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CFPB Explains How Waiting Periods in Mortgage Origination Process May be Modified or Waived to Expedite Access to Mortgage Credit

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To help provide consumers with urgent financial needs to obtain quicker access to mortgage credit amid the COVID-19 pandemic, the Consumer Financial Protection Bureau ("CFPB") has issued an interpretive rule clarifying consumers' rights to modify or waive certain required waiting periods under the TILA-RESPA Integrated Disclosure Rule ("TRID Rule") and Regulation Z's right of rescission rules ("Regulation Z Rescission Rules"). Borrowers can also waive certain timing requirements related to when a copy of a real property appraisal or valuation must be provided.

Rights to Waive Waiting Period under the TRID Rule and Regulation Z Rescission Rules

Pursuant to the TRID Rule, creditors generally must (1) deliver or place in the mail the Loan Estimate to consumers no later than seven business days before consummation (i.e., closing); and (2) ensure that consumers receive the Closing Disclosure no later than three business days before consummation. The Regulation Z Rescission Rules provide consumers with at least three business days from consummation to rescind certain credit obligations secured by a consumer's principal dwelling. Creditors must provide consumers with disclosures informing them of this rescission right.

The TRID Rule and the Regulation Z Rescission Rules permit modification or waiver of these waiting periods if a consumer (1) has received the Loan Estimate, Closing Disclosure or the rescission notice (as applicable), (2) has a bona fide personal financial emergency before the end of the applicable waiting period, and (3) submits to the creditor a dated written statement that: (i) describes the emergency, (ii) specifically modifies or waives the waiting period, and (iii) bears the signature of all consumers who are primarily liable on the legal obligation (for the TRID Rule) or who are entitled to rescind (for the Regulation Z Rescission Rules).

In light of the COVID-19 pandemic, the CFPB has clarified in an interpretive rule effective May 4, 2020 that a consumer needing to obtain funds due to the COVID-19 pandemic can claim a bona fide personal financial emergency if the following conditions are met:

- A consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency;

- The consumer's brief statement describing the emergency identifies a financial need that is due to the COVID-19 pandemic; and
- The emergency necessitates consummating the credit transaction before the end of an applicable TRID Rule waiting period or must be met before the end of the Regulation Z Rescission Rules waiting period.

Consumers who waive one or both of the waiting periods will be able to expedite the closing and/or funding process. Though creditors are not obligated to inform consumers about their waiver rights, the CFPB encourages creditors to voluntarily inform consumers during the COVID-19 pandemic of their ability to utilize the modification and waiver provisions for bona fide personal financial emergencies.

The interpretive rule also clarifies that the COVID-19 pandemic is an extraordinary event that constitutes a "changed circumstances" allowing issuance of a revised Loan Estimate reflecting changes in settlement charges for purposes of the good faith determination under the TRID Rule.

Waiver of the Delivery Timing Requirement under the ECOA Valuations Rule

Pursuant to the Equal Credit Opportunity Act ("ECOA") Valuations Rule, creditors must generally provide applicants for first-lien loans on a dwelling with copies of all real property valuations promptly upon completion, or three business days prior to consummation (for closed-end credit) or account opening (for open-end credit), whichever is earlier.

The CFPB issued a FAQ on April 29, 2020 stating that the ECOA Valuations Rule permits an applicant to waive the timing requirement through an affirmative oral or written statement and agree to receive any copy at or before consummation or account opening, except where otherwise prohibited by law. This regulatory flexibility available under the ECOA Valuations Rule can expedite access to credit secured by a first lien on a dwelling for applicants affected by the COVID-19 pandemic.

The CFPB also released two factsheets on the ECOA Valuations Rule: transaction coverage and delivery of appraisals. The fact sheet on transaction coverage points out that whether a loss mitigation program such as loan modification is subject to the ECOA Valuations Rule depends on (1) whether there is an "application"[1] for credit; and (2) if there is an "extension of credit."[2]

Additional Information

The interpretive rule is available here. The FAQ concerning the ECOA Valuations Rule can be found here. If you have any questions regarding the waiver requirements or the TRID Rule, Regulation Z Rescission Rules, or ECOA Valuations Rule in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Please note that this is a general overview of the issues addressed and does not constitute legal advice.

Footnotes

[1] An “application” is defined under Section 1002.2(f) of Regulation B as an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested.

[2] An “extension of credit” is the granting of credit in any form. 12 CFR § 1002.2(q). “Credit” is the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefore. 12 CFR § 1002.2(j).

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