



Point of view

Analyzing Strategic Regulatory Policy Shifts

Americas FS Regulatory Center of Excellence

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TILA-RESPA Integrated Disclosures (TRID):
Amendments to federal mortgage disclosure
requirements under the Truth in Lending Act
(Regulation Z)

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1. Executive summary

The Consumer Financial Protection Bureau (CFPB or Bureau) has proposed amendments to Federal mortgage disclosure requirements under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) that are implemented in Regulation Z. In addition to clarifications and technical amendments, the proposed changes include: i) tolerance provisions for the total of payments, ii) an adjustment to a partial exemption mainly affecting housing finance agencies and nonprofits, iii) extension of the integrated disclosure requirements to all cooperative units, and iv) guidance on sharing the disclosures with various parties involved in the mortgage origination process.

The comment period for these amendments expired on October 18, 2016. The CFPB is targeting an October 1, 2017 effective date for the proposed amendments and clarifications based on an assumption the final rules will be promulgated on or before April 1, 2017.¹ A timing delay is possible, however, as the proposal was released ahead of the recent presidential election and the new Administration has called for a temporary freeze on new regulations. Institutions are encouraged to “stay the course,” recognizing that the amendments and clarifications address compliance issues identified by the industry regarding the existing TRID rules.

2. Background

Due to many duplicative mortgage disclosure requirements between TILA and RESPA, Congress directed the Bureau to integrate the inefficient and burdensome disclosures into what we now know as the TILA-RESPA Integrated Disclosures (TRID). The primary goals of the TRID requirements were to:

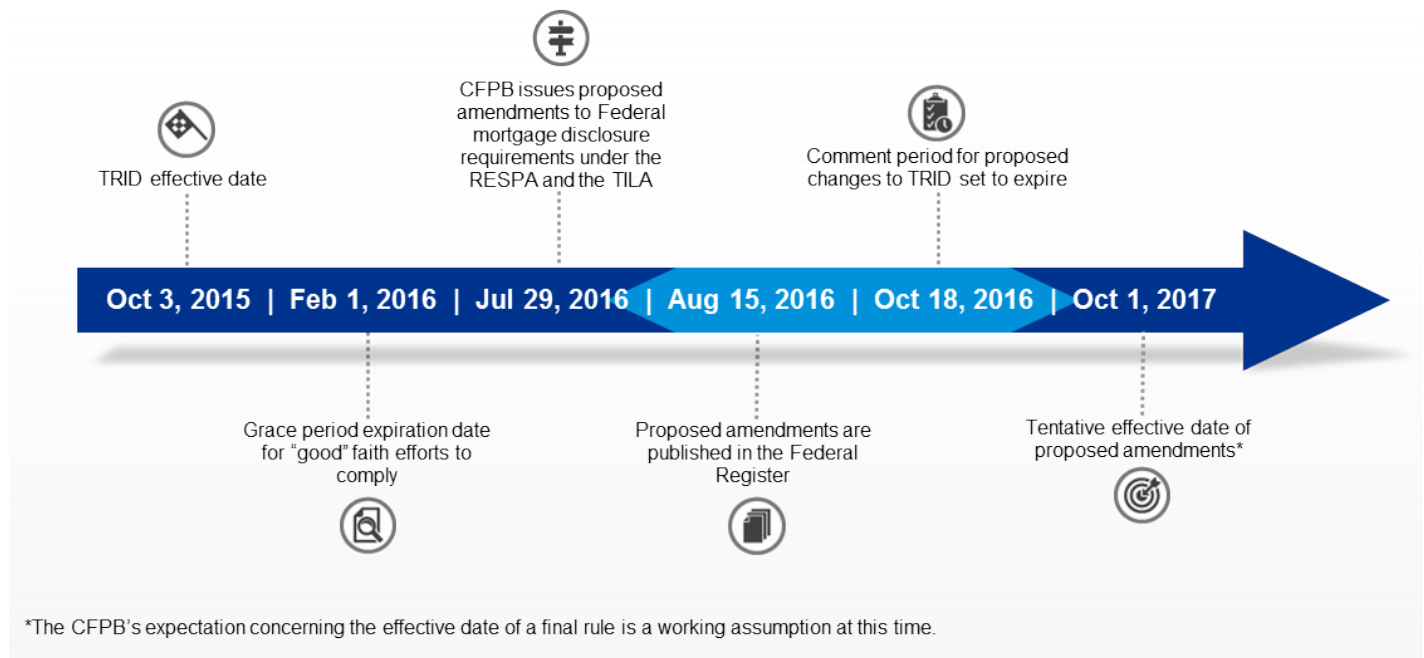
- Consolidate overlapping forms to reduce burden on creditors and facilitate compliance;
- Develop clear disclosures that help consumers understand the credit transaction and closing costs; and
- Facilitate comparison shopping so that consumers could more readily choose mortgages that are right for them.

