

Insights: Alerts

CFPB Finalizes Amendments to the TILA-RESPA Integrated Disclosure (TRID) Rule

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Written by Gary R. Bronstein, Christina M. Gattuso, Edward G. Olifer,

On July 7, the Consumer Financial Protection Bureau (Bureau) finalized amendments to federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) that are implemented in Regulation Z (which is TILA's implementing regulation).¹ The amendments memorialize past informal guidance, whether provided through webinar, compliance guide, or otherwise, and make additional clarifications and technical amendments. These amendments also make a limited number of additional substantive changes, where the Bureau has identified discrete solutions to specific implementation challenges. The Bureau also issued a limited follow-up proposal to address a discrete implementation issue.²

The Bureau did not reopen any major policy decisions with this rulemaking, and the Bureau recognizes that these amendments do not and cannot “address every concern that has been raised to the Bureau.”³ The Bureau states that it believes that industry “has made substantial implementation progress,” and that the Bureau “is prioritizing its resources to further facilitate industry’s implementation progress.”⁴

Highlights

Among other changes, the amendments will:

- **Create Tolerances for the Total of Payments.** The Truth in Lending Act establishes accuracy tolerances for calculating the finance charge and disclosures affected by the finance charge. In part to address concerns that the liability for creditors and their assignees could result from minor or technical violations, and in light of prior changes to certain underlying regulatory definitions, the Bureau has established express tolerances for the total of payments to parallel the existing provisions regarding the finance charge.
- **Adjusts a Partial Exemption that Mainly Affects Housing Finance Agencies & Nonprofits.** The existing rule provides a partial exemption from the integrated disclosure requirements for certain non-interest bearing subordinate lien transactions that provide down payment and other homeowner assistance (housing assistance loans). The amendments expand the scope of the partial exemption and provide additional flexibility when loans satisfy the partial exemption.
- **Require Uniform Coverage of Cooperative Units.** Under the existing rule, coverage of cooperative units depends on whether cooperatives are classified as real property under state law. Because state law sometimes treats cooperatives differently for different purposes, there may be uncertainty and potential

inconsistency among market actors regarding coverage of the integrated disclosure requirements. The amendments require provision of the integrated disclosures in transactions involving cooperative units, whether or not cooperatives are classified under state law as real property.

- **Provides Guidance on Sharing Disclosures with Various Parties Involved in the Mortgage Origination Process.** The Bureau has received a number of requests for guidance concerning the sharing of the integrated disclosures with sellers and various other parties involved in the origination process, including real estate agents, in light of privacy concerns. The amendments incorporate and expand upon previous webinar guidance in the Official Interpretations (commentary) to the regulation to provide greater clarity.
- **Post-Consummation Disclosures.** The amendments require a creditor, servicer, or covered person to provide the post-consummation disclosures (concerning escrow account closure and partial payment policies of a new owner of the mortgage loan), regardless of the date an application was received, as of the proposed effective date of October 1, 2018.
- **Transactions Involving a Seller.** The amendments clarify that, in purchase transactions with simultaneous subordinate financing, the settlement agent complies with the rule by providing the seller with only the Closing Disclosure for the first-lien transaction if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, the amendments provide that the settlement agent complies with the rule by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures that relate to the seller's transaction reflecting the actual terms of the seller's transaction.
- **Construction Loans.** The amendments provide additional explanations for the disclosure of construction and construction-permanent loans. These additional explanations for construction-permanent loans provide guidance to creditors concerning allocation of buyers points or similar amounts imposed on the consumer between the construction and permanent phases of the transaction (if the creditor chooses to disclose the credit extended as more than one transaction). In response to comments, the Bureau also clarified that, for construction-permanent financing transactions, the creditor must disclose the Loan Estimate only for the transaction for which it received an application.
- **Use of Forms in Appendix H.** Appendix H to Regulation Z includes integrated disclosure model forms⁵ and integrated disclosure samples.⁶ Use of an appropriate integrated disclosure model form, if accurate, constitutes compliance with the requirements of the Loan Estimate and Closing Disclosure. Moreover, use of an appropriate integrated disclosure model form is mandatory for a transaction that is a federally-related mortgage loan (as defined in Regulation X). The Bureau proposed to provide that, unlike the integrated disclosure model forms, the integrated disclosure samples are not model forms providing safe harbor protection. However, the Bureau did not adopt such proposed revisions because it concluded that maintaining the sample forms' status as model forms "will facilitate compliance and promote greater consistency in formatting" the required disclosures, which, in turn, "can facilitate comparison shopping for consumers."⁷ Accordingly, use of an appropriate sample form, if properly completed with accurate content, constitutes compliance with the requirements of the Loan Estimate and Closing Disclosure, as applicable.

The more minor changes and technical corrections address a variety of topics, including:

- affiliate charges;
- the calculating cash to close table;

- construction loans;
- decimal places and rounding;
- escrow account disclosures;
- escrow cancellation notices;
- expiration dates for the closing costs disclosed on the Loan Estimate;
- gift funds;
- the “In 5 Years” calculation;
- lender and seller credits;
- lenders’ and settlement agents’ respective responsibilities;
- the list of service providers;
- non-obligor consumers;
- 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 (principal curtailment);
- 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;
- trusts; and
- informational updates to the Loan Estimate disclosures.

Effective Date

Based on the requests by some commenters that creditors be allowed to implement some aspects of the final rule soon after issuance, these amendments will become effective 60 days after publication in the *Federal Register*. The Bureau is further allowing optional compliance until compliance with the amendments becomes mandatory. Therefore, compliance with these amendments is mandatory only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018 (except for compliance with the escrow cancellation notice (required by 12 C.F.R. § 1026.20(e)) and the partial payment policy disclosure (required by 12 C.F.R. § 1026.39(d)(5)), with which compliance will become mandatory on October 1, 2018, regardless of when an application was received).

The amendments will require several changes to systems used to produce the TILA-RESPA integrated disclosure forms. The Bureau believes that mandating compliance with the amendments only with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018, will provide creditors sufficient time to complete software updates, to conduct testing and self-audits, to update training policies, and to complete staff training that may be needed to implement changes.

New Proposal to Clarify the Ability to Reset Tolerances After Issuing the Closing Disclosure

The Bureau did not finalize proposed comment 19(e)(4)(ii)-2, which relates to comparing charges paid by or imposed on the consumer to charges disclosed on a corrected Closing Disclosure to determine if an estimated charge was disclosed in good faith. Instead, the Bureau has issued a new proposal, concurrent with these amendments, that would address this issue. Specifically, the proposed amendments would permit creditors to compare charges paid by or imposed on the consumer to amounts disclosed on a Closing Disclosure, instead of a Loan Estimate, to determine if an estimated closing cost was disclosed in good faith. The proposal would permit creditors to use either initial or corrected Closing Disclosures to reflect changes in costs for purposes of determining if an estimated closing cost was disclosed in good faith, regardless of when the Closing Disclosure is provided relative to consummation.

The proposal also would make several changes to reflect amendments to the rule made by amendments issued in January 2015 regarding interest rate dependent charges.

Comments are due 60 days after the proposal's publication in the *Federal Register*. The Bureau proposes an effective date 30 days after publication in the *Federal Register* of any final rule based on this proposal and seeks comment on the same.

¹Consumer Financial Protection Bureau, *Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z)* (July 7, 2017) (July 2017 TRID Amendments), available at http://files.consumerfinance.gov/f/documents/201707_cfpb_Final-Rule_Amendments-to-Federal-Mortgage-Disclosure-Requirements_TILA.pdf.

²Consumer Financial Protection Bureau, *Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z)* (July 7, 2017) (July 2017 TRID Proposal), available at http://files.consumerfinance.gov/f/documents/201707_cfpb_Proposed-Rule_Amendments-to-Federal-Mortgage-Disclosure-Requirements_TILA.pdf.

³July 2017 TRID Amendments, at p. 9.

⁴*Id.*

⁵See Forms H-24(A) and (G), H-25(A) and (H) through (J), and H-28(A), (F), (I) and (J).

⁶See Forms H-24(B) through (F), H-25(B) through (G), and H-28(B) through (E), (G) and (H).

⁷July 2017 TRID Amendments, at p. 409.

Related People



Gary R. Bronstein

t 202.508.5893

gbronstein@ktslaw.com



Christina M. Gattuso

t 202.508.5884

cgattuso@ktslaw.com



Edward G. Olifer

t 202.508.5852

eolifer@ktslaw.com