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Practical Compliance

M&M Consulting, LLC Compliance Group

Dean Stockford
(207) 458-8559
dstockford@mandm.consulting

Julie Beaumont
(603) 325-5001
jbeaumont@mandm.consulting

Kim Conroy
(774) 275-7017
kconroy@mandm.consulting

Jessica Coulombe
(774) 218-1004
jcoulombe@mandm.consulting

Jeff Hubbard
(603) 440-3702
jhubbard@mandm.consulting

Kevin Hughes
(603) 339-7088
khughes@mandm.consulting

Ana Maguire
(413) 244-9324
amaguire@mandm.consulting

Marcy Rodrigue
(207) 240-6527
mrodrigue@mandm.consulting

Roy Thattacherry
(978) 646-7149
rthattacherry@mandm.consulting

Deborah Yates
(207) 677-6354
dyates@mandm.consulting

In This Issue

TRID Amendments – the "Black Hole" Fix

On May 2, 2018, the Consumer Financial Protection Bureau's (CFPB) Final Rule amending the TILA-RESPA Integrated Disclosure (TRID) regulations was published in the Federal Register. The Final Rule amendments address various technical compliance related issues and concerns that had been raised within the industry regarding when and how lenders can compare the respective fee disclosures *[i.e., the Loan Estimate (LE) and the Closing Disclosure (CD)]* under the "good faith" regulatory requirements to determine whether the fees disclosed are within the allowable tolerances. The Final Rule affects the provisions of §1026.19(e)(4); and is effective on June 1, 2018.

TRID regulations allow lenders to revise the original fee estimates provided to consumers, under certain circumstances. This allows for the fee amounts to be "reset" on a revised LE, which are then used to determine allowable variance tolerances with fees reflected on the CD.

TRID's Unintended "Black Hole"

The final revised LE must be received by the consumer no later than four business days before consummation. Further, the regulation prohibits a revised LE from being provided to the consumer on or after the date that the lender provides the CD. While parts of the commentary seem to indicate that it is permissible for lenders, in certain cases, to reset tolerances on the CD itself. However, there has been considerable confusion on how to proceed when a CD has already been provided to the consumer, when there are subsequent last-minute cost changes in a mortgage transaction, and when there are four or more days between the time the revised disclosures would be required.

M&M Consulting, LLC has received several questions regarding such quandaries (even to the present day) since the TRID regulations went into effect. The TRID timing rules, as constructed, have forced closing delays in these instances, a situation that some in the industry have dubbed the "black hole."

The Final Rule Amendments "Fix"

The CFPB's Final Rule amendments to §1026.19(e)(4)(i) and (ii) of Regulation Z allows lenders to issue revised Loan Estimates or Closing Disclosures that reset TRID tolerances without regard to how many business days before closing the change occurred.

The Final Rule amendments affect when lenders can compare the charges

charges paid to determine if an estimated closing cost was disclosed in good faith.

The Final Rule amendments remove the "four-business day limit" between fee revisions and consummation, permit lenders to reset tolerances with either an initial or corrected Closing Disclosure, and permit revisions regardless of when the Closing Disclosure is provided relative to consummation. Specifically, the Final Rule description of the change states:

> *"As finalized, § 1026.19(e)(4)(i) provides that, subject to the requirements of §1026.19(e)(4)(ii), if a lender uses a revised estimate pursuant to §1026.19(e)(3)(iv) for the purpose of determining good faith under §1026.19(e)(3)(i) and (ii), the lender shall provide a revised version of the disclosures required under §1026.19(e)(1)(i) or the disclosures required under §1026.19(f)(1)(i) (including any corrected disclosures provided under §1026.19(f)(2)(i) or (ii)) reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision applies."*

Areas Not Impacted by the Final Rule Amendments

It's also important to recognize certain key areas / topics that are not impacted by the Final Rule Amendments.

For example; the Amendments do not:

- Expand the circumstances in which lenders are allowed to reset tolerances;
- Treat rate lock extension fees differently than other fees under the rule with respect to resetting tolerances, as the CFPB does not believe that rate lock extension fees are fundamentally different from other lender costs
- Impact the timing requirements for the Closing Disclosure, other than removing the four-business day limit.
- Impact the three-day waiting period regarding changes relating to APR, prepayment penalty, and product elements outlined in 1026.19(f)(2)(ii).

