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# Think You Can Avoid RESPA by focusing on construction and land loans? Think again, August 1st is coming!

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The Real Estate Settlement Procedures Act (“RESPA,” implemented by Regulation X) and the Truth-In-Lending Act (“TILA,” implemented by Regulation Z) have long been a bane for mortgage lenders as they attempt to interpret the statutes associated with each law and apply them to real-world lending. For years, these two laws were enforced by different agencies, with RESPA enforced by the Department of Housing and Urban Development and TILA enforced by the Federal Reserve Board. This led to inconsistencies in documentation, disclosures, and enforcement. In 2010, the Dodd-Frank Act allowed for the creation of the Consumer Financial Protection Bureau (CFPB) and consolidated enforcement of both RESPA and TILA under the CFPB. As a result, there have been wide sweeping changes in the procedures and requirements surrounding mortgage lending which were not necessarily well received within the lending community. Many lenders have sought to avoid the stringent regulations being promulgated by the CFPB by limiting their lending operations to loans that did not fall under the scope of either RESPA or TILA. This primarily includes construction loans, business purpose loans, including loans to trusts, loans secured only by land, reverse mortgages, home equity lines of credit (HELOCs), and loans on manufactured housing.

A lender that has built a successful business by focusing on these types of loans has enjoyed freedoms in the way it conducts business that would turn their counterparts making conforming or government residential mortgage loans green with envy. However, as of August 1st 2015, the CFPB is enacting broad changes that will include the incorporation of some of these loans under the new version of the applicable regulations. While reverse mortgages, HELOCs, and loans on manufactured housing will escape these new requirements, construction loans and vacant land loans that are intended for consumer purposes will begin to fall under the scope of Reg. X and Reg. Z. Lenders that take applications for such loans on or after August 1st will have to comply with the new requirements. In addition, while business purpose loans will continue to escape the requirements of Reg. X and Reg. Z, a loan made to a trust that was created for estate or tax planning purposes will now be required to comply with both regulations as they will be considered consumer purpose loans, even if the true purpose of the loan is to engage in something that would otherwise be considered a business purpose loan.

These changes are causing a major stir even among lenders that have been battling with RESPA and TILA for years. Those lenders that have enjoyed the shield of the previously narrower scope of the laws are now in a position where they must choose whether to abandon a highly profitable stream of business, or become familiar with laws and regulations that even the most educated and experienced lenders have struggled with for years.

If you or your organization needs help navigating these waters, whether you have been engaged in lending regulated by RESPA or TILA in the past or not, please contact one of our financial services attorneys with your questions or concerns. We can help you identify the major areas of concern and have a plan to hit the ground running on August 1st.

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