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CFPB Publishes Results of eClosing Pilot Program

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On August 5, the CFPB released a 90-page report summarizing the results of its eClosing[1] pilot program, a research initiative launched in April 2014 to explore whether electronic closing processes offer measurable benefits to mortgage borrowers. According to the CFPB, the pilot program was part of the agency's overall "Know Before You Owe" campaign, through which the CFPB developed the TILA-RESPA integrated disclosure (TRID) regime. In the report, the CFPB pointed out eClosings may benefit borrowers by making them feel more empowered during the closing process, and the CFPB encouraged the industry to "explore eClosing as a promising option for customers."

For the pilot, the CFPB enlisted the help of seven lenders, five technology companies and dozens of settlement agents and real estate professionals in a cooperative effort. The CFPB recognized and commended the time and effort of the participants, given the relatively short turnaround time for completing the data-gathering phase. In total, the CFPB collected data on 3,292 loans, some of which the parties closed with traditional paper documents, and others of which the parties closed with either all electronic documents or a combination of electronic and paper documents ("hybrid transactions"). The CFPB received post-closing survey responses from 1,254 borrowers, 60 of whom participated in follow-up interviews.

In the course of the pilot, the CFPB focused on three metrics with respect to the mortgage closing process—consumer understanding, consumer empowerment and overall efficiency. Generally, the agency drew on data from all 3,292 loans; for the first two metrics, which necessarily rely on consumer input, the agency drew on data from the 1,254 borrower surveys. According to the CFPB, for borrowers using eClosings compared to borrowers using traditional paper documents, the data showed:

- A 7 percent positive difference in perceived understanding of the closing process;
- A 15 percent positive difference in perceived empowerment during the closing process (i.e., feeling of control and capability during the process); and
- A 17 percent positive difference in overall efficiency of the closing process.

A central theme in the CFPB's discussions of these positive differences is the early delivery of documents that eClosings make possible. Namely, compared to traditional paper closing processes, eClosing processes allow lenders to produce documents faster and deliver them more quickly to borrowers. Because eClosing borrowers receive their documents earlier than traditional paper closing borrowers, such borrowers felt they understood the process better and were more in control, while facing fewer unforeseen delays.

[1] The CFPB described "eClosings" as residential mortgage closings that rely on technology that allows consumers and other involved in such mortgage transactions to view and sign documents electronically. This includes hybrid transactions, in which some Closing Disclosures and documents are viewed and signed electronically and some are provided and signed on paper.

The Bureau's approach validated a key principle in TRID, that is new timing requirements that, as of October 3, 2015, will require lenders to deliver Closing Disclosures to borrowers at least three business days prior to consummation. The report also noted that even with the promulgation of the E-SIGN Act and UETA years ago, misunderstanding of the validity of eSignatures persists.[2] The report noted that secondary market acceptance of all-electronic mortgage transactions, including eNotes, has been uneven.

The report presented other caveats with respect to the agency's findings—namely, the small sample size and the inability to randomize the treatment and control groups (i.e., borrowers have to opt-in to the eClosing process; lenders cannot choose eClosing on borrowers' behalf). Additionally, the Bureau quite rightly observed that certain state law recording and notary restrictions have impeded mortgage lenders from implementing all-electronic eClosings. In other words, not every eClosing borrower will enjoy an identical eClosing experience.

Alongside its release of the report, the CFPB hosted a public forum to discuss the pilot program and the report's findings. During the forum, industry members welcomed operational efficiencies facilitated by the eClosing process but also expressed concerns over its upfront costs and its safe, reliable use in the current age of cybersecurity. Consumer advocates expressed concerns about limited access to Internet connections for borrowers and encouraged unification of eClosing functionality standards (i.e., the entire closing package, not just the Closing Disclosures, should be delivered early).

At this point, take-home lessons from the report include:

- Reinforcement of the CFPB's expectation, as clearly evidenced by TRID, that the mortgage industry should move to technology-driven solutions in a 21st century mortgage market.
- CFPB recognition that eClosings do not lend themselves to a "one size fits all" solution, due to resource constraints and limitations on developing new and potentially costly eClosing platforms. In addition, the agency recognized, not unfavorably, that for the foreseeable future, hybrid transactions will be more common than all-electronic eClosings.
- CFPB encouragement of eClosings must be viewed in the greater context of mandatory early disclosures codified in TRID. Suggestions by some commentators noted in the report, including the CFPB itself, pointed toward ALL transaction documents (notes, security instruments, etc.) being provided to consumers in advance of closings. It remains to be seen whether advocates of this approach will press for this in future discussions of eClosings.
- The CFPB, in its April 2014 proposal and in connection with the report itself, described the volume of paperwork required in residential mortgage closings as creating "pain points" for borrowers. In connection with the report, the Bureau stated, "Consumers felt overwhelmed by the stack of complex paperwork." This could be viewed as a blind spot in the agency's understanding of the documentation required to create enforceable, saleable and compliant mortgage loans for secondary market delivery or

[2] The CFPB's embrace of the E-SIGN Act has been mixed, presumably reflecting consumer advocates' long-established concerns over potential misuse of electronic disclosures and transactions to the detriment of consumers. For example, the CFPB negated ordinary E-SIGN Act receipt rules in connection with TRID. In TRID, the agency overwrote the E-SIGN Act by adding a three-day "mailbox rule" for consumer receipt of electronic TRID disclosures.

as an opportunity for the industry to engage the Bureau to further simplify mandatory disclosures and streamline standard secondary market requirements.

- Importantly, the CFPB in its report recognized that positive results for consumers may depend on transaction type, implicitly recognizing that refinance transactions lend themselves to eClosings better than purchase transactions do. The agency suggested that differentiation of transaction types be included in future studies of eClosings.
- A noted positive for borrowers was the opportunity, with early disclosures, to correct mistakes in closing documents prior to the signing ceremony. It is possible that the CFPB's concern over borrowers not having enough time to review transaction documents prior to closing could be distilled into unfair, deceptive, or abusive acts and practices (UDAAP) claims, even if TRID compliance is evident.

In the report, the CFPB strongly encouraged industry participants and others to use the report as a beginning point for more study, with methodologies for consideration of numerous variables not explored in the pilot. The agency expressed its willingness to continue to cooperate with stakeholders in future efforts. Stay tuned for more developments.

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