

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Application of Certain Provisions in the TILA-RESPA Integrated Disclosure Rule and Regulation Z Right of Rescission Rules in Light of the COVID-19 Pandemic

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interpretive rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this interpretive rule to provide guidance to creditors and other covered persons involved in the mortgage origination process. The Bureau understands that the COVID-19 pandemic could pose temporary business disruptions and challenges for covered persons that are involved in the mortgage origination process, including creditors, loan originators, settlement agents, and other parties such as real estate appraisers. The Bureau recognizes, furthermore, that consumers may have acute needs for proceeds from mortgage transactions as well as uncertainty and confusion about the origination process. In recent weeks, the Bureau has received a number of questions and requests for clarification from stakeholders, including creditors, industry representatives, and State regulators, about the application of certain provisions in the TILA-RESPA Integrated Disclosure (TRID) Rule and Regulation Z's right of rescission rules (Regulation Z Rescission Rules) in light of the COVID-19 pandemic. The Bureau concludes in this interpretive rule that if a consumer determines that his or her need to obtain funds due to the COVID-19 pandemic (1) necessitates consummating the credit transaction before the end of the TRID Rule waiting periods or (2) must be met before the end of the Regulation Z Rescission Rules waiting period, then the consumer has a bona fide personal financial emergency that would permit the consumer

to utilize the modification and waiver provisions, subject to the applicable procedures set forth in the TRID Rule and Regulation Z Rescission Rules. The Bureau also concludes in this interpretive rule that the COVID-19 pandemic is a “changed circumstance” for purposes of certain TRID Rule provisions, allowing creditors to use revised estimates reflecting changes in settlement charges for purposes of determining good faith. This interpretive rule will help expedite consumers’ access to credit under the TRID Rule and Regulation Z Rescission Rules.

DATES: This interpretive rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael G. Silver, Senior Counsel, Office of Regulations, (202) 435-7700, or <https://reginquiries.consumerfinance.gov/>. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Background

The Bureau recognizes the serious impact the COVID-19 pandemic is having on many consumers and on the operations of many entities, including those involved in the mortgage origination process, and the challenges of this unique and rapidly evolving situation.

The Bureau understands that the current crisis is causing temporary business disruptions and is creating challenges for some businesses involved in the mortgage origination process, including creditors, mortgage loan originators, settlement agents, and other parties such as real estate appraisers. The difficulties some businesses are facing include operational and staffing challenges in processing loan applications, estimating mortgage transaction costs, delivering disclosures, providing third party services relating to mortgage origination, and closing loans.

The Bureau understands that these difficulties also are affecting some other entities, such as county recorders' offices, that provide information relating to the costs of mortgage transactions or otherwise play a role in the mortgage origination process.

The Bureau recognizes, furthermore, that due to the impacts of the COVID-19 pandemic, some consumers have an acute need for proceeds from mortgage transactions as well as uncertainty or confusion about the origination process. Some consumers are seeking to refinance their homes quickly to obtain funds to meet financial needs that are due to the COVID-19 pandemic.

The timely good-faith estimates of mortgage transaction costs under the TRID Rule and the disclosures under the Regulation Z Rescission Rules along with their corresponding waiting periods, the provisions for which are described in more detail in part I.B, facilitate prudent consumer decision-making. Providing these estimates and disclosures along with their corresponding waiting periods under the general legal standards in these rules, however, may result in delay in the transactions of some consumers seeking to respond to emergency conditions. However, the TRID Rule and Regulation Z Rescission Rules include provisions intended to provide regulatory flexibility in certain circumstances. This interpretive rule is intended to spotlight and clarify these provisions for consumers and mortgage origination businesses so that they can take advantage of these provisions during the COVID-19 pandemic.

The TRID Rule (which is codified in Regulation Z) and the Regulation Z Rescission Rules implement the Truth in Lending Act (TILA).¹ The TRID Rule imposes certain disclosure requirements and waiting periods related to mortgage transactions.² The Regulation Z

¹ 12 U.S.C. 1601 *et seq.*

² *See* 12 CFR 1026.19(e) and (f).

Rescission Rules provide consumers with the right to rescind certain credit transactions secured by their principal dwelling.³ The Regulation Z Rescission Rules also impose waiting periods.

In recent weeks, the Bureau has received a number of questions and requests for clarification from stakeholders, including creditors, industry representatives, and State regulators, about these provisions and their application in light of the COVID-19 pandemic. Given the challenges posed by the current crisis, the Bureau is issuing this interpretive rule to provide guidance to covered persons that must comply with the TRID Rule or the Regulation Z Rescission Rules. The Bureau continues to seek stakeholder feedback and evaluate whether the Bureau should provide any additional guidance about the application of the laws and regulations under the Bureau's purview pertaining to the mortgage origination process in light of the COVID-19 pandemic.

B. Specific Guidance Regarding the TRID Rule and the Regulation Z Rescission Rules in Light of the COVID-19 Pandemic

1. Bona Fide Personal Financial Emergency

Under the TRID Rule, creditors generally must deliver or place in the mail the Loan Estimate to consumers no later than seven business days before consummation and consumers must receive the Closing Disclosure no later than three business days before consummation.⁴ The Regulation Z Rescission Rules also provide consumers with at least three business days from consummation to rescind certain credit obligations secured by the consumer's principal dwelling, and creditors are required to provide consumers with a disclosure informing them of

³ See 12 CFR 1026.15, 1026.23.

⁴ 12 CFR 1026.19(e)(1)(iii)(B), 1026.19(f)(1)(ii)(A). Section 1026.19(f)(2)(ii) also provides for a corrected Closing Disclosure and additional three-day waiting period if certain changes are made before consummation, which is subject to the TRID Rule modification and waiver provisions described below. 12 CFR 1026.19(f)(2)(ii).

this rescission right.⁵ Under the TRID Rule and the Regulation Z Rescission Rules, however, after receiving the required disclosure(s), a consumer may modify or waive these waiting periods if the consumer determines that he or she needs credit extended to meet a bona fide personal financial emergency.⁶ For the waiting periods to be modified or waived, the creditor must have a dated written statement by the consumer that: (1) describes the emergency, (2) specifically modifies or waives the waiting period, and (3) bears the signature of all consumers who are primarily liable on the legal obligation (for the TRID Rule) or who are entitled to rescind (for the Regulation Z Rescission Rules).⁷ Commentary to the TRID Rule modification and waiver provisions clarifies that “[t]he consumer must have a bona fide personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period.” The commentary also clarifies that whether these conditions are met is determined by the facts or circumstances of individual situations, and provides one example.⁸ Commentary to the Regulation Z Rescission Rules waiver provision similarly clarifies that for a consumer to waive the rescission waiting period, “the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period.”⁹

⁵ 12 CFR 1026.15(a), 1026.23(a). These Regulation Z provisions implement the statutory rescission right provisions in TILA section 125. *See* 12 U.S.C. 1635. The rescission right generally applies to refinancings and other non-purchase credit transactions (subject to certain limitations), but not to residential mortgage transactions (i.e., where a security interest is created or retained in the consumer’s principal dwelling to finance the acquisition or initial construction of that dwelling, as defined in § 1026.2(a)(24)). *See* 12 CFR 1026.23(f). *See also* 12 CFR 1026.15(f).

⁶ 12 CFR 1026.15(e); 12 CFR 1026.19(e)(1)(v), (f)(1)(iv); 12 CFR 1026.23(e). *See also* 12 CFR 1026.19(a)(3).

The modification and waiver provisions in the TRID Rule and the Regulation Z Rescission Rules implement the statutory provisions in TILA sections 128(b)(2)(F) and 125(d). *See* 12 U.S.C. 1638(b)(2)(F), 12 U.S.C. 1635(d).

⁷ 12 CFR 1026.15(e); 12 CFR 1026.19(e)(1)(v), (f)(1)(iv); 12 CFR 1026.23(e). *See also* 12 CFR 1026.19(a)(3).

⁸ *See* comments 19(e)(1)(v)-1, 19(f)(1)(iv)-1 (“The imminent sale of the consumer’s home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a bona fide personal financial emergency.”); *see also* comment 19(a)(3)-1.

⁹ Comment 23(e)-1. Comment 23(e)-2 also clarifies that, “To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency.” Unlike the TRID Rule, the commentary to 12 CFR 1026.23(e) does not include any examples of what circumstances constitute a bona fide personal financial emergency. *See also* comment 15(e)-2.

On September 14, 2018, the Bureau issued its “Statement on Supervisory Practices Regarding Financial Institutions and Consumers Affected by a Major Disaster or Emergency” (2018 Supervisory Statement). The 2018 Supervisory Statement explained that Regulation Z provides that consumers may waive or modify the timing requirements described above if necessary to meet a bona fide personal financial emergency and that this “regulatory flexibility can help expedite access to credit for consumers facing a bona fide personal financial emergency following a major disaster or emergency.”¹⁰

The Bureau recognizes that a consumer’s need to obtain funds due to the COVID-19 pandemic can similarly create a bona fide personal financial emergency. The Bureau is responding to stakeholders’ questions and requests for clarification about the applicability of these provisions during the COVID-19 pandemic. The Bureau has determined to issue this interpretive rule to provide general guidance to stakeholders and other members of the public. Accordingly, the Bureau is clarifying that (1) if a consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, (2) the consumer’s brief statement describing the emergency identifies a financial need that is due to the COVID-19 pandemic, and (3) the emergency necessitates consummating the credit transaction before the end of an applicable TRID Rule waiting period or must be met before the end of the Regulation Z Rescission Rules waiting period, then the consumer has a bona fide personal financial emergency that would permit the consumer to utilize the modification and waiver provisions,

¹⁰ Bureau of Consumer Financial Protection, “Statement on Supervisory Practices Regarding Financial Institutions and Consumers Affected by a Major Disaster or Emergency,” Sept. 14, 2018, *available at*: https://files.consumerfinance.gov/f/documents/bcftp_statement-on-supervisory-practices_disaster-emergency.pdf.

subject to the applicable procedures set forth in the TRID Rule and the Regulation Z Rescission Rules.¹¹

Regulation Z does not mandate that creditors inform consumers of their ability to use the modification and waiver provisions in the TRID Rule or the Regulation Z Rescission Rules if the consumer has a bona fide financial emergency. Some consumers may be unaware that these provisions may be available to them. Thus, the Bureau encourages creditors to consider voluntarily informing consumers during the COVID-19 pandemic of their ability to utilize the modification and waiver provisions for bona fide personal financial emergencies if the consumer has a need to obtain funds due to the COVID-19 pandemic prior to the end of an applicable waiting period.

2. *Changed Circumstances*

Under the TRID Rule, creditors¹² must estimate in good faith the costs that consumers will incur in connection with their mortgage transaction and disclose them on the Loan Estimate.¹³ For purposes of determining good faith under the TRID Rule, creditors may use revised estimates of such costs in a limited number of situations pursuant to Regulation Z,

¹¹ Neither the TRID Rule nor the Regulation Z Rescission Rules modification and waiver provisions permit creditors to use printed forms for consumers to agree to such modifications or waivers. *See* 12 CFR 1026.15(e); 1026.19(e)(1)(v) and (f)(1)(iv); 12 CFR 1026.23(e). The Bureau notes that this prohibition also applies to disclosures delivered in compliance with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). For example, the creditor cannot include a pre-populated waiver form within a batch of electronic disclosures provided to the consumer under the TRID Rule, Regulation Z, and other regulations.

¹² The TRID Rule also permits mortgage brokers to provide the Loan Estimate, but the creditor remains responsible for satisfaction of the requirements under § 1026.19(e). *See* 12 CFR 1026.19(e)(1)(ii).

¹³ 12 CFR 1026.19(e)(3). As a general rule, an estimated closing cost disclosed on the Loan Estimate pursuant to § 1026.19(e)(1)(i) is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed. 12 CFR 1026.19(e)(3)(i). For certain categories of settlement charges, good faith is determined with reference to whether: (1) the aggregate amount of certain charges paid by or imposed on the consumer does not exceed the aggregate amount of those charges disclosed pursuant to § 1026.19(e)(1)(i) by more than 10 percent (*see* 12 CFR 1026.19(e)(3)(ii)(A)); or (2) the charge was estimated consistent with the best information reasonably available at the time it was disclosed, regardless of whether the final amount exceeds the estimated amount (*see* 12 CFR 1026.19(e)(3)(iii)).

§ 1026.19(e)(3)(iv).¹⁴ One such situation is if there are “changed circumstances” that affect the settlement charges consumers would incur.¹⁵ The TRID Rule specifies that changed circumstances includes “an extraordinary event beyond the control of any interested party,” with the commentary to the TRID Rule clarifying that a “war or natural disaster” is an example of such an extraordinary event.¹⁶

Economic disruptions and shortages during the COVID-19 pandemic may affect the ability of stakeholders to provide accurate estimates of some settlement charges. Stakeholders have sought guidance from the Bureau as to whether the COVID-19 pandemic is an extraordinary event that permits creditors to provide consumers with revised estimates reflecting changes in settlement charges. For example, a stakeholder asked to clarify whether, for purposes of establishing good faith, a creditor could provide a revised estimate of the appraisal fee based on changed circumstances where (1) the amount disclosed on the Loan Estimate was based on a reasonable market price at the time of the estimate and (2) the actual appraisal fee was higher because of a shortage of available appraisers due to the effects of the COVID-19 pandemic. Upon consideration of the interpretive issues, the Bureau concludes that, as with wars or natural disasters, the COVID-19 pandemic is an example of an extraordinary event beyond the control of any interested party, and thus is a changed circumstance. Accordingly, for purposes of determining good faith, creditors may use revised estimates of settlement charges that consumers

¹⁴ 12 CFR 1026.19(e)(3)(iv); 12 CFR 1026.19(e)(4)(i). Under § 1026.19(e)(4)(i), the revised estimates must be reflected on a revised version of the Loan Estimate, on the Closing Disclosure, or on a corrected Closing Disclosure.

¹⁵ 12 CFR 1026.19(e)(3)(iv)(A).

¹⁶ 12 CFR 1026.19(e)(3)(iv)(A)(1); comment 19(e)(3)(iv)(A)-2.

would incur in connection with the mortgage transaction if the COVID-19 pandemic has affected the estimate of such settlement charges.¹⁷

3. *Legal Authority and TILA Safe Harbor Provisions*

The Bureau is issuing this interpretive rule based on its authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Dodd-Frank Act, which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.¹⁸

By operation of TILA section 130(f), no provision of TILA sections 108(b), 108(c), 108(e), 112, or 130 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, this interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.¹⁹

II. Effective Date

Because this rule is solely interpretive, it is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the Administrative Procedure Act.²⁰

Therefore, this rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], the same date that it is published in the *Federal Register*.

III. Regulatory Requirements

¹⁷ See *id.*; 12 CFR 1026.19(e)(4)(i). As noted above, the revised estimates must be reflected on a revised version of the Loan Estimate, on the Closing Disclosure, or on a corrected Closing Disclosure. 12 CFR 1026.19(e)(4)(i). See also 12 CFR 1024.2(b) (definition of “Changed circumstances” in Regulation X, which predates the TRID Rule changed circumstance definition, includes “Acts of God, war, disaster, or other emergency”).

¹⁸ 12 U.S.C. 5512(b)(1). The relevant provisions of TILA and Regulation Z form part of Federal consumer financial law. See 12 U.S.C. 5481(12)(O), (14).

¹⁹ 15 U.S.C. 1640(f).

²⁰ 5 U.S.C. 553(d).

This rule articulates the Bureau’s interpretation of Regulation Z and TILA. As an interpretive rule, it is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.²¹ Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.²²

The Bureau has determined that this interpretive rule does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring OMB approval under the Paperwork Reduction Act.²³

IV. Congressional Review Act

Pursuant to the Congressional Review Act,²⁴ the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule’s published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a “major rule” as defined by 5 U.S.C. 804(2).

V. Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the *Federal Register*.

²¹ 5 U.S.C. 553(b).

²² 5 U.S.C. 603(a), 604(a).

²³ 44 U.S.C. 3501 *et seq.*

²⁴ 5 U.S.C. 801 *et seq.*

Dated: April 28, 2020.

/s/ Laura Galban

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.