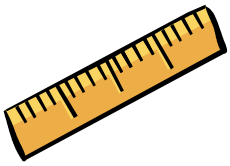
While the CFPB expressed some concern about lenders sending Closing Disclosures very early in the process, it did not add additional provisions to the timing requirements for the Closing Disclosure, as it believes the existing Closing Disclosure accuracy standards already accomplish protective objectives. Specifically, the CFPB cited:

- Existing §1026.19(f)(1)(i) requires lenders to disclose on the Closing Disclosure the "actual terms" of the credit transaction.
- Existing commentaries permit lenders to estimate disclosures on the Closing Disclosure using the best information reasonably available when the actual term is not reasonably available to the lender at the time the disclosures are made.
- Comment 19(f)(1)(i)-1 provides that the "reasonably available" standard requires that the lender, *acting in good faith*, exercise due diligence in obtaining the information.

Conclusion

It remains to be seen how effective the Final Rule Amendments are in remedying the last-minute closing cost changes it seeks to address, and whether additional amendments to the Rule may be needed. However, at the very least, the Final Rule Amendments seem to provide a reasonable starting point.

Short Clips



Agencies No Longer Enforcing Volcker Rule for Banks Exempt Under S. 2155

On 05/30/18, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) formally proposed the interagency revisions to the Volcker Rule. The agencies will no longer enforce Volcker for banks and holding companies subject to the exemption under the S. 2155 regulatory reform bill signed into law on May 24, 2018.

S. 2155 generally exempted banks with less than $10 billion in assets from Volcker Rule requirements, and the agencies noted in the proposed rule that they plan to address these statutory amendments through a separate rulemaking process. The amendments took effect upon enactment, however, in the interim, until the adoption of implementing regulations, the Agencies will not enforce the 2013 final rule in a manner inconsistent with S. 2155."

Comments will be accepted for 60 days after all five regulatory agencies adopt the proposal and publish it in the Federal Register. Comments must be received on or before September 17, 2018.

CFPB Updates TRID Compliance Guides

On 05/17/18, the Consumer Financial Protection Bureau (CFPB) issued new versions of the Small Entity Compliance Guide for the TILA-RESPA integrated Disclosures, as well as the Guide to the Loan Estimate and the Closing Disclosure. All Guides reflect a recently issued final rule that addressed the TRID "black hole" problem.

There are two versions of each guide, one that reflects both 2017 and 2018 TRID updates, and one that only reflects the 2018 update. Early compliance with the 2017 TRID amendments is optional between now and Oct. 1, 2018.

FinCEN Temporarily Suspends Beneficial Ownership Requirements for Automatic Renewal Products

On 05/17/18, the Financial Crime Enforcement Network (FinCEN) issued Ruling FIN-2018-R002, announcing that it will temporarily suspend its application of the beneficial ownership requirements for certificate of deposit rollovers and loans that renew automatically.

The relief is retroactive to the May 11 compliance date and will continue until August 9, 2018. During that time, FinCEN will re-evaluate the requirement to determine if more permanent relief is needed.

FinCEN Clarifies Beneficial Ownership Reporting Requirements for Premium Finance Cash Refunds

On 05/11/18, FinCEN issued an administrative ruling (FIN-2018-R001) to provide relief for institutions from applying the beneficial ownership rule to premium finance products that allow for cash refunds. This action exempts these transactions from the rule's requirement to collect beneficial ownership information.

Premium finance lenders provide short-term loans, typically to small businesses, to cover annual property and casualty insurance premiums by making an advance payment in full to an insurance carrier. These arrangements finance a product that FinCEN previously determined to present almost no money laundering risks, and the structure of these arrangements make them unlikely vehicles for money laundering.

OCC Issues New Exam Guidance on Military Lending Act

On 05/11/18, the OCC issued a new Military Lending Act booklet as part of the Comptroller's Handbook. The booklet provides OCC examiners with guidance on examining bank compliance with the MLA amendments finalized in 2015 addressing extensions of credit to service members and their families. It replaces previous MLA guidance.

