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CFPB Agrees to Give Originators a Grace Period for Compliance with New TRID Regulations

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January 21, 2016

On the eve of the New Year, the Consumer Financial Protection Bureau (CFPB) took steps to calm industry concerns about the effect of the new TILA RESPA Integrated Disclosure (TRID) rules enacted by the CFPB.

Effective October 3, 2015, the TRID rules transformed the process by which loan originators close most mortgage loans. Among other things, they do away with the once ubiquitous good faith estimate and HUD-1 closing disclosure forms, and provide for two new disclosures: an initial loan estimate provided not more than three business days after a loan application is received and a closing disclosure form provided not less than three business days prior to the closing. The TRID rules then provide for specific limitations on the amount fees may change from the loan estimate without a new disclosure. The new rules also provide additional liability to originators, servicers and investors in part by expanding the previously limited areas in which Truth In Lending Act liability (including a private right of action for actual and statutory damages) applies.

In a December 29, 2015, letter to David Stevens, president and CEO of the Mortgage Bankers Association, CFPB Director Richard Cordray acknowledged the substantial task faced by the mortgage industry in complying with the new loan closing disclosure rules. "We recognize that the mortgage industry needed to make significant system and operation changes to adjust to the new requirements." As a result, Cordray indicated that "the Bureau and the other regulators have made clear that our initial examinations for compliance with the rule will be sensitive to the progress industry has made" and "will be squarely focused on whether companies have made good faith efforts to come into compliance with the rule."

The CFPB's granting of an informal good faith grace period marked a dramatic turnaround from its earlier refusal to agree to such a provision and its proposal that Congress pass legislation mandating a formal good faith period. On the other hand, the CFPB did not give a specific timeline for this good faith period, but indicated that it would apply for the first few months of implementing the new rule. It is possible that the period just announced may already be near or at its end.

One specific area of concern related to the new TRID rules and addressed by Cordray in the letter involves how the new rules would affect investors as well as the secondary mortgage market as a whole. Since the new rules provide for additional exposure and the CFPB has made clear that investors will ultimately be liable for mistakes made by loan brokers or other originators, some originators have reported investors, including government sponsored entities like Fannie Mae and Freddie Mac, rejecting loans on the basis of minor typographical errors with the new disclosure forms. In his letter, Cordray stated that such actions were an overreaction by investors as the risk of civil liability to investors under these circumstances was minimal, in part because the TRID rules provide for correction of typographical and other errors in a revised closing estimate. Cordray further indicated that the CFPB believes that investor concerns and attempts to either refuse the purchase of a loan or require repurchase of a loan will decrease as the industry gains experience with the new rules.

Whether the good faith grace period will continue for any length of time remains to be seen. The bottom line for the industry is that mortgage originators, servicers and investors alike must continue efforts to adapt to these new rules as quickly as possible.