Using a Closing Disclosure to Reset Tolerance
(CFPB Revises TRID to Remove the "Black Hole")
Effective June 1, 2018

Background

The Truth-in-Lending/RESPA integrated disclosure (TRID) rule requires creditors to provide consumers with good faith estimates of the loan terms and closing costs on a Loan Estimate. Under the rule, an estimated closing cost is disclosed in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed, subject to certain exceptions (i.e., the aggregate 10% and variations permitted tolerance categories).

In certain circumstances – changed circumstances affecting settlement charges or eligibility, consumer requests, interest rate dependent charges, etc – creditors may use a revised estimate instead of the a charge originally disclosed on the initial Loan Estimate to determine good faith for those costs subject to the 0% or aggregate 10% tolerance categories. Generally, the creditor provides the revised estimate in a revised Loan Estimate. However, if "there are less than four business days between the time the revised version of the disclosures is required to be provided… and consummation," then the creditor may disclose the revised estimate in the Closing Disclosure (either the initial Closing Disclosure or a corrected Closing Disclosure). That is, providing the revised Loan Estimate or Closing Disclosure, as applicable, will "reset" the fee that is subject to a valid reason for revision for tolerance comparison purposes. This results in the creditor being able to pass the increased cost onto the borrower.

Under the current rule, a creditor may have already provided a Closing Disclosure when it learns of an otherwise permissible revised estimate, but if there are four or more business days between the time the corrected Closing Disclosure would be required to be provided and consummation (e.g., because closing has been delayed due to an APR inaccuracy), the creditor is not able to provide a corrected Closing Disclosure to reflect the revised estimate (i.e., the "black hole"). The creditor would not be able, in this instance, to pass the increased cost to the consumer. Instead, the creditor would either have to absorb the increased cost or refuse to close the transaction.

Revised Rule

The CFPB revised the rule to remove the four-business day limit in order to permit creditors to reset tolerance with either an initial or corrected Closing Disclosure regardless of when the Closing Disclosure is provided relative to consummation. The creditor has three business days of receiving information sufficient to establish that a changed circumstance or other valid reason for revision has occurred.

The CFPB provided the following examples:

Example 1: Consummation is originally scheduled for Wednesday, June 10. The creditor hand delivers the initial Closing Disclosure on Friday, June 5. On Monday, June 8, the consumer reschedules consummation for Wednesday, June 17. Also on Monday, June 8, the consumer requests a rate lock extension that would result in revised disclosure, which is a valid reason for revision under the interest rate dependent charges provision, but would not require a new waiting period. The creditor is required to provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation.

The creditor complies by hand delivering the disclosures on Thursday, June 11. Alternatively, the creditor complies by providing the disclosures to the consumer by mail, including by electronic mail, on Thursday, June 11, because the consumer is considered to have received the corrected disclosures on Monday, June 15 (unless the creditor relies on evidence that the consumer received the corrected disclosures earlier).

Example 2: Consummation is originally scheduled for Wednesday, June 10. The creditor hand delivers the initial Closing Disclosure on Friday, June 5, and the APR becomes inaccurate on Monday, June 8, such that the creditor is required to delay consummation and provide corrected disclosures, including any other changed terms, so that the consumer receives them at least three business days before consummation. Consummation is rescheduled for Friday, June 12. The creditor complies by hand delivering the corrected Closing Disclosure reflecting the revised APR and any other changed terms to the consumer on Tuesday, June 9.