FFIEC Issues New Customer Due Diligence and Beneficial Ownership Examination Procedures

On 05/11/18, the Federal Financial Institutions Examination Council (FFIEC) issued new Examination Procedures on the final rule, "Customer Due Diligence Requirements for Financial Institutions," issued by FinCEN on May 11, 2016.

These examination procedures apply to banks, savings and loan associations, savings

associations, credit unions, and branches, agencies, and representative offices of foreign banks, and replace those in the current "Customer Due Diligence — Overview and Examination Procedures" section of the FFIEC's Bank Secrecy Act/Anti-Money Laundering Examination Manual. In addition, a new Overview and Examination Procedures were developed for the beneficial ownership requirements for legal entity customers.

The FFIEC member agencies created these procedures in close collaboration with FinCEN and the U.S. Department of the Treasury.

FinCEN Reminds CTR Filers of Changes to Batch File Submission Format

On 05/08/18, FinCEN issued a Notice reminding financial institutions that effective June 1, 2018, Currency Transaction Report batch files must be submitted using the new XML format. ASCII files will no longer be accepted. If an institution is unable to use the XML format, it must revert to the discrete option to file reports until it can begin using XML.

FFIEC Announces Availability of 2017 Data on Mortgage Lending

On 05/07/18, the FFIEC announced the availability of data on mortgage lending transactions at U.S. financial institutions covered by the Home Mortgage Disclosure Act (HMDA). Covered institutions include banks, savings associations, credit unions, and mortgage companies. The press release contains inks to loan-level HMDA data for 2017 lending activity submitted by financial institutions on or before April 18, 2018, including links to Financial institution disclosure statements and MSA and nationwide aggregate reports for 2017 HMDA data; and Tools to search and analyze the HMDA data.

DOL Announces Relief for Fiduciaries

On 05/07/18, the Department of Labor (DOL) issued Field Assistance Bulletin No. 2018-02, announcing a temporary enforcement policy on prohibited transaction rules applicable to investment advice fiduciaries. This policy relief will help fiduciaries ensure that their compliance structures do not fall under the prohibited transaction requirements of the Employee Retirement Income Security Act; and comes as a result of the Fifth Circuit's decision earlier this year to vacate the fiduciary rule in its entirety.

Under the policy, banks and other financial institutions that were relying on their good-faith compliance with the fiduciary rule (including the impartial conduct standards of the best interest contract exemption) may continue to rely on this good-faith compliance without DOL enforcement action, and pending further guidance from DOL.

FATF Updates List of AML/CFT Jurisdictions

On 04/27/18, FinCEN's Financial Action Task Force (FATF) issued Advisory FIN-2018-A002, revising the list of the jurisdictions that are subject to countermeasures or enhanced due diligence due to anti-money laundering and counter-terrorist financing deficiencies (Section I), as well as jurisdictions with AML/CFT deficiencies that are working to correct them (Section II). Bosnia and Herzegovina were removed from the Section II list, while Serbia was added to the list due to lack of effective implementation of their AML/CFT frameworks.

CFPB Approves Final Rule to Fix TRID's 'Black Hole' Problem

On 04/26/18, the CFPB finalized an amendment 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 was published in the Federal Register on May 2, 2018, and is effective June 1,2018.

The Final Rule will allow lenders 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 was provided relative to consummation, effectively fixing the "black hole" problem. It also removes the four-day business limit for resetting tolerances that exists in current law.

Good to Know

Send your questions to the *answerperson@mandm.consulting*

Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received and responded to five days a week.

Q: For a while now, we have been using Factual Data to obtain credit report information on applicants. Factual Data provides a tri-merged credit report. When the Bank provides an Adverse Action Notice to applicants, under Part II of the notice - Disclosure of Use of Information Obtained from an Outside Source, this section is completed three times with TransUnion; Experian; and Equifax, information.

According to a recent compliance review notification from Factual Data, our adverse action notice/letter needs to list Factual Data, as they are a reseller of bureau data (and the bureaus require that Factual Data be listed) and also because they are responsible for handling any consumer disputes or disclosure requests. We can still have the other bureaus listed, but Factual Data must be present on the form.

Should we now be listing Factual Data and the three credit reporting agencies? Is this new?

