

## SPECIAL ALERT: CFPB ISSUES STATEMENT ON TRID ENFORCEMENT

On June 3, CFPB Director Cordray responded to requests from industry and members of Congress for delayed enforcement of the Bureau's TILA-RESPA Integrated Disclosure ("TRID") rule, which will take effect for applications received on or after August 1, 2015. The Bureau did not, as many had hoped, delay the effective date or establish a "hold harmless" period during which the rule would be in effect but public and private enforcement would be limited.

Instead, Director Cordray stated that he had spoken with other regulators "to clarify that [the Bureau's] oversight of the implementation of the [TRID] Rule will be sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the Rule on time." As noted in Director Cordray's letter and a related CFPB [blog post](#), this is consistent with the approach applied by the Bureau in early 2014 after the Ability-to-Repay/Qualified Mortgage Rule, Mortgage Servicing Rules, revised Loan Originator Compensation Rule, and other regulations implementing Title XIV of the Dodd-Frank Act took effect. Director Cordray noted that, in the Bureau's view, this approach "has worked out well." The Bureau stated in its [Winter 2015 Supervisory Highlights](#) that "[m]ost of the Title XIV rules took effect in January 2014 and the CFPB commenced supervisory examinations for compliance four months after the effective date."

The Bureau's statements, while helpful in understanding its general approach to supervision and enforcement under the TRID rule, do not provide guidance on what constitutes "good-faith efforts to come into compliance." Instead, as with the Title XIV rules, this will be determined by the Bureau on a case-by-case basis. Furthermore, the "good-faith efforts" standard will not apply in actions brought by borrowers to enforce the provisions of the TRID rule that carry a private right of action.

The Bureau also issued a [factsheet](#) titled "Will the new mortgage disclosures delay my closing?" Stating that "[t]here has been much misinformation and mistaken commentary around this point," the factsheet explains that, although the new Closing Disclosure must be received by the borrower no later than three business days before consummation,<sup>1</sup> there are only three circumstances in which the TRID rule requires redisclosure with a new three-business-day waiting period:

1. An increase in the annual percentage rate ("APR") of more than 1/8 of a percentage point (0.125%) or, for "irregular transactions," 1/4 of one percentage point (0.25%).<sup>2</sup> Helpfully, the

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<sup>1</sup> 12 C.F.R. § 1026.19(f)(1)(ii)(A).

<sup>2</sup> 12 C.F.R. § 1026.19(f)(2)(ii)(A). Under Regulation Z, "an irregular transaction is one that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment)." 12 C.F.R. § 1026.22(a)(3).

Bureau clarified that “A **decrease in APR will not** require a new 3-day review if it is based on changes to interest rate or other fees.”<sup>3</sup>

2. The loan product is changed, such as changing from a fixed rate to a variable rate or adding an interest-only payment feature.<sup>4</sup>
3. A prepayment penalty is added.<sup>5</sup> The Bureau stated that the addition of a penalty would “mak[e] it expensive to refinance or sell.”

The factsheet concludes by stating that “[a]ny other changes in the days leading up to closing do not require a new 3-day review, although the lender will still have to provide an updated disclosure.”<sup>6</sup> As examples, the Bureau listed “the following circumstances [that] *do not* require a new 3-day review:

- **Unexpected discoveries on a walk-through** such as a broken refrigerator or a missing stove, even if they require seller credits to the buyer.
- **Most changes to payments made at closing**, including the amount of the real estate commission, taxes and utilities proration, and the amount paid into escrow.
- **Typos found at the closing table.**<sup>7</sup>

While accurate, the Bureau’s factsheet does not account for circumstances in which closing is delayed for some other reason. For example, when unexpected problems are discovered during the walk-through, the buyer may, for safety or other reasons, require the seller to make the repairs before closing rather than accepting the property “as is” with a credit from the seller to pay for the repairs. If these repairs cause a significant delay, the borrower’s “rate lock” (*i.e.*, the rate the lender has committed to provide for a period of time) may expire before the new closing date, resulting in a potential increase in the rate and the monthly payments.

However, once the Closing Disclosure has been issued, the borrower can only be charged a rate lock extension fee or any other fee that exceeds the applicable “tolerance” limitations under very limited circumstances. Specifically, as the Bureau has explained in detail, the tolerances cannot be reset with a new disclosure if there are four or more days between the date on which that disclosure would normally

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<sup>3</sup> Emphasis in original. Presumably, the Bureau is referring to the additional tolerance in § 1026.22(a)(4), which states that an APR is considered accurate if it results from the disclosed finance charge and the finance charge is greater than the amount required to be disclosed.

<sup>4</sup> 12 C.F.R. § 1026.19(f)(2)(ii)(B).

<sup>5</sup> 12 C.F.R. § 1026.19(f)(2)(ii)(C).

<sup>6</sup> See also 12 C.F.R. § 1026.19(f)(2)(i).

<sup>7</sup> Emphasis in original.

be required (*i.e.*, within three business days of receiving information sufficient to establish that a permitted change has occurred) and the date of consummation.<sup>8</sup> Accordingly, when closing is significantly delayed, the borrower and the lender may miss their window to extend the rate lock and will have to make difficult choices. If the borrower is unwilling to allow the rate to adjust to the current market rate and the lender is unwilling to provide the expired rate at no cost, the loan and the purchase may have to be cancelled, with potentially significant consequences to all parties involved and downstream effects on other transactions (*e.g.*, the seller's purchase of another property with the sale proceeds).

There is debate about whether this and similar scenarios will be outliers or a significant problem. As of now, it appears that the TRID rule will take effect on August 1 without alteration.

For additional information and resources on the TRID rule, please visit our [TRID Resource Center](#).

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Questions regarding the matters discussed in this Alert may be directed to any of our lawyers listed below, or to any other BuckleySandler attorney with whom you have consulted in the past.

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<sup>8</sup> See Regulation Z, comment 19(e)(4)(ii)-1 ("If . . . there are less than four business days between the time the revised [Loan Estimate] is required to be provided pursuant to § 1026.19(e)(4)(i) [*i.e.*, within three business days of receiving information sufficient to establish that a changed circumstance or other exception has occurred] and consummation, creditors comply with the requirements of § 1026.19(e)(4) if the revised disclosures are reflected in the [Closing Disclosure]."); BuckleySandler Unofficial Transcript of CFPB Webinar on Aug. 26, 2014, p. 20-21, available at [http://www.buckleysandler.com/uploads/1082/doc/TILA-RESPA\\_Integrated\\_Disclosures\\_8-26-2014\\_Transcription.pdf](http://www.buckleysandler.com/uploads/1082/doc/TILA-RESPA_Integrated_Disclosures_8-26-2014_Transcription.pdf).