In-Focus

REGULATORY OUTLOOK 2018: DON'T TREAD ON TRID

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REGULATORY OUTLOOK 2018: DON'T TREAD ON TRID

By Rob Chrisman

It may be time to rewrite Ben Franklin's famous quote, "...nothing can be certain but death and taxes," to be "Nothing can be certain but death, taxes and regulation." At least for mortgage lending.

Residential lenders, whether depository banks, non-banks, mortgage banks, or brokers, have borne the brunt of a tidal wave of regulations in the last eight plus years. Most industry veterans will argue that much of this was needed. One veteran mortgage banker I spoke to said, "In the race for volume, market share, and yield, lenders and investors took chances that they shouldn't have. On top of that, before 2008, the government was pushing the Agencies to offer programs and guidelines that, with hindsight, they shouldn't have. And now we're paying the price."

The *Consumer* Financial Protection Bureau — the CFPB — was set up to benefit the borrower by "Making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives."[1] Definitely, some of the new rules have had a positive impact on the borrower — and the lender. Data from STRATMOR's MortgageSAT program which captures borrower satisfaction feedback shows some of these results (see page 5 in this article). Even so, increasingly, there is a feeling that government policies, procedures, and methodologies have gone too far and, as a result, are restricting lending and credit to otherwise deserving borrowers.

What can residential lenders glean from recent leadership changes and other regulatory trends, and might these changes help improve their margins or volumes and better serve the borrower at the same time? In this article, I'll tackle one of the major regulatory areas impacting the mortgage industry today — TRID — and its specific impact on lender operations and practices as well as how the industry is likely to respond to additional related rule changes.

The Regulatory Landscape

Currently, there appears to be a trend away from "regulation through enforcement." This alone, if it comes to fruition, would be a huge benefit to lenders who continue to act as if they are but one mistake away from a CFPB penalty and having their net worth slashed. As an industry, we seem to be in a "quiet time" versus the past when well-publicized enforcement actions were the norm. As one lender observed, "We don't know if there are more shoes waiting to drop, or if the CFPB is truly re-examining its role in lending." Certainly, the resignation of the Consumer Finance Protection Bureau's Director — Richard Cordray — and the appointment of an interim director — Mick Mulvaney — has helped promote the feeling that the CFPB's tactics will change.

With new leadership at the CFPB, defense lawyers litigating against the agency, along with other industry analysts, see the glimmer of a possible reprieve for clients "in the crosshairs." First, they just must get the attention of the CFPB's Acting Director (and head of OMB) Mulvaney, or his close staff. There is the feeling that perhaps the CFPB is open to listening, and having a dialogue, rather than immediately taking punitive actions.

This leadership change, however, is nonetheless occurring against a backdrop of expanding regulation. The CFPB has announced a review of the Home Mortgage Disclosure Act (HMDA) guidelines. The new guidelines, which took effect this month, have been well publicized for two years prior to implementation. Agency initiatives also appear to be broadening the residential lending regulatory landscape. The Federal Housing Finance Administration (FHFA), for example, has recently announced a "Request for Information" concerning moving away from FICO and an openness to accepting other credit scoring models.

It's possible that mortgage lenders and servicers will see the CFPB, during the tenure of Acting Director Mulvaney, use the five-year "look back" the bureau is required to perform to make significant changes to a pair of major rulemakings: The Truth in Lending Act/Real Estate Settlement Procedures Act Integrated Disclosure Rule (TRID), and the ability-to-repay rule. In Dodd-Frank, there's a five-year required regulatory review, and there are two of those regulatory reviews that are still under advisement: one for TRID and the other for the ATR/qualified mortgage rule.

Lenders should be aware, however, that despite the possible changes taking place at the Federal level, the states have proved willing and able to act on their own and fill any voids. Several, such as New York, California, and Illinois, have been increasing their presence in terms of stepped up rules. New York, specifically, has risen to the forefront of dealing with cyber security regulations. Lenders should also not forget that the current political environment is highly volatile, and that today's de-regulation could quickly become tomorrow's re-regulation if there are changes both in Congress and/or the White House.

Given these uncertainties and the large investments lenders have in technology, training and new operational processes aimed at complying with current regulations, many lenders may choose to stick with most of their current practices until the dust settles.

OUTLOOK FOR TILA RESPA INTEGRATED DISCLOSURE RULE (TRID)

Many in the industry have the following three expectations relating to the CFPB's mortgage policy work. First, the nomination of a new CFPB Director in January, and the confirmation of that director in the second quarter. Second, as mentioned previously, the softening of the Bureau's enforcement and supervisory stances. Third, rulemaking activity focused on making technical corrections to TRID, slight tweaks to HMDA requirements, and a broader review of the Qualified Mortgage rule.

