the new location where the transfer of ownership has been recorded; and the date of the sale or transfer.

The requirement to provide the disclosure has been in effect since the law was enacted. (It added this provision to the Truth in Lending Act.) The Federal Reserve was not required to issue implementing regulations as a result of the law change, but decided to do so under its general authority to issue regulations under the act. The new amendments to Regulation Z, which are found in new Section 226.39, help to define the scope of the disclosure requirement.

Since the disclosure requirement has been in effect for some time, the Fed chose not to issue a proposal and request for comments prior to issuing the interim final rule on November 20. The regulation amendment is essentially effective immediately, because the law is already effective. The Fed did provide for a 60-day delay in effective date of the regulation change until Jan. 19, 2010. However, for practical purposes, the requirement is already effective.

Seems we've heard this song before

This new disclosure may sound very similar to some old, familiar disclosures required under the Real Estate Settlement Procedures Act. RESPA requires a notice to consumers when the servicing of their federally related mortgage loan is transferred to someone else. Both the transferor and the transferee have to notify the consumer of the transfer of servicing so that the consumer is not confused about where to send his/her mortgage loan payment. The consumer gets two disclosures about the transfer—one 15 days before the transfer and one 15 days after the transfer.

Similar, but not the same.

But this new disclosure is a bit different. It isn't related to the transfer of loan servicing. It applies when the ownership of the loan is transferred.

If there is a transfer of ownership without a transfer of servicing rights, or vice versa, the consumer notice requirements will be different.

If the servicing transfers along with the ownership transfer, the new TiL/Regulation Z disclosure and the existing RESPA disclosures are all required.

Congress determined that consumers need to know when there is a change in the ownership of their mortgage along with where that ownership transfer is recorded and how to contact the new mortgage loan owner. In the event a consumer needs to rescind their mortgage loan (although the disclosure requirement is not limited to rescindable mortgage loans), the consumer needs to know the identity of the new owner, according to the act's legislative history.

At what point does a disclosure become harmful and not helpful? Have we hit that mark yet with this latest creation?

What do you think? Share your experiences as a Compliance officer, senior manager, or director in the comment area below.

About Nancy Derr-Castiglione

"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both ABA Banking Journal contributing editors on compliance.

Nancy, a Certified Regulatory Compliance Manager, is owner of D-C Compliance Services, an independent regulatory compliance consulting services business that has provided expertise in compliance training, monitoring, risk assessment, and policies and procedures to financial institutions since 2002.

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In addition to serving as a Contributing Editor of ABA Banking Journal, Nancy has served on the ABA Compliance Executive Committee; National and Graduate Compliance Schools board; conference planning committees, and the Editorial Advisory Board for the ABA Bank Compliance magazine.

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