

# “What keeps you up at night?”

Saul Ewing  
Consumer Financial  
Services practice

Francis X. Riley, III  
Contact

## CFPB Takes First Step in Consolidation of Residential Purchase Closing Documents into a Single Form

By Francis X. Riley, III and Nicholas C. Stewart

### SUMMARY

The Consumer Financial Protection Bureau (“CFPB”) kicks into gear the second phase of its “Know Before You Owe” project – the consolidation of the HUD-1/ HUD-1A Settlement Statement and the Truth in Lending Disclosure (“TILD”) document — by introducing for comment two alternative consolidated prototypes, “Hornbeam” and “Ironwood.” CFPB’s stated goal: To streamline and make things easier to understand for the consumer.

### WHAT HAPPENED?

In kicking off the second phase of its “Know Before You Owe” initiative, which has the stated goal of improving the way consumers are provided with and understand their final mortgage loan terms and closing costs, the CFPB released two comparison prototype forms which consolidate the HUD-1 Settlement statement and TILD form. These two options, known as “Hornbeam” and “Ironwood” are online at <http://www.consumerfinance.gov/knowbeforeyouowe/>. Consumers and industry professionals are being asked to provide their comments. The HUD-1 – which is required under Section 4 of RESPA and 24 CFR part 3500 (Reg. X) of HUD’s regulations – is a statement of actual charges and adjustments paid by the borrower at or before closing. The TILD document is dictated by the Truth-in-Lending Act (“TILA”) and under 12 CFR 226 (Reg. Z) of the Federal Reserve Board’s regulations.

No matter what form the final consolidated document takes, lenders and settlement agents will soon have to explain, complete, explain again, and then provide a reformatted and consolidated mortgage disclosure form to consumers. Final consolidation will also require major changes to

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RESPA and HUD’s Regulation X and corresponding changes to TILA and FRB’s Regulation Z to make these laws consistent with the forms.

### WHAT CAN BE GLEANED FROM THE TWO FORMS?

It appears that the CFPB’s approach to its ultimate resolution of the HUD-1/TILD consolidation will parallel its resolution of the GFE/TILD consolidation: *Achieve an acceptable form and then supplement or change the related statutory laws and regulations to be consistent with that form.* Consequently, questions posed around apparent problems and inconsistencies between these forms or any further iterations and the related regulatory framework are of no moment to CFPB. Further, this “*form first, regulations later*” approach suggests that consumer and industry groups alike can look to affect changes to RESPA and TILA and their related regulations through achieving specific inclusions and exclusions from the ultimate consolidated form. An additional avenue to affect the ultimate regulatory framework will be available when the CFPB moves into the Small Business Regulatory Enforcement Fairness Act review process for the final form. It is as part of this process that the issue most relevant to small business will be reviewed and

assessed by the CFPB, i.e., cost impact of the new form. The final rule addressing this consolidation must be issued by July 21, 2012.

If you have any further questions about the process being undertaken by CFPB or how you can participate, please do not hesitate to contact Francis X. Riley III, Esq. or any other member of Saul Ewing’s Consumer Financial Services practice.

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This Alert was written by Francis X. Riley, III, a member of the firm’s Consumer Financial Services practice and Nicholas C. Stewart, a member of the firm’s Business and Finance Department. Francis can be reached at 609.452.3150 or friley@saul.com. Nicholas can be reached at 202.295.6629 or nstewart@saul.com. This publication has been prepared by the Consumer Financial Services practice for information purposes only.

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