Current TRID Rules

TRID regulations, which became effective in October 2015, are the CFPB's major initiative aimed at restructuring the disclosures provided to consumers seeking to obtain a mortgage. Principal components of TRID consisted of a new upfront Loan Estimate Disclosure and a new Closing Disclosure aimed at providing consumers with a much clearer picture of loan terms and conditions, ongoing costs and closing costs.

Impact on Lender Operations and Practices

In the capital markets, the jury is still out regarding TRID. For example, Sequoia Mortgage Trust 2018-2 is a securitization of 717 first lien, prime jumbo mortgage loans, including 165 agency-eligible high balance mortgage loans. The loans were sourced from multiple originators and acquired by Redwood Residential Acquisition Corporation (aka Redwood Trust). Moody's reports that, "Redwood elected to conduct a limited review, which did not include checks for TRID compliance. We reviewed the initial compliance findings of loans from the same originator where a full review was conducted, and the results did not indicate any significant credit, valuation or compliance concerns."

Moving upstream to the primary markets, on December 6, 2017, the CFPB published an updated version of the TILA-RESPA Integrated Disclosure Guide to the Loan Estimate and Closing Disclosure forms. The updated guide incorporates amendments and clarifications set forth in the final rule issued on July 7, 2017. In addition to the LOS and process modifications necessary to generate each of these new disclosures, TRID implementation by most lenders involved:

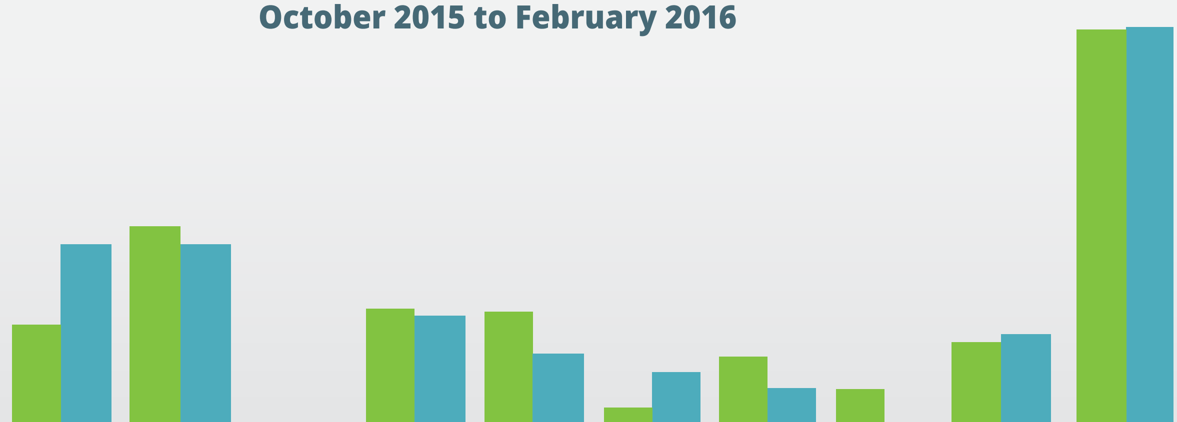
- Establishing processes and scripts for setting borrower expectations
- Training sales and operations staffs
- Setting expectations with Realtors
- Developing a process to verify fees
- Modifying the interface between the LOS and doc prep providers
- Setting expectations with settlement agents
- Developing post-closing processes for verifying TRID compliance

Results of a February 2016 STRATMOR Spotlight Survey: **TRID — Impact and Experience** indicated that many of these implementation steps did not go well, especially in setting expectations with settlement agents. Sixty percent of lenders reported having a difficult experience with settlement agents.

In this same survey, lenders were asked to estimate the TRID-related increase in their cost per loan both since the October 2015 TRID effective date and long-term. The distribution of lender responses is illustrated in Chart 1.

