



Follow-up Questions re the Closing Disclosure & Transactions Involving a Seller

We dedicated the April 2016 BCG Monthly Telephone Briefing to frequently asked questions about the TILA-RESPA Integrated Disclosure (TRID) rule. Here are two follow-up questions we promised to address following the Briefing.

Question #1: On April 12, 2016, the CFPB presented an Outlook Live Webinar titled “Know Before You Owe Mortgage Disclosure Rule: Post-Effective Date Questions & Guidance.” During that webinar, the CFPB answered the following question: “When a separate disclosure is provided to the seller, is the settlement agent required to provide the creditor with a copy of the seller’s Closing Disclosure?” (Emphasis in original.)

The CFPB responded “Yes.” First, the CFPB referred to Section 1026.19(f)(4)(iv), which provides that if the creditor and settlement agent provide the consumer’s and seller’s Closing Disclosures as separate documents, the settlement agent must provide to the creditor a copy of the seller’s Closing Disclosure. Thereafter, the CFPB stated that “[t]his also facilitates the creditor’s compliance with its record retention requirements under Section 1026.25(c)(1)(ii), which, among other things, requires the creditor to maintain a copy of the seller’s Closing Disclosure for five years after consummation and, in the event the mortgage loan is sold or transferred, to include the seller’s Closing Disclosure as part of the loan file to the new owner or servicer.”

Question #2: Please confirm the CFPB’s response to the following question during the same Outlook Live Webinar: “When separate disclosures are provided to the consumer and the seller, must seller-paid real estate commissions be included on page 2 of the consumer’s Closing Disclosure?”

The CFPB also responded “Yes” to this question. We would summarize the CFPB’s rationale as follows. Even if the Closing Disclosure to the seller and borrower will be separate disclosures, “loan costs and other costs paid by the seller may not be omitted from the consumer’s Closing Disclosure and, therefore, must be included.” (Emphasis added.) This includes seller-paid real estate commissions, which must be disclosed in Section H.–Other (in the Other Costs table). Comment 38(g)(4)-1.