

Still Confused By RESPA? You Are Not Alone!

Some lessons can be learned from the deeply flawed reform process.

By Curt Doman

It's no secret that Real Estate Settlement Procedures Act (RESPA) reform has been a thorn in lenders' sides. However, there is something to be gained from this change, and those lenders who are able to recognize it and learn from it will be able to grapple with additional reforms that may come their way.

While most would agree that the new Good Faith Estimate (GFE) and HUD-1 provide some benefit to consumers, it seems that little previous consideration was given to the subsequent costs that would be passed on to borrowers or how lenders would have to utilize the new forms. In view of the level of consumer distrust in the financial industry, it is critical that lenders and brokers alike project the appearance of being aboveboard on all transactions. However, the confusion created by the new forms has the potential to create some very awkward situations.

For example, the new forms are unclear regarding the owner's title. In many places, the seller pays the policy - yet the GFE, which is supposed to be an estimate of the borrower's payment responsibility, requires that this be listed on the form. Imagine the borrower's response when a lender or broker explains to him or her the purpose of the GFE, only to redact that definition moments later - it is not exactly a confidence-booster.

In fact, ambiguities like these are par for the course when it comes to

the new GFE and HUD-1. Lenders also have to grapple with how to handle prepaid finance charges, as well as annual percentage rates, with little to no guidance from the Department of Housing and Urban Development (HUD) or the Federal Reserve Board. As a result, many lenders have reverted back to using pre-qualification worksheets to determine how much work a potential borrower's loan would require, drawing the ire of the regulatory community and consumer rights groups alike.

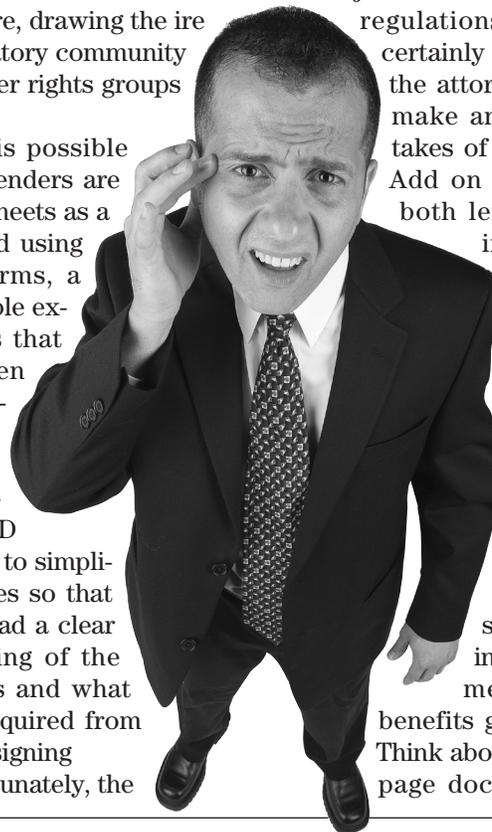
While it is possible that a few lenders are using worksheets as a way to avoid using the new forms, a more plausible explanation is that this has been the inevitable result of poorly drafted reform. HUD had the goal to simplify disclosures so that borrowers had a clear understanding of the loan's terms and what would be required from them at the signing table. Unfortunately, the

mortgage financing process is far too complex and full of too many nuances to be distilled into a one-page document.

Ultimately, the largest immediate problem is that some lenders and vendors still aren't in compliance with the finer points of the RESPA changes, even though they think they are, and despite efforts by HUD to educate the industry on the changes beforehand. While regulators were willing to provide lenders a period of adjustment before enforcing the new regulations, investors are most certainly not as lenient, nor are the attorneys who are quick to make an example of the mistakes of the mortgage industry. Add on the increased cost to both lenders and consumers in taxes, loan fees, legal fees and the labor spent on complying, and RESPA reform seems to have created a much bigger problem than the one it was trying to solve.

Easier for whom?

The changes make things clearer for consumers, but the increase in the length of the documents may negate any benefits gained through reform. Think about it: Does taking a one-page document and expanding



it to three pages increase clarity or simply make it more likely to be less closely examined? Conventional wisdom indicates the latter. In hindsight, scrapping the old system and starting from scratch might have been a cleaner way to do things.

At the end of the day, most savvy consumers want to know three things:

- What are the fees being charged by my lender?

- What is the cost of my funds?

- What additional fees am I being charged by third parties?

If given that information on one page, borrowers would be much more likely to understand the term of their loan, and lenders would have been much better able to comply. Topping off the laundry list of problems created by RESPA reform was the absence of sufficient clarification prior to mandatory implementation and testing through thousands of loan scenarios to reveal the many questions that have emerged since mandatory release. There is currently a 56-page list of RESPA clarifications, but that was released after the January 2010 compliance deadline.

Unfortunately, what's done is done, and unless significant mistakes occur as a result of the changes to RESPA, it is unlikely that the reforms

will be retracted or altered. In addition, the bailout of the financial markets has increased the public's thirst for blood, which politicians are only too happy to satisfy with a heap of regulations on the market.

In short, this isn't the last reform the mortgage industry will see. Therefore, it is important that the industry take away strategies for dealing with future regulatory changes in a more efficient and productive manner.

The first lesson is that there is no such thing as a "soft release." Lenders must be prepared to implement regulatory changes as soon as the changes are announced. The secondary market is much more demanding about the quality of loans it will accept and will expect lenders to be in compliance almost immediately.

This may require the addition of temporary staff or employing the services of a consulting firm to get the ball rolling, but ultimately, the benefits of a speedy and orderly implementation will far outweigh the temporary increase in costs.

The second lesson comes in not accepting "Trust me" as a verification of compliance. While it is certainly in a vendor's best interest to provide products and services that are in compliance with all applicable regulations, the responsibility of ensuring

compliance and the consequences of failure to comply fall squarely on the shoulders of the lender.

The third lesson is remembering that there is no such thing as too much education for regulators and industry players. Lenders have to be proactive about learning the ins and outs of regulatory compliance. Relying on regulators to give you all the answers is like planting a dollar and waiting for the money tree to grow - you will be perpetually disappointed.

Lenders need to actively seek the answers to the issues they face, and if an answer cannot be found, clarification must be required from the regulatory body overseeing compliance. The reality the mortgage industry must face is that the fall of the financial industry has driven consumer confidence almost to the point of no return.

Only time will tell if RESPA reform, or any of the other regulatory changes that are sure to come down the pike, will be able to restore the public's faith in the industry. **SME**

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