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CFPB Amends the TILA-RESPA Integrated Disclosure Rule

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The Consumer Financial Protection Bureau ("CFPB") has issued several amendments to the TILA-RESPA Integrated Disclosure Rule (commonly known as the "TRID Rule") setting forth guidance, clarifications and technical corrections on a number of disclosure requirements. Among other things, the amendments confirm that certain loans secured by cooperative units are subject to the TRID Rule, add tolerances for the total of payments on the Closing Disclosure, and clarify when the Closing Disclosure may be shared with other parties in the settlement process. The amendments are effective 60 days after publication in the Federal Register, and compliance with the amendments is required by October 1, 2018.

I. Background

The TRID Rule took effect in October 2015 and requires certain lenders to provide consumers with specific disclosures on most residential mortgages subject to the Truth in Lending Act ("TILA"). The primary disclosures are the Loan Estimate, generally required to be issued within three business days of application, and the Closing Disclosure, generally required to be issued no later than three business days before consummation of the loan.

The CFPB proposed several amendments to the TRID Rule in 2016, and the agency has now finalized these amendments in a 560-page rulemaking. In addition, the CFPB has issued a follow-up proposal to address whether lenders may use a Closing Disclosure instead of a Loan Estimate to determine if an estimated closing cost was disclosed in good faith.

II. Primary Changes

The CFPB has identified four primary changes in the amendments, each of which is discussed below.

1. Uniform Coverage of Cooperatives

The amendments extend the TRID Rule's coverage to all closed-end credit transactions (other than reverse mortgages) that are secured by a cooperative unit, regardless of whether the cooperative unit is treated as real property under state or other applicable law. This is a significant clarification for lenders in New York.

2. Tolerances for the Total of Payments

The amendments create tolerances for the total of payments on the Closing Disclosure that parallel the statutory tolerances for accuracy of the finance charge and disclosures affected by the finance charge under the TILA.

The total of payments is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and all loan costs, as scheduled. There has been some uncertainty under the TRID Rule as to whether lenders have a tolerance for the total of payments amount set forth on the Closing Disclosure. The CFPB is now confirming that the total of payments will be considered accurate if it is (a) understated by no more than ½ of 1 percent (or 1 percent for refinancing with a new creditor) of the face amount of the note or $100, whichever is greater; or (b) greater than the amount required to be disclosed.

3. Privacy and Sharing of Information

The amendments clarify the circumstances in which a creditor may provide disclosures to certain parties involved in the origination process, such as the seller.

Pursuant to the TRID Rule, creditors must provide required disclosures to consumer applicants and borrowers, while settlement agents are responsible for providing Closing Disclosures to sellers in purchase transactions. The amendments clarify that even though the TRID Rule indicates that the settlement agent is responsible for providing the seller with a Closing Disclosure, the creditor is not prohibited from providing the Closing Disclosure to the seller.

The amendments provide three methods by which lenders can separate a consumer's information from a seller's information on the Closing Disclosure. A lender may:

a. Leave certain information blank concerning the seller or consumer on the form provided to the other party;

b. Omit the table or label for the disclosure concerning the seller or consumer on the form provided to the other party; or

c. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the Closing Disclosure form, as illustrated by form H-25(I) of appendix H of Regulation Z.

4. Expansion of Partial Exemption for Housing Assistance Lending

The amendments expand the TRID Rule's partial exemption for certain non-interest bearing subordinate loans that provide down-payment and other homeowner assistance.

To encourage lenders to partner with housing finance agencies to make housing assistance loans, the CFPB allows transfer taxes, recording, application and housing counseling fees to be charged in connection with these transactions without losing eligibility for the partial exemption. The amendments also exclude recording fees and transfer taxes from the exemption's limits on costs.

III. Other Changes

In addition to the primary changes in the TRID Rule identified above, the CFPB also made certain other changes and clarifications.

1. Construction Loans

The CFPB made the following clarifications with respect to construction loans under the TRID Rule:

a. Lenders who choose to disclose a construction-permanent loan as two separate transactions must provide separate sets of disclosures for each phase;

b. Construction inspection and handling charges collected before or at consummation must be disclosed in the Loan Costs table and such costs collected after consummation are to be disclosed in a separate addendum;

c. For transactions without a seller, the estimated value disclosed on the Loan Estimate must be based on the best information reasonably available at the time of disclosure and may include the estimated value of the anticipated improvements to the property;

d. Construction costs are disclosed as part of the Funds for Borrower on the Loan Estimate and Closing Disclosure; and

e. Clarifies how to complete the interest rate disclosure for construction-only and construction-permanent loans.

2. Simultaneous Subordinate Lien Loans

The amendments permit lenders to use an alternative disclosure to disclose simultaneous subordinate lien loans if all information related to the seller's transaction is properly disclosed on the Closing Disclosure for the first-lien mortgage loan. The proceeds from a simultaneous subordinate lien loan must be disclosed in the first lien mortgage loan's Loan Estimate and Closing Disclosure.

3. Written Lists of Providers

The TRID Rule requires lenders to identify and provide sufficient information about service providers for the settlement services that the lender requires but for which it permits a consumer to shop. The amendments clarify that the proper use of the model form H-27 in appendix H of Regulation Z for written lists of providers grants lenders a safe harbor with respect to this requirement.

IV. Revised Proposal

In addition to the final amendments to the TRID Rule, the CFPB has issued a revised proposal seeking comments on when lenders may use a Closing Disclosure or revised Closing Disclosure, instead of a Loan Estimate, to determine the good faith of an estimated closing cost. Specifically, the proposal states that if there is a change of circumstances and there are fewer than four business days between the time the revised Loan Estimate is required to be provided and consummation, or the Closing Disclosure has already been provided to the consumer, lenders will be deemed to comply with the good faith requirement if the revised disclosures are reflected in the Closing Disclosure or revised Closing Disclosure. Comments on this revised proposal must be submitted to the CFPB within 60 days after publication of the proposal in the Federal Register.

V. Further Information

The final amendments to the TRID Rule are available here: http://files.consumerfinance.gov/f/documents/201707_cfpb_Final-Rule_Amendments-to-Federal-Mortgage-Disclosure-Requirements_TILA.pdf.

The revised proposal to the TRID Rule on when lenders may use a Closing Disclosure or revised Closing Disclosure, instead of a Loan Estimate, to determine the good faith of an estimated closing cost is available here: http://files.consumerfinance.gov/f/documents/201707_cfpb_Proposed-Rule_Amendments-to-Federal-Mortgage-Disclosure-Requirements_TILA.pdf.

Please note that this advisory is a general overview of the final amendments to the TRID Rule, and is not intended as formal legal advice. If you have any questions regarding the amendments or the TRID Rule in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

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