Chart 1

TRID-Related Increase in Lender Cost Per Loan
October 2015 to February 2016



	< $50	$50 - $99	$100 - $149	$150 - $199	$200 - $249	$250 - $299	$300 - $399	$400 - $499	≥$500	No idea-can't even hazard a guess
Since October 2015	9%	18%	0%	10%	10%	1%	6%	3%	7%	35%
Long Term	16%	16%	0%	10%	6%	5%	3%	0%	8%	35%

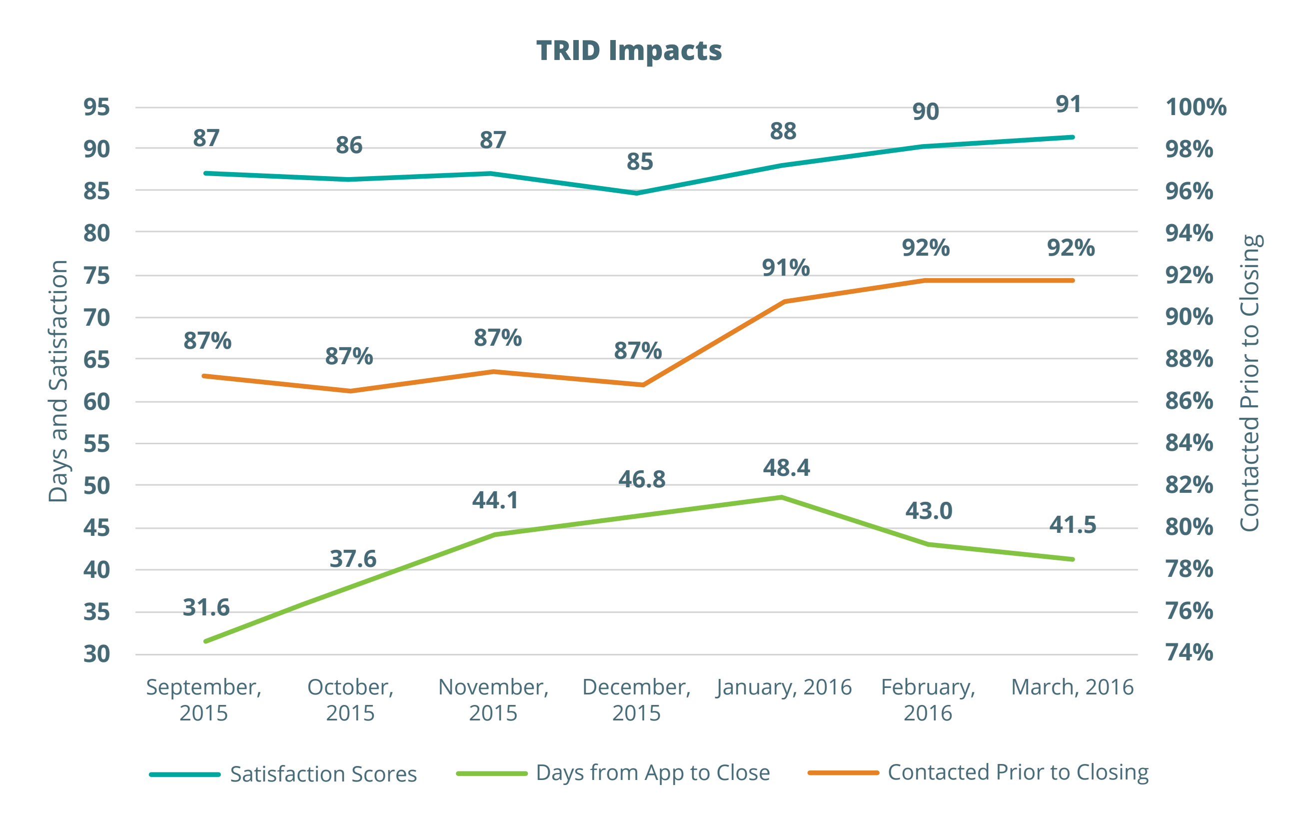
STRATMOR Spotlight Survey: TRID — Impact and Experience, February 2016 ©STRATMOR Group, 2018.

Responding lenders estimated that, since October 2015, TRID had increased their average back-office fulfillment and post-closing costs by $209 per loan, but expected that long-term costs would decline to $181 per loan as lenders gained experience. Further, lenders estimated that on average they would recover 17 percent of these additional TRID-related costs through additional origination charges, bringing the net increase in origination costs down to about $150 per loan. These results are closely in-line with the results of an April 2015 Spotlight Survey: **RESPA-TILA Readiness**, in which lenders estimated that the average additional cost for TRID compliance would be $160 per loan.

TRID also impacted approval-to-close cycle times. According to a February 2016 survey conducted by the American Bankers Association (ABA) and reported in the April 1, 2016 issue of the *Dodd-Frank Update,* more than 75 percent of the ABA's survey respondents reported that loan closings were delayed by one to twenty days. Ellie Mae's *Origination Insight Report* reported that it took an average of 46 days to close a mortgage loan in February compared to STRATMOR's estimate of 31.6 days in pre-TRID September 2015, based on data obtained from STRATMOR's MortgageSAT borrower satisfaction survey program.

