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CFPB Proposes Amendments to the TILA–RESPA Integrated Disclosure Rule

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The Consumer Financial Protection Bureau ("CFPB") has proposed several amendments to the TILA-RESPA Integrated Disclosure Rule ("TRID Rule" or "Rule"). The 293-page proposal addresses various issues raised by lenders since the TRID Rule became effective on October 3, 2015, and also includes clarifying and technical amendments. The primary proposed changes include the following: (1) uniform coverage of cooperatives under the TRID Rule, (2) creation of tolerances for the total of payments on the Closing Disclosure, (3) confirmation that sharing of TRID disclosures with certain parties in the manner prescribed in the Rule does not violate privacy restrictions, and (4) expansion of a partial exemption under the TRID Rule for certain housing assistance loans by housing finance agencies and nonprofits. Comments on the proposed amendments are due by October 18, 2016.

I. Background of TRID Rule

The TRID Rule has radically changed disclosure requirements for most residential mortgage loans by imposing new requirements and consolidating disclosures under the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"). The Rule combined the Good Faith Estimate and early Truth-in-Lending disclosure into a single Loan Estimate disclosure. In addition, the Rule combined the HUD-1 Settlement Statement and final Truth-in-Lending disclosure into a new Closing Disclosure to be delivered to the borrower no later than three business days prior to closing.

These new requirements have been challenging for lenders, both from a compliance and operational standpoint. Recognizing these challenges, the CFPB has been providing informal guidance on the Rule through webinars and other means; these proposed amendments are intended to formalize the CFPB's guidance.

II. Primary Proposed Changes

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

1. Uniform Coverage of Cooperatives

The CFPB proposes to 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.

Currently, the Rule only covers transactions secured by real property, as defined under state law. Due to the uncertainty under state law as to whether cooperatives are deemed to be real property, there has been some uncertainty as to whether loans secured by cooperative units are subject to the Rule. To resolve this uncertainty and establish a uniform standard for TRID purposes, the CFPB is proposing to apply the TRID Rule to cover closed-end consumer loans secured by cooperative units.

2. Tolerances for the Total of Payments

The proposal creates tolerances for the total of payments on the Closing Disclosure that parallel the statutory tolerances for accuracy of the finance charge under 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 current 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 proposing to confirm that such tolerance does exist. In general, the total of payments will be considered accurate if it is (a) understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or (a) greater than the amount required to be disclosed.

3. Privacy and Sharing of Information

The proposed amendments clarify that TRID disclosures may be shared with various third parties involved in the origination process, such as sellers and real estate brokers, as prescribed under the Rule.

Pursuant to the TRID Rule, creditors must provide required disclosures to consumers, while settlement agents are responsible for providing Closing Disclosures to sellers in purchase transactions. There are two options to accomplish this under the current Rule. The first option is to provide the seller with the same Closing Disclosure that the creditor delivered to the borrower, as long as it also contains the information relating to the seller's transaction. The second option is to provide the seller with either a separate Closing Disclosure or a revised copy of the borrower's Closing Disclosure that omits certain borrower-specific information and contains seller information.

In the proposed amendments, the CFPB points out that it is acceptable for creditors and settlement agents to provide the combined Closing Disclosure, or separate Closing Disclosures, as a confirmation or other record of transaction to consumers, sellers, and their agents, or information on the status or value of the financial service to their customers or their customers' agents or brokers. The CFPB has taken the position that sharing TRID disclosures as described does not violate the privacy provisions of the Gramm-Leach-Bliley Act (or its implementing Regulation P), because the sharing is to comply with federal law and is a usual method to provide the customer or the customer's agent or broker with a confirmation or record of transaction.

4. Housing Assistance Lending

The proposal amends a partial exemption for down payment assistance and similar subordinate lien loans often offered by housing finance agencies and nonprofits.

