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New Record Retention Requirements under the TILA-RESPA Integrated Disclosure Rule

March 20, 2015

As the August 1, 2015 effective date for the new TILA-RESPA Integrated Disclosure Rule approaches, we would like to alert you to an important aspect of the new rule that has not received much attention: record retention. Among other requirements in the rule, creditors must retain copies of the new Closing Disclosure for five years, and if the creditor sells, transfers, or otherwise disposes of its interest in a covered mortgage loan and does not service the mortgage loan, the creditor must provide a copy of the Closing Disclosure to the new owner or servicer as a part of the transfer of the loan file.

The new TILA-RESPA Integrated Disclosure Rule promulgated by the Consumer Financial Protection Bureau ("CFPB") consolidates certain mortgage loan disclosure requirements under the Truth-in-Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA"). This new rule is effective August 1, 2015 and applies to most closed-end consumer credit transactions secured by real property for which the creditor receives an application on or after that date. The new rule does not apply to home equity lines of credit, reverse mortgages, or loans secured by a mobile home.

Specifically, the new rule combines the current initial Good Faith Estimate and the early Truth in Lending disclosure into a new document called the Loan Estimate. The Loan Estimate must be delivered to the consumer or placed in the mail no later than the third business day following receipt of the loan application. A new document called the Closing Disclosure will replace the current final Truth in Lending disclosure and RESPA's HUD-1 disclosure. The Closing Disclosure must be provided to the consumer at least three business days prior to loan consummation.

Besides these major changes involving the Loan Estimate and Closing Disclosure, the new rule also implements important new record retention requirements, including the following:

- The creditor must retain a copy of the Closing Disclosure for five years after consummation.
    - If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage loan and does not service the mortgage loan, the creditor must provide a copy of the Closing Disclosure to the new owner or servicer as a part of the transfer of the loan file. This requirement will apply, for instance, when a loan is sold as part of an individual or bulk loan sale, as well as when a loan is assigned to a new lender as part of a refinance (which is common in New York State to avoid new mortgage tax).

    - The original creditor's record retention obligation still applies upon transfer of the mortgage; both the original creditor and the new owner or servicer is required to retain the Closing Disclosure for the remainder of the five-year retention period.

- The creditor, or servicer if applicable, must retain the Escrow Closing Notice and the Partial Payment Disclosure, both of which are new disclosures, for two years.
    - The Escrow Closing Notice is a new notice that must be provided no later than three business days before cancellation of an escrow account to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, except for reverse mortgages.
    - The Partial Payment Disclosure is a new disclosure that must be included in the notice provided to a borrower when a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling on real property, other than a reverse mortgage, is sold, assigned, or otherwise transferred.

- The creditor must retain all other evidence of compliance with the new rule, including issuance of the Loan Estimate, for three years after the later of the date of consummation, the date disclosures are required to be made, or the date action is required to be taken.

Electronic recordkeeping is permitted, but not required. The documents may be maintained by any method that reproduces records accurately, including computer programs.

For creditors that are impacted by this new rule, now is a good time to revisit the TILA and RESPA policies and record retention schedules to ensure compliance with the new rule. Further information about the new Integrated Disclosure Rule and its official interpretations is available at: http://www.consumerfinance.gov/regulatory-implementation/tila-respa/. In addition, the CFPB's recently revised small entity compliance guide may be accessed at: http://files.consumerfinance.gov/f/201503_cfpb_tila-respa-integrated-disclosure-rule.pdf.

Please note that this advisory is a general overview of the record retention requirements under the new rule and is not intended as a comprehensive explanation of all aspects of the rule or as formal legal advice. If you have any questions regarding the new rule or its record retention requirements, 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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