Since the TRID rules became effective October 3, 2015, the Bureau has made multiple technical corrections and amendments in an effort to assist organizations with implementation and compliance, while maintaining the integrity and spirit of the rules, which are intended to help consumers understand their mortgage loan terms. While the following proposed provisions and amendments do not fully address the full breadth of the industry’s concerns (refer to “compliance management challenges and expectations” below), they do clarify, correct and provide additional guidance to facilitate compliance.

¹ Source: Federal Register Web site, Proposed Rule section, August 15, 2016.

3. Proposed new provisions & amendments

The following graphic illustrates the timeline for the proposed amendments, beginning with the effective date of the TRID rules.



Key proposed amendments and clarifications are outlined below.

3.1 Total of payments tolerance

Under TILA, the finance charge and disclosures affected by the finance charge must be accurate within defined tolerances. In the same manner, the Bureau has proposed establishing tolerance provisions for the total of payments.² Generally, the total of payments would be considered accurate if the disclosed total of payments is:

- understated by no more than 1/2 of one percent (or one percent for certain refinances) of the face amount of the note or \$100, whichever is greater
- Greater than the amount required to be disclosed.

3.2 Housing finance agency partial exemption

The Bureau is proposing an expansion of the existing partial exemption for certain non-interest bearing subordinate lien transactions that provide down payment and other

homeowner assistance. The expansion of the partial exemption would clarify that transfer taxes may be payable by the consumer at consummation without losing eligibility for the partial exemption. It would also exclude recording fees and transfer taxes from the one percent threshold of total costs payable by the consumer at consummation.

3.3 Coverage for cooperative units

Currently cooperative unit transactions are not uniformly required to use integrated disclosures. In fact, they are only required to use integrated disclosures if the state in which the unit is located considers a cooperative unit "real property." This guidance creates an issue as some parties to a cooperative transaction may treat the transaction differently. The proposed rule would require integrated disclosures to be

² Source: Federal Register Web site, Proposed Rule section, August 15, 2016.

used on all cooperative unit transactions regardless of whether the unit is treated as real property under state law.

3.4 Privacy and information sharing

The CFPB is proposing to provide guidance and clarity on sharing disclosures with sellers and various other parties, including real estate agents, involved in the origination process for TRID loans (most closed-end consumer credit transactions secured by real property, excluding Home Equity Lines of Credit, reverse mortgages, or chattel-dwelling loans secured by a mobile home or by a dwelling that is not attached to real property) to address privacy concerns raised by the industry.

3.5 Informal guidance

In addition to the proposed amendments above, the CFPB intends to memorialize past informal guidance (e.g., webinars, compliance guide) on certain topics, including:

- Passing on the cost of rate lock extensions after the Closing Disclosure has been issued, but before closing;
- Re-disclosure of the Closing Disclosure after a new rate lock on rate lock extensions; and
- Changing the fee tolerance from ten percent to zero percent in instances where the Written List of Providers is not provided to the borrower.

3.6 Technical changes

The proposed rule contains technical changes to a variety of topics to assist in clarification and to aid in eliminating

confusion among participants in the mortgage process. These changes, which the CFPB describes as minor updates, are intended to lead to a more uniform interpretation of previously ambiguous areas within TRID. Technical corrections have been proposed in the following areas:

- Affiliate charges;
- Calculating the cash to close table;
- Construction loans;
- Decimal places and rounding;
- Escrow account disclosures;
- Escrow cancellation notices;
- Treatment of gift funds;
- The written list of service providers;
- Distinction between model forms and sample forms;
- Principal reductions;
- Summaries of transactions table;
- Total interest percentage calculation; and
- Informational updates to the Loan Estimate.

