

TRID Amendment Gives Lenders Greater Flexibility to Use Closing Disclosures to Reset Tolerances

May 8, 2018

The Consumer Financial Protection Bureau (“CFPB”) has amended the TILA-RESPA Integrated Disclosure Rule (commonly known as the “TRID Rule”) to give lenders greater flexibility to issue Closing Disclosures to reset fee tolerances. This amendment addresses what has been called a “black hole” in the TRID Rule that resulted in lenders sometimes having to absorb certain under-disclosed fees.

I. Background

Regulation Z, which implements the Truth in Lending Act, was amended in 2015 to require lenders to issue disclosures regarding loan terms and fees to mortgage applicants. The disclosures are a Loan Estimate, which must be provided within three business days of application, and a Closing Disclosure, which generally must be received by the borrower at least three business days before closing.

Under the current TRID Rule, a Loan Estimate must be made in good faith. Generally, an estimated closing cost on the Loan Estimate is in good faith if the charge actually paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate. Certain charges are still considered in good faith even if they increase, provided that the increased amount is within a certain tolerance.

Lenders can reset tolerances of certain charges using a revised Loan Estimate so that the Loan Estimate can be deemed in good faith if a change of circumstance occurs as provided under the TRID Rule. Under the current TRID Rule, however, the only circumstance where a lender is able to use a Closing Disclosure to reset the tolerance of a cost disclosed on the Loan Estimate is when there are less than four business days between the time a revised Loan Estimate would need to be provided and consummation. Due to this restriction and the prohibition on issuing a revised Loan Estimate once a Closing Disclosure is issued, a lender is not currently able to use a Closing Disclosure to reset tolerances in certain cases. This has been called a “black hole” where lenders have to incur costs exceeding tolerances in order to ensure that the Loan Estimate is in good faith. The amendment adopted by the CFPB is intended to fix the “black hole” and give lenders greater flexibility to reset tolerances.

II. Summary of the Amendment

The CFPB has amended the TRID Rule to remove the four-business day limit and permit lenders to reset tolerances with either an initial or corrected Closing Disclosure regardless of when the Closing Disclosure is provided relative to consummation.

Please note that when using the initial Closing Disclosure or revised Closing Disclosure to reset the tolerances for certain expenses, the lender must provide the Closing Disclosure or revised Closing Disclosure reflecting the revised estimate (or charge) within three business days of receiving information sufficient to establish that a change of circumstance has occurred.

III. Effective Date

The amendment is effective as of June 1, 2018. Lenders are allowed to take advantage of the amendment to reset tolerances for both loan applications that are in process on that date, as well as loan applications made on and after such date. However, the CFPB has stated that the amendment may not otherwise be applied retroactively.

IV. More Information

The amendment is available [here](#).

Please note that this advisory is a general overview of the final amendment and is not intended as a comprehensive explanation of all aspects of 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 or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

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- Joseph D. Simon