Chart 2, also based on STRATMOR's MortgageSAT program, clearly shows that, after rising to a peak of 48.4 days in January 2016, the application-to-close cycle time declined to 41.5 days in March 2016 and appeared to be heading back towards pre-TRID levels.

Chart 2

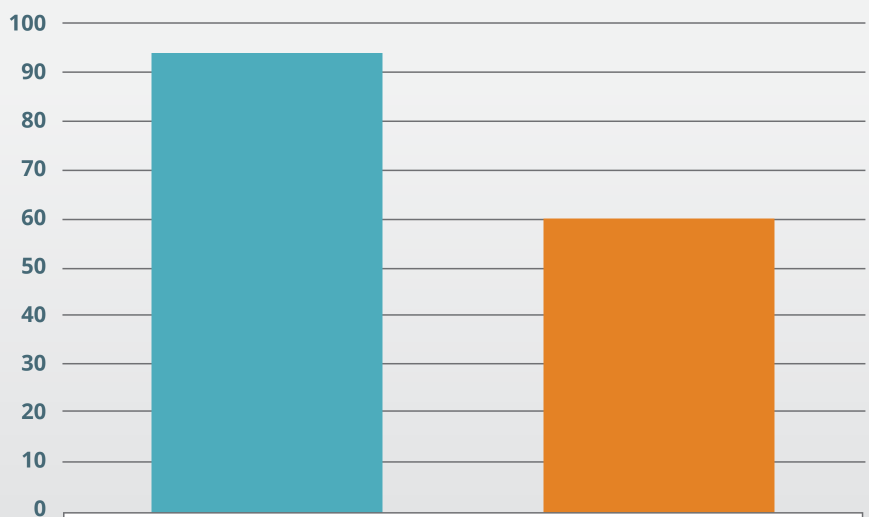


But what is especially fascinating about Chart 2 is that, despite higher closing costs to the borrower and longer cycle times, borrower satisfaction as measured by MortgageSAT increased from a so-so score of 85 in December 2015 to an excellent score of 91 in March 2016 (see the blue line). The reason for this improvement is easy to see: Starting in January 2016, there has been a steady and substantial increase — from 87 to 92 percent — in the proportion of borrowers being contacted by their lender prior to closing (see the orange line).

Increasing such contact was a key goal of TRID and has been shown by MortgageSAT to be a key factor affecting overall borrower satisfaction. MortgageSAT survey results for over 50 thousand borrowers during the first half of 2017 (see Chart 3) make clear that the average satisfaction score of 93 (out of 100) for borrowers who were given reasonable advance notice of their loan closing drops to an abysmal score of 60 if they were not given adequate notice.

Chart 3

MortgageSAT Borrower Satisfaction Scores
December 2017



	Satisfaction
Contacted	93
Not contacted	60

High satisfaction scores are correlated with a high likelihood for borrowers to do repeat business with a lender, to refer the lender to friends and relatives to make favorable comments on social media. Conversely, borrowers who have had an unsatisfactory experience are highly unlikely to do another loan with the lender, make referrals or say positive things about the lender on social media.

Likely Regulatory Changes about TRID and Industry Response

While loan pricing and fees remain important, it appears that maximizing the borrower experience across both the front-end sales and back-end fulfillment processes has become the key competitive success factor in residential mortgage lending.

2018: DON'T TREAD ON TRID

And, because TRID — in both its front-end and back-end disclosure requirements — has had a decidedly positive impact on borrower satisfaction, we think it is a relatively unlikely candidate for material regulatory change. But even if TRID rules were significantly lessened, we believe that relatively few lenders — and certainly not large bank and independent lenders — will back off their current TRID-compliant disclosure practices and policies.

One CEO mentioned to me that, "We probably spent north of $500,000 on vendors, TRID consultants, time in meetings, and implementation. Others I know of spent more. If we are asked to undo that, voluntarily or not, well, I don't want to spend another $500k. It would make little sense. Look, there are some things that can be tweaked, but now it takes 10 days to close a loan. That's the minimum. Could changing some TRID-related things help lower that? Perhaps. But at what cost?"

TRID has been beneficial to borrowers. It doesn't cost lenders an arm and a leg or significantly delay origination cycle times. Lenders are heavily invested in TRID systems, processes, and people. All of which leads to a slight revision of another saying, this one popularized by Bert Lance, Director of Office Management and the Budget (OMB) in the Carter Administration, to: "If it ain't broke, why fix it?"

[1]"Building the CFPB: Progress Report", July 18, 2011, page 2

WE WELCOME YOUR FEEDBACK

Interested in joining the discussion on TRID? Contact Rob Chrisman at: rob.chrisman@stratmorgroup.com .