4. Compliance management challenges and expectations

During this time of massive and complex regulatory change, financial institution advocates such as the American Bankers Association (ABA) and the Consumer Bankers Association (CBA) continue to fight for an extended grace period for financial institutions to comply with the TRID rules. In a joint comment letter submitted in response to the current proposal, the ABA and CBA implored the Bureau to extend the current diagnostic examination policy while financial institutions are advancing changes to meet the proposed requirements. They state, "...to assure that these rule transitions are well implemented, the current good faith compliance period should

be made coextensive with the implementation period afforded under this new rule."³

The Bureau and other regulators have made it clear that they are "sensitive to the progress industry has made" and thus will focus on "good faith efforts" by financial institutions to comply with TRID.⁴ As recently as October 25, 2016, CFPB Director Richard Cordray stated, "we and the other regulators have pledged to be sensitive to the progress made by lenders that are squarely focused on making good faith efforts to

³ Source: American Bankers Association, Comment Letter to the Office of the Executive Secretary, Consumer Financial Protection Bureau (October 18, 2016).

⁴ Source: Mortgage Bankers Association Web site, MBA Newslink section, January 4, 2016.

come into compliance with the rule on time.”⁵ He added that their review approach was, and would be, diagnostic and corrective rather than punitive.

However, concerns about liability stemming from TRID violations still loom over the banking industry. Notable concerns include:

- The inability to correct errors after an applicable mortgage loan has closed;
- Lawsuits from borrowers or investors; and

- The required repurchase of assets sold into the secondary market.

Further, a review of the Bureau’s complaint database found nearly half of TRID-related complaints centered on the settlement process and costs. Statements from consumers mention failure to disclose settlement costs in a timely manner, fee amounts changing from the Loan Estimate (LE) to the Closing Disclosure (CD), and too many versions of the CD prior to closing.

5. Key considerations

Mortgage compliance remains a focal point for regulators, and provided that the proposed updates are effectively implemented and result in the clarity desired, it will be imperative that organizations proactively make the necessary adjustments to current policies, procedures and technology, including loan origination systems. Greater clarity will allow the Bureau to more effectively enforce regulation after the proposed amendments and technical changes become effective, creating pressure on organizations to be prepared to comply with the revisions.

KPMG works closely with both compliance professionals and key stakeholders to help design and implement customized compliance programs. Services include:

- Compliance risk culture;
- Compliance program assessment;
- Compliance design and transformation;
- Compliance integration;
- Information and technology enablement;
- Compliance controls; and
- Compliance transformation management.

In addition, KPMG has the scale, industry insight, and multidisciplinary range of services to help institutions make informed proactive business decisions, timely compliance architecture choices, and better realize long-term value. In order to present a cross-functional team that is able to deliver results, our



team leverages the strength of KPMG’s Financial Risk Management Practice to provide:

- Regulatory insights, including deep knowledge of regulatory expectations and how to work with regulators;
- Expansive mortgage leadership with direct experience related to implementing significant regulatory changes in a manner that is among the best in the industry;
- Business process design specialists that effectively articulate regulatory change requirements into precise business process and control impacts;

⁵ Source: Consumer Financial Protection Bureau Web site, Newsroom section, October 25, 2016.

— Regulatory/compliance testing strategies and tools that promote a servicer's ability to achieve compliance, such as KPMG's:

- Regulatory Compliance Tool;
- Automated TRID compliance testing technology;

- Compliance Transformation Framework; and,
- Regulatory Change Transformation Framework.

Project management capabilities that have a proven track record of leading cross functional teams that successfully execute required changes within a given timeframe.

Contact us



Deborah Bailey
Managing Director

Americas Financial Services Regulatory Center of Excellence
Financial Services Regulatory Risk Practice

T: 212-954-0897

E: dpbailey@kpmg.com



Amy Matsuo
Principal and National Lead

Financial Services Regulatory Risk Practice

T: 919-380-1509

E: amatsuo@kpmg.com



Carolyn Greathouse
Principal

Financial Services Regulatory Risk Practice

T: 314-244-4096

E: cgreathouse@kpmg.com



Stacey Guardino
Partner

Financial Services Regulatory Risk Practice

T: 212-954-4950

E: sguardino@kpmg.com

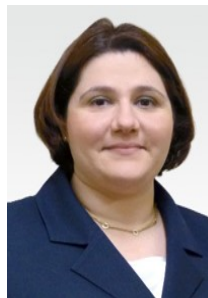


Todd Semanco
Partner

Financial Services Regulatory Risk Practice

T: 412-232-1601

E: tsemanco@kpmg.com



Ursula Nigrelli
Managing Director

Financial Services Regulatory Risk Practice

T: 212-954-8103

E: unigrelli@kpmg.com



Michael Lamberth
Managing Director

Financial Services Regulatory Risk Practice

T: 804-241-2795

E: mlamberth@kpmg.com

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