The TRID Rule currently does not apply to a transaction if: (1) the transaction is secured by a subordinate lien; (2) the transaction's purpose is to finance a down payment, closing costs, or similar homebuyer assistance; (3) the credit contract does not require the payment of interest; (4) the credit contract provides that repayment of the amount of credit extended is forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, or deferred for a minimum of 20 years after consummation of the transaction, until the sale of the property securing the transaction, or until the property securing the transaction is no longer the principal dwelling of the consumer; (5) the total of costs payable by the consumer at consummation is less than one percent of the amount of credit extended and includes no charges other than fees for recordation, application, and housing counseling; and (6) the creditor complies with all other applicable Regulation Z requirements in connection with the transaction, including providing certain required Regulation Z disclosures. The CFPB is now proposing to exclude recordings fees and transfer taxes from the one percent threshold so that more housing assistance loans will qualify for the partial exemption. By amending this partial exemption, the CFPB is hoping to encourage lenders to partner with housing finance agencies to make housing assistance loans.

III. Additional Proposed Changes

Aside from the four main changes noted above, the proposal addresses a number of additional items.

The amendments propose to clarify that creditors are permitted to issue a revised Loan Estimate for informational purposes, even in situations where the creditor is not resetting tolerances for the particular reasons listed in the TRID Rule, provided that any disclosures on the revised Loan Estimate are based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer.

Another important aspect of this proposed amendment is that creditors will have more flexibility to use the Closing Disclosure to reset tolerances. Under the current Rule, creditors can only use the Closing Disclosure to reset tolerances when (1) the Closing Disclosure has not yet been issued, and (2) there are fewer than four business days between the time the revised Loan Estimate is required to be provided (within three business days of learning of a change) and consummation. To resolve potential issues where creditors are forced to absorb excess charges when the change of circumstances occurs within prescribed timing but after the Closing Disclosure has been issued, the CFPB is proposing to allow creditors to use the Closing Disclosures to reset the tolerances when a change of circumstances occurs during the prescribed time frame above and in circumstances where the Closing Disclosure has already been provided to the consumer.

The proposed amendments also clarify the disclosure of construction costs, payoffs of existing liens, and payoffs of unsecured debt. Creditors may choose either of the following two options to disclose these items. First, they may be disclosed under "Section H. Other" of the Loan Estimate and Closing Disclosure, even if payable directly or indirectly to the creditor. Second, these items may be disclosed on the optional alternative calculating cash to close table for transactions without a seller.

The proposed amendments also cover other topics including but not limited to: affiliate charges under the "unlimited" tolerance category; the calculating cash to close table; construction loans; decimal places and

rounding; escrow account disclosures; expiration dates for the closing costs disclosed on the Loan Estimate; refunds related to the good faith analysis; gift funds; the "In 5 Years" calculation; lender and seller credits; the list of service providers; service provider sample forms; partial payment policy disclosures; payment ranges on the projected payments table; the payoffs and payments table; payoffs with a purchase loan; post-consummation fees; principal reduction; disclosure and good faith determination of property taxes and property value; rate locks; recording fees; simultaneous second lien loans; the summaries of transactions table; the total interest percentage calculation; and trusts.

IV. Unaddressed Topics

While the proposed amendments have provided some clarification to the TRID Rule, there are two main issues that the CFPB has declined to address at this time.

First, though the CFPB has been urged by lenders to change how title insurance premiums are disclosed, no revisions regarding the disclosure of simultaneous issuance title insurance premiums are being proposed at this time. According to the proposal, this is because a change in how such premiums are disclosed may implicate fundamental policy choices made in the TRID Rule. Under the current Rule, the premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage. As a result of this calculation method, the amount of the title insurance premiums disclosed on the TRID disclosures may not reflect the actual number disclosed on the title bills in some states (including New York State).

Second, the CFPB is not proposing any additional cure provisions, leaving creditors potentially vulnerable to any technical violations or errors that do not fall under the current Rule's limited cure provisions.

V. Further Information

The proposed amendment can be found here: http://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/amendments-federal-mortgage-disclosure-requirements-under-truth-lending-act-regulation-z/.

Please note that this advisory is a general overview of the proposed amendments and is not intended as a comprehensive explanation of all aspects of the proposed amendments to the TRID Rule or as formal legal advice. If you have any questions regarding the TRID Rule, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

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