A: §615(a)(3) of the FCRA requires that adverse action notices include *"the name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis) that furnished the report to the person…"* This requirement is not new.

As you noted, the Bank has the option of also providing additional information on any applicable national credit reporting agency. I've seen some clients also list the specific national credit reporting agency that provided the credit score utilized in the decision process (for example, the middle score obtained).

So yes, you should be listing Factual Data on these adverse action notices; while listing one or more of the national credit reporting agencies is a business decision, as the practice does not appear to be prohibited.

Q: I have a question on a commercial loan that is being closed to pay off an existing LOC on a second home that they rent out in NH. The security for the loan is the investment property however we are taking liens out on their primary residence as well as the property in NH that they are going to rent out. We are getting ready to close the loan and wanted to make sure that we don't have to disclose under Reg Z or give them a right of rescission due to the abundance of collateral on the abundance of collateral…the overriding purpose of the loan is that it is a commercial loan which is being used to pay off a rental home in NH that is owned by a trust where they are the beneficiaries.

A: Based on what you've described, the loan is not subject to Regulation Z, in general, nor its rescission requirements.

The purpose of the loan involves a non-owner-occupied rental property, which under Comment 26.3(a)-4 (Exempt Transactions), is a business purpose loan, and it is thus exempt from Regulation Z. In addition, Comment 26.23-1 (Right of Rescission) states that loans *"that are not subject to the regulation are not covered by § 1026.23 even if a customer's principal dwelling is the collateral securing the credit. For example, the right of rescission does not apply to a business purpose loan, even though the loan is secured by the customer's principal dwelling"*.

Q: I have a question regarding reporting Experian FICO credit score model information on the HMDA LAR. It appears to me that both Experian Fair Isaac and Experian Fair Isaac v.2 can be reported as credit score model 2 in HMDA. However, I'd like a second opinion. Otherwise, it would seem like Experian Fair Isaac v.2 would have to be reported as credit score model 8 – Other, and with a manually entered description.

A: I agree with your interpretation. The way it's written and reads, it looks like all "Experian Fair Isaac" reports utilize the same code, compared to some other reports where different versions have their own code.

Q: We are trying to determine whether we should report DTI when we deny a loan for something other than DTI. The HMDA guide says: Enter, as a percentage, the ratio of the applicant's or

borrower's total monthly debt to the total monthly income relied on in making the credit decision. Use decimal places only if the ratio relied upon uses decimal places. Example: If the relied upon debt-to-income ratio is 42.95, enter 42.95, and not 43. If, however, your institution rounded the ratio up to 43% and relied on the rounded-up number, enter 43. Enter "NA" for: ▫ Purchased covered loans, § 1003.4(a)(23); Comment 4(a)(23)-7; ▫ Transactions for which no credit decision was made (e.g., files closed for incompleteness, or if an application was withdrawn before a credit decision was made), Comment 4(a)(23)-3; ▫ Transactions for which the credit decision was made without relying on debt-to-income ratio, Comment 4(a)(23)-4; ▫ Covered loans or applications when applicant and co-applicant are not natural persons, Comment 4(a)(23)-5; ▫ Covered loan secured by, or an application proposed to be secured by, a multifamily dwelling, Comment 4(a)(23)-6

For example, if we deny a loan for LTV and Credit score, should we report DTI for HMDA purposes? While not a reason for the denial, we do calculate and look at DTI during the underwriting process.

A: Based on my review of the applicable section of the regulation and the associated commentary, you would not report DTI if it did not play a part in the credit decision made / reported.

I based this opinion primarily on Comment 4(a)(23)-2, which provides an overview of how the field should be completed when DTI is one of multiple factors involved in the credit decision; and Comments 3.4(a)(23)-3 and 3.4(a)(23)-4, which provide an overview of how the field should be completed when either the Bank does not make the credit decision and when DTI does not factor into the credit decision, respectively.

As for the scenario you provided beneath the chart, based on the Comments cited in my earlier email, in my opinion, you would not report DTI in this field since it did not play a part in the credit decision being reported.

Q: We are going to place an ad in a local magazine for a new CD. We will know what the rate is on the CD at the time we provide the ad for publishing, but the rate could change before the ad is run. Our disclosure will read: "The Annual Percentage Yield (APY) is accurate as of [DATE] and is subject to change daily."

