



October 10, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Docket No. 3170-AA76

Dear Ms. Jackson:

Successful disclosures help consumers make decisions by providing accurate and timely information. This is called good faith and advance disclosure in the Consumer Financial Protection Bureau's (CFPB) TILA/RESPA Integrated Disclosures (TRID).

The American Land Title Association¹ (ALTA) supports the removal of the so called four-business day limit for resetting tolerances with both initial and corrected Closing Disclosures. This change should help creditors comply with the rule's complex timing requirements. At the same time, we believe simple changes are needed to prevent any degradation the rule's strong good faith and advance disclosure requirements.

Consumers Want Accurate Information about their Transaction

At the center of the CFPB's proposal is the commonsense notion that consumers deserve accurate information about their transaction. Regardless of when a changed circumstance occurs or the stage of the transaction consumers need accurate information about the actual costs they will pay for each service provided during the transaction.

There are number of areas where TRID deviates from this essential truth. One area is the requirement to misquote the cost of title insurance policies and discounts to consumers on the

¹ The American Land Title Association, founded in 1907, is the national trade association representing 6,200 title insurance companies, title and settlement agents, independent abstractors, title searchers, and real estate attorneys. With offices throughout the United States, ALTA members conduct title searches, examinations, closings, and issue title insurance that helps protect the property rights of millions of American homebuyers every year.

Closing Disclosure. Another is the current rule's complex requirements for issuing updated disclosures to reset tolerances.

The need for this proposed fix is best summed up by our experience when we educated the industry ahead of its implementation. In 2015, ALTA joined with the Mortgage Bankers Association to host a series of TRID readiness forums across the country. These forums brought compliance experts and Bureau staff together to prepare companies for the changes. They were very successful and we deeply appreciate the CFPB's help and participation.

In the forums, the experts generally agreed on what was allowable under the rule. The one area of disagreement was this topic. Different experts reading the same language came to different conclusions about whether the rule allowed the resetting of tolerances using an updated Closing Disclosure outside of the four day limit.

We believe the proposal from the CFPB addresses this confusion. That is why we generally support it.

The proposal clearly states, "creditors could 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 is provided relative to consummation²." The proposed official interpretations provide valuable examples to industry to illustrate this concept. We support their finalization as written.

Even with this positive change, we are concerned that the proposed changes could impact current market practices that unintentionally lead to increased consumer confusion. We encourage the CFPB to monitor these issues going forward.

Consumers Receive Too Many Updated Disclosures

TRID's tolerance regime carefully balances the benefit of consumers receiving accurate estimates early in the transaction with the reality that transactions change over time due to a number of reasons. Often the main driver these changes is the consumer themselves or outside circumstances. In these situations, the CFPB's rule does not penalize creditors for the need to update their estimates.

At the same time, our experience is consumers get confused when they received myriad updated disclosures throughout the transaction. This potential to bury the consumer under an avalanche of update disclosures is an unintended consequence of the tolerance regime.

² Of ti² 82 Fed. Reg. 154. Page 37795.

If a Creditor seeks to change their cost estimate for good faith purposes, they must, “provide a revised version of the disclosures... within three business days of receiving information sufficient to establish³” the changed circumstance. Unfortunately, it is not common for multiple changed circumstances to occur during the processing of a loan. Thus, creditors may not be able to avoid confusing consumers with multiple disclosures.

Additionally, the rule does not prohibit or require creditors to send updated disclosures for changed cost estimates that do not reset tolerances because there is not a valid changed circumstance or the updated estimate is below the thresholds in §1026.19(e)(3)(i) and (ii). In these circumstances, creditors may transmit updated disclosures due to their desire for consumers to have the most accurate information possible.

In our experience, too many disclosure updates throughout the transaction works against the goal of improving consumer understanding. The Department of Housing and Urban Development’s (HUD) 2010 RESPA rule included a similar tolerance concept. In that environment, creditors would send multiple Good Faith Estimates (between 7 and 9 per transaction) to attempt to cure tolerance issues.

Unfortunately, our members experience was that this practice led to more consumer confusion and served to obscure costs even further for consumers. Frequently, ALTA members reported that consumers would ignore the updated disclosures and have no idea which one to use for comparison purposes at closing.

Lastly, the removal of the four-business day limit may encourage creditors to provide Closing Disclosures instead much earlier than intended by the CFPB. Creditors may elect to send the initial Closing Disclosure early in the transaction (including shortly after application). This would guarantee they do not trip up on the three-day advance disclosure rule. While this can help creditors comply with the three-day advance disclosure rule, it could potentially increase confusion for the consumer.

To address this issue we suggest incentivizing creditors to consolidate changes to avoid multiple disclosure updates. This could be done by changing the timing requirements in §1026.19(e)(4) to allow a single disclosure of all known changes caused by a valid changed circumstances at a specific time in the transaction. Alternatively, the bureau could emphasize avoiding unnecessary or non required updates as part of its supervisory process.

³ 12 CFR §1026.19(e)(4).

Encourage Creditors to Provide a Copy of the Disclosure Used for Good-Faith Comparison to Settlement Agents in Advance of Settlement

As the authority in real estate transactions, buyers and sellers rely on settlement agents to answer questions about their transaction. This is made difficult when creditors update disclosures without providing copies to the settlement agent and without giving agents information to answer consumers' questions about why costs estimates changed.

We believe the rule should require creditors to provide the settlement agent with a copy of any Closing Disclosure provided to the consumer at the same time it is transmitted to the consumer.

Implementation Period

We agree with the CFPB's proposed effective date of thirty days after publication in the Federal Register. While some companies may have hard coded the four-business day limit into their systems, this is not the type of change where a creditor can become out of compliance if it follows the current regulation. In addition, a single implementation period is preferable over the optional compliance period (as the CFPB created with the recently finalized amendments). An optional compliance period creates unnecessary complexity for settlement agents who work with a multitude of creditors. This makes it harder to train staff and provide a consistent settlement experience since each closing they conduct could use different rules.

We look forward to continuing to work with the Bureau on these issues. Should you have any questions about this letter, please do not hesitate to contact Steve Gottheim, ALTA's senior counsel, at steve@alta.org or 202-261-2943. Thank you for taking the opportunity to listen to our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle L. Korsmo". The signature is fluid and cursive, with a large loop at the end.

Michelle L. Korsmo
Chief Executive Officer