RESPA VERSUS TILA: WHY HAVE BOTH? AND WHICH SHOULD GO?

Would a regulatory merger help solve two tough challenges?

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The list of common compliance violations show RESPA and TILA problems at the top the list. In Truth in Lending, there are chronic types of errors in identifying all of the finance charges. When that happens, both the finance charge and the Annual percentage rate are off-usually outside of tolerances. Then there are errors on the HUD-1 and Good Faith Estimate that lead to write-ups. These error sets are often inter-related. The result is that a single oversight of a finance charge can result in multiple violations of two regulations.

It is bad enough that one mistake leads to multiple violations of two regulations.

But do we really need both RESPA and TILA? What if there was only one regulation to disclose all mortgage costs? Not only would life be much easier, it would cut common violations in half.

Is RESPA evolving out of relevance?

Prior to the implementation of the 2010 Good Faith Estimate scheme, RESPA violations, although common, basically resulted in a slap.

There were no monetary consequences. The worst thing that could happen is a finding of a pattern or practice of violations that repeated from exam to exam. Only TILA carried the big stick-restitution.

Then the Department of Housing and Urban Development invented tolerances for the GFE.

While HUD's authority to do this is highly questionable-since HUD lacks any authority to enforce it-the deed is done and banks must comply. So, suddenly, GFE errors have financial consequences, just like TILA violations.

So the question is: Does RESPA provide information to consumers that TILA does not?

Think about it: What does RESPA tell the customer that isn't already a part of TILA?

Anything missing could easily be covered by TILA, so that a single disclosure did the job for both laws.

And what about Truth in Lending?

Truth in Lending is all about the cost of credit. The idea is that consumers should have a means of seeing not just the interest rate, but the total cost of credit over the life of the loan.

To give the customer this information, Truth in Lending accounts for not only the note amount and contract interest rate, but also includes other costs and fees that exist because the customer is using credit to make or complete the transaction.

Items such as points, that wouldn't exist in a cash transaction, are included in the finance charge and APR. Brokers' fees are also included. After all, if the customer wasn't looking for mortgage credit, there would be no role or use for the broker.

RESPA, on the other hand, is about the cost of settlement.

Congress' purpose in requiring the GFE and the HUD-1 Settlement Sheet was to prevent settlement shock-that awkward moment when the borrower realizes that taking out a mortgage is expensive.

To prevent this moment of shock, RESPA requires mortgage lenders to tell borrowers about costs in advance of making the loan. First there is the GFE. Then there is the HUD-1. The idea is that the consumer knows what will happen and what it will cost before that ceremonial moment in the lawyer's office.

Considering RESPA versus TILA

Ultimately, the difference between TILA and RESPA results from looking at different stages in the mortgage process: making loan decisions and going to settlement. The information is strikingly similar-but ever so slightly different.

TILA includes all finance charges but omits some costs of purchase or settlement that are not triggered by the credit. Recording a deed, for example, would occur whether or not the purchaser uses credit. TILA does include non-credit related costs if they are part of the itemization of amount financed.

RESPA, on the other hand, was intended to deal with the costs of settlement. It is only in the past several years-a small fraction of RESPA's life-span-that HUD has concluded that the cost of credit is a settlement cost. So RESPA disclosures have traditionally included fees, such as appraisals and filing fees, that are not a cost of credit and are not included in TILA disclosures or calculations.

Because there has always been this slight difference between the purpose and calculations of the two disclosures, they have always been treated as separate entities. However, this time around, HUD argues that the cost of settlement includes the cost of credit.

Unfortunately for creditors subject to both regulations, HUD's new required forms disclose the costs and terms of credit differently from TILA's required format.

We could argue until the cows come home about which disclosure is better. The problem for us is that they are different.

Time for a regulatory merger?

However, now that HUD has added a method-even though incomplete and arguably misleading-for showing the cost of

credit, HUD has opened the door to taking another hard look at whether we really need two separate regulations and disclosures.

Merging TILA and RESPA disclosures has been looked at before.

HUD and Federal Reserve Board staff were directed by Congress to work together to design a combined disclosure. Unfortunately, the effort ended in disagreement and we still have two separate disclosures.

It should not be necessary to have two separate disclosures. It is perfectly possible to design a TILA disclosure that includes settlement costs and fees.

In its proposal to revise TILA disclosures for real estate secured loans, the Federal Reserve proposed rolling all settlement costs into the cost of credit. Doing so would, in theory, reduce the number of finance charge violations because lenders would no longer have to figure out what should be included. It would all be in.

With all charges included, the only remaining issue is itemizing all settlement costs. With a few adjustments, the itemization of the amount financed could accomplish this.

Following the all-charges-in approach to the finance charge would raise the APR but we now know, thanks to the FRB's study, that consumers don't look at that anyway. So why not? If we did, we could perhaps dispose of RESPA.

About Lucy Griffin

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

Lucy, a Certified Regulatory Compliance Manager, has over 30 years experience in compliance. She began as a regulator, including stints with the Federal Reserve Board, the Federal Trade Commission, and the Federal Home Loan Bank Board. For many years she managed the ABA Compliance Division. Since 1993 she has served as a compliance consultant as president of Compliance Resources, Inc., Reston, Va. She is also editor of Compliance Action newsletter and senior advisor with Paragon Compliance Group, a compliance training firm.

In addition to serving as a Contributing Editor of ABA Banking Journal, Lucy serves on the faculty of ABA's National Compliance Schools board. For more than a decade she developed and administered the case study at ABA's National Graduate School of Compliance Management. She can be reached at lucygriffin@earthlink.net

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