I believe this will cover us because we have "is subject to change daily." Is that correct?

A: You are correct. §1030.8(c)(2) provides that you can indicate the period of time the annual percentage yield will be offered, or state that the APY is accurate as of a specified date.

Comment 30.8(c)(2)-2 also provides an alternative disclosure approach for an ad in this type of publication, if this is something you might want to consider. Specifically, it states that:

"An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is "current through the date of this issue," if the periodical shows the date".

Q: We have an LLC business that is registered in the US with a US EIN number and the only owner is applying for a commercial loan, our loan officer is questioning whether the owner who lives in Greece must have a SSN or an ITIN for the UBO form to be complete. I say that we do, as the 100% owner of the LLC, he will also be a guarantor. One of our requirement for membership is a SSN or an ITIN. The Commercial loan officer wanted me to check with our compliance folks, so is it a must that a SSN or an ITIN be on the UBO form?

31 CFR §1010.230, *Certification Regarding Beneficial Owners of Legal Entity Customers*, does not impose any requirements for a SSN or ITIN.

The form only requires that Non-US Persons provide a *SSN, Passport Number or other similar identification number. Note: In lieu of a passport number, Non-U.S. Persons may also provide a Social Security Number, an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.*

The CU may impose more stringent requirements for membership qualification; however, it does not appear to be required by the model form.

Important Dates– Don't Forget!

Generally, we retain the prior month, and go forward for at least a year as known. Dates are either effective dates of Final Rules, or end of the comment period for proposed rules.)

05/11/2018 FinCEN, CDD / Beneficial Ownership Rules. Mandatory compliance date.
06/01/2018 FinCEN, CTR Batch Filing Format. Mandatory date for CTR batch files to be submitted using the new XML format.
06/01/2018 CFPB, Amendments to the TRID Rules. Amendments regarding closing cost increases.
05/14/2018 Federal Reserve, Regulation J. End of comment period for proposed changes to make the Regulation consistent with the upcoming changes to Regulation CC.
07/01/2018 Federal Reserve, Regulation CC. Effective date of Final Rule reflecting a virtually all-electronic check collection and return environment.
08/09/2018 FINCEN, Beneficial Ownership Rules. End of temporary suspension period for automatic renewal products.
10/01/2018 CFPB, Amendments to the TRID Rules. Mandatory compliance date.
12/31/2018 FHFA, HARP Extension. Program extended beyond original September 2017 end-date.
01/01/2019 HMDA, Regulation C. Effective date for changes to enforcement and reporting provisions.
04/01/2019 CFPB, Prepaid Accounts Rule. New mandatory compliance date for most Reg. E & Reg. Z changes, electronic transaction histories, and for submitting prepaid account agreements to the CFPB.
04/01/2020 CFPB, Prepaid Accounts Rule. Revised mandatory compliance date for providing the full 24 months of written account transaction history upon request.
01/01/2020 HMDA, Regulation C. Quarterly reporting for high volume reporters starts.

More Important Dates… … 2018 M&M Compliance School

It's not too late to register for the 2018 M & M Consulting Compliance School!

Registration is now open to both clients and non-clients, and there is still space available.

Don't miss out by delaying your registrations.

The 2018 *M&M Compliance School* will be held September 18 & 19, 2018 (Tuesday - Wednesday) at the *Doubletree by Hilton* in Milford, Massachusetts (Exit 19 off I-495). The cost for this year's program for clients is $335 for both days! For those staying overnight, the hotel cost is $119 per night plus tax.

Please contact Dean Stockford (dstockford@mandm.consulting / (207) 458-8559) for more information.

In The News:

The Board of Directors of M & M Consulting, LLC is pleased to announce that effective May 1, 2018, Dean Stockford was promoted as the next President/CEO of M & M Consulting. Dean has been with the company for more than 17 years and was most recently the SVP of Compliance. Dean has vast experience in the financial industry and has done a remarkable job managing and growing the compliance division over the last several years. He is an accomplished leader, with a track record of working with many different size institutions. He brings a great mixture of leadership, inspiration, operational experience, breadth and passion for customers and staff. This is an exciting time for our company and we are lucky to have someone that has such a perfect skill set for the opportunity.

