

## **RE93R15:**

### **Consumer Financial Protection Bureau (CFPB) Effect on Real Estate Closings**

**Introduction:** This course provides a counseling session to prepare real estate agents and their clients on how to respond to new changes to the Consumer Financial Protection Bureau's (CFPB) rules, effective date of August 1, 2015. A real estate agent and their client should consult an attorney as part of the transaction. The Board strongly suggests that a Board approved Instructor and/or Board approved School teach this course in conjunction with an attorney or other mortgage specialist.

Section numbers below refer to Title 12 of the Code of Federal Regulations (CFR)

1. Introduction and Background
  - a. Dodd/Frank Legislation
    - i. Integrated Mortgage Disclosure
    - ii. Ability-to-Repay/Qualifying Mortgage Rule
  - b. Creation of Consumer Financial Protection Bureau (CFPB) – New Objectives
2. Exceptions to coverage: §1024.5, 1026.3 and 1026.19
  - a. Reverse mortgages
  - b. Home Equity Line of Credit (HELOC)
  - c. Mobile home
  - d. Commercial purpose loans
  - e. Community no-interest loans
  - f. Creditors making 5 or fewer loans per year
  - g. Prohibitions on personal financing
  - h. Loan officer compensation rule
3. Effective Dates
  - a. Most provisions apply to applications received by creditor or mortgage broker on and after 8/1/15
  - b. Some provisions take effect 8/1/15 without receipt of application
    - i. State law exemption clarification requests §1026.28(a)(1) and §1026.29
    - ii. Use of estimates §1026.19(e)(2)
4. Loan Estimate (LE): Early Disclosure Form §1026.19(e)(1)(i)
  - a. The role that agents and attorneys now play
  - b. “Reasonably Available Standard” defined
5. Provider List §1026.19(e)(1)(vi)
  - a. Pros and cons on inclusion

6. Changes to Drafting and Executing Offer and Purchase and Sale Agreement
  - a. Loan Originator as focal point
7. Loan Estimate (LE) Variations §1026.19(e)(3)(iii)
8. Change of Circumstance § 1026.19(e)(iv)(ii)
  - a. Triggers for notifications
  - b. Ramifications of inaccuracy
  - c. Examples
9. Preparation & Delivery of Closing Disclosure (CD) §1026.38(r)(4)
  - a. Lender Decisions to Prepare and Deliver
  - b. Process – Real Estate Agent/Broker Name on Closing Statement
  - c. Liability and Tracking
  - d. What Can and Cannot be Done at the Closing Table
10. CFPB’s Views on Marketing Services Agreements
  - a. *In the Matter of Lighthouse Title, Inc.*, 2014-CFPB-0015
11. 3- Day Review Period = 8 days § 1026.19(f)(1)(ii)
  - a. Hand delivery: immediate
  - b. US Mail: assumed receipt 3 days after placed in mail
  - c. Email: with receipt confirmed by consumer after approval to use email method of delivery (if not, assumed 3 days to open email)
  - d. Overnight Delivery: with consumer confirmed receipt
  - e. Business days for CD purposes: all days except Sunday and federal holidays
  - f. Consummation is defined as “the time that a consumer becomes contractually obligated on a credit transaction”
12. Re-disclosure Requirements §1026.19(f)(2)(ii)
  - a. Inaccurate Annual Percentage Rate (APR)
  - b. Change in loan product
  - c. Prepayment penalty added
13. Use of waiver §1026.19(f)(iv)
  - a. Bona fide personal financial emergency of Borrower
14. Liability and Penalties
  - a. 2 CFR §180 and §2424
  - b. Truth In Lending Act (TILA) –
    - i. Private right of action for violations (with attorney’s fees and costs)

- ii. Statutory penalties of up to \$4,000 for failures to properly provide certain disclosures (including finance charge and APR)
- c. Real Estate Settlement Procedures Act (RESPA) –
  - i. No private right of action for Good Faith Estimate (GFE) and (Department of Housing and Urban Development) HUD-1 disclosures changes under Dodd-Frank Act.
- d. CFPB enforcement of consumer financial laws (incl. TILA and RESPA)
  - i. \$5,000 per day per violation; \$25,000 per day for reckless violations; \$1M per day for knowing violations
  - ii. Off the Closing Statement Negotiations
- e. Best Practices Update and certifications