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National Association of Federally-Insured Credit Unions

February 6, 2019

Tom Pahl
Policy Associate Director for Research, Markets, and Regulations
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

RE: TRID Frequently Asked Questions

Dear Mr. Pahl:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau) recently released Frequently Asked Questions (FAQs) regarding the disclosure rules for the *Truth in Lending Act* (TILA) - *Real Estate Settlement Procedures Act* (RESPA) Integrated Disclosure (TRID) rule. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 115 million consumers with personal and small business financial service products. NAFCU greatly appreciates the Bureau's efforts to address lingering implementation issues, but would like to suggest additional areas where FAQs would provide significant clarity and assistance to our member credit unions.

Although NAFCU strongly supports the use of formal rulemaking versus informal guidance, NAFCU and its member credit unions recognize that pursuing rulemakings for all TRID issues is time-consuming and may be inefficient. Thus, NAFCU urges the Bureau to instead issue comprehensive FAQs summarizing the questions received by stakeholders and the answers provided by Bureau staff. Previously released webinars and Bureau staff responses to regulatory inquiries have been helpful, but this approach would also provide transparent and open guidance that can be easily referenced. The following suggested additional FAQs have been identified through extensive feedback from NAFCU's members. The list is not exhaustive and is outlined in order of priority.

Suggested Additional FAQs

Cure Provisions and Error Corrections

Under 12 C.F.R. § 1026.19(f)(2)(iv), the only errors that can be corrected if discovered post-consummation are "non-numeric clerical errors." The Bureau specifically stated in the preamble to the TRID Rule that it did not "intend to affect statutory liability provisions for other types of errors" and therefore did not define "numeric errors" or address how they may be cured. *See* 78

F.R. 79882. As a result, any numerical clerical error, regardless of whether it is substantive or affects the transaction, cannot be cured. Examples could possibly include an incorrect number in the credit union's file number, the email address of the seller's real estate broker, the phone number of the borrower's real estate broker, or the year of pro-rated taxes being paid at closing.

Because the Bureau did not wish to provide a regulatory method of correction or cure, a credit union must consult the federal statute regarding its liability for a clerical error. The liability under 15 U.S.C. § 1640 is only limited by the defendant's ability to sufficiently establish actual damages resulting from the error. Between the inability to cure the violation under the regulation and the breadth of liability for any violation if the defendant can argue actual damage, it is very difficult for credit unions to manage their liability for non-substantive, clerical errors in a responsible, risk-based manner. In comparison, before the implementation of TRID, credit unions were able to avoid being in violation of the regulation by correction of any "inadvertent or technical error." *See* 12 C.F.R. § 1024.8(c).

NAFCU encourages the Bureau to amend subsection 1026.19(f)(2)(iv) to remove the descriptor "non-numeric" and allow for the curing of any clerical error. The Bureau could then define "clerical errors" in a manner that does not rely on whether the error involved a number, but rather, whether the error is substantive, affects the terms or charges of the transaction, and creates any actual risk of harm or confusion for the borrower. At the very least, NAFCU urges the Bureau to provide some guidance in the form of an FAQ to assist credit unions in understanding their potential liability for clerical errors.

Negative Owner's Title Insurance Premium

Often, the lender's title insurance is a mandatory cost, and the owner's title insurance is optional. In many states, when these policies are purchased together, the policies are heavily discounted. However, the Bureau has taken the position that the full cost of these premiums should be disclosed, rather than the actual discounted price which is paid. TRID provides a specific formula for calculating the premium disclosures which, in some cases, yields a negative number. This formula does not always represent the actual cost allocation, which creates confusion for consumers.

This issue was addressed in the rulemaking process, and the preamble to TRID explains that this method was adopted to account for the "incremental" cost that is usually represented by simultaneously buying lender and owner's title insurance policies. *See* 78 FR 79964. At the time, numerous issues with this calculation were brought to the Bureau's attention, but it does not seem that the issue of the calculation resulting in a negative number was contemplated. The Bureau has not publically provided guidance as to whether a negative number in the disclosure is even permitted, and, if so, how this should impact other disclosures like the Calculating Cash to Close table.

The Bureau has indicated in informal phone guidance that a negative number is permissible if that is what the formula provides; however, the Bureau believes this is a rare case, even though numerous lenders and title insurers report this as a problem. Moreover, the resulting negative

number impacts other parts of the form, such as the Calculating Cash to Close table, which requires clarification. NAFCU strongly urges the Bureau to provide written guidance explaining its position on this issue.

Calculating Cash to Close

The Calculating Cash to Close table in the disclosures is difficult to complete because TRID and its guidance do not contemplate many particular kinds of transactions. The mathematics behind the calculations relies on assumptions about transactions that are not always true. Overall, because of overgeneralized assumptions that are the basis for the Calculating Cash to Close disclosure, credit unions are placed in the position of having to choose which part of TRID to violate in order to make an accurate disclosure – i.e., does the credit union ensure that the table’s result is the actual amount of cash a consumer needs to bring to closing, even if some of the line item entries are calculated in a way that does not fully comply with TRID? Although the Bureau has offered some unofficial, verbal guidance on how to disclose cash to close, the guidance has not addressed the difficult questions of what to do when the loan simply does not fit the form or its requirements.

NAFCU’s members continue to struggle with the Calculating Cash to Close table. Until situational-based guidance is produced, such as sample forms with fact patterns or FAQs, their form vendors are really not able to create programs which can reliably complete the forms in a manner that complies with the rules and produces logical, helpful results for consumers.

Second Lien Loans

This issue arises frequently in the context of simultaneous second or “piggyback” liens. Although this was addressed in the 2017 TRID amendments, there is limited guidance on preparing the TRID disclosures where there is a second lien involved in the transaction. Existing guidance is limited to a sample page 3 of the Closing Disclosure. With only a single page of the form as guidance, credit unions are unable to see how the relationship between the Loan Estimate and the Closing Disclosure operates in the transactions, or how additional parts of the form might work. Although the Bureau has produced a webinar on this topic, there is no written, searchable guidance in this area, except as mentioned above. Written guidance in the form of FAQs and complete sample forms with fact patterns would be enormously helpful.

Pre-Approvals/Pre-Qualifications

The Bureau has informally indicated that borrