



COVID-19 TRID and Rescission Interpretive Rule Summary

ACTION: Interpretive Rule

Effective Date: May 4, 2020

References:

<https://www.federalregister.gov/documents/2020/05/04/2020-09515/application-of-certain-provisions-in-the-tila-respa-integrated-disclosure-rule-and-regulation-z>

Overview

The Bureau of Consumer Financial Protection (“CFPB”) issued this interpretive rule clarifying the application of certain provisions in the TILA-RESPA Integrated Disclosure (TRID) Rule and Regulation Z’s right of rescission rules (Rescission Rules) in light of the COVID-19 pandemic. As an interpretive rule it doesn’t impose new or change existing substantive requirements; rather, it interprets the law set out in the TRID and Rescission Rules. The CFPB concluded that if a consumer determines that their need to obtain funds due to the COVID-19 pandemic necessitates consummating the transaction before the end of the TRID Rule waiting periods or must be met before the end of the Rescission Rules waiting period, then the consumer has a bona fide personal financial emergency. The CFPB also concluded that the COVID-19 pandemic is a “changed circumstance” for purposes of certain TRID Rule provisions.

Background

Both the TRID and Rescission Rules have disclosure requirements as well as corresponding waiting periods. While these rules facilitate prudent consumer decision-making, a waiting period may result in delay in the transactions of some consumers seeking to respond to emergency conditions. Both the TRID Rule and Rescission Rules include provisions, intended to provide regulatory flexibility in certain circumstances.

Bona Fide Financial Emergency

Under both the TRID and Rescission Rules, a consumer may modify or waive the corresponding waiting periods if the consumer determines that they need credit extended to meet a bona fide personal financial emergency. In order for the waiting periods to be modified or waived, the bank 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 Rescission Rules).

The CFPB clarified in the rule the bona fide personal financial emergency requirement in the COVID-19 context. The CFPB concluded that a 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 respective rules, if:

- (1) 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 Rescission Rules waiting period

As indicated in a footnote in the interpretive rule, both the TRID Rule and the Rescission Rules prohibit the use of printed forms for this purpose. As such banks would not want to include such a form in an application packet or otherwise provide a printed form. Additionally, while not required by either rule, the CFPB encouraged banks 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.

Changed Circumstances

The CFPB concluded in the interpretive rule that 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, banks may use revised estimates of settlement charges that consumers would incur in connection with the mortgage transaction if the COVID-19 pandemic has affected the estimate of such settlement charges. The CFPB provided an example in the context of appraisal fees, where COVID-19 could be the basis of a changed circumstance 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.

ACTION PLAN

- 1. Read the Interpretive Rule.**
- 2. Determine how your Reg. Z policies, procedures, training tools, and departments will be affected by these interpretations.**
- 3. Train loan officers and other relevant staff to recognize when consumers may be undergoing bona fide personal financial emergencies and inform them of the modification and waiver provisions.**
- 4. Contact Compliance Alliance with any questions.**