

June 1, 2018

Vol. XXXV, No. 10

TRUTH IN LENDING – “BLACK HOLE” TRID DISCLOSURES

I. INTRODUCTION

The Consumer Financial Protection Bureau (CFPB) has finalized an amendment of Federal mortgage disclosure requirements under the Real Estate Settlement Protections Act (RESPA) and the Truth in Lending Act (TILA) that are implemented in Regulation Z. The amendment is designed to fix a consequential issue with the TILA/RESPA integrated disclosure rules that caused consumers to face significant regulatory delays because of legitimate fee changes during the origination process. **The final rule became effective on June 1, 2018.**

The amendment relates to when a creditor may 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 final rule will allow creditors to use either an initial or corrected Closing Disclosure 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 was provided relative to consummation – effectively fixing the “black hole” problem that was identified by the banking industry. The final rule also removes the four-day business limit for resetting tolerances that exists in current law.

A. TRID “Black Hole”

A creditor’s inability to reset fee tolerances with a revised Closing Disclosure more than four business days before closing has resulted in an adverse unintended consequence under the TILA/RESPA integrated disclosure (TRID) regulations. Commonly referred to as the “black hole,” once the Closing Disclosure has been provided under current regulations, timing restrictions in the current regulations allow a revised Closing Disclosure to be used to reset tolerances on increased closing costs only if the disclosure is provided within three business days of the valid change in circumstance and within four business days of consummation. As a result, any increased costs to the consumer above and beyond permitted fee tolerances occurring from changes six business days or more before consummation must be absorbed by the creditor – either because the creditor pays the increased fees without any changes to the final Closing Disclosure or the creditor refunds the overage to the consumer on the final Closing Disclosure as a tolerance cure.

B. Use of Closing Disclosures to Reset Tolerances

The final rule removes the four-business day limit on a creditor's ability to reset tolerances with a Closing Disclosure. Thus, if a changed circumstance or another triggering event has occurred, the final rule permits a creditor to reset tolerances with either an initial or corrected Closing Disclosure regardless of the number of days between consummation and the date the Closing Disclosure reflecting the revised estimate is required to be provided to the consumer. The creditor must provide the consumer with the Closing Disclosure reflecting the revised estimate at or before consummation and within three business days of receiving information sufficient to establish that the changed circumstance or other triggering event has occurred. Additionally, the consumer must still receive an initial Closing Disclosure at least three business days prior to consummation. A new three-day waiting period is only required for a corrected Closing Disclosure if the APR becomes inaccurate, a prepayment penalty is added, or the loan product changes from a loan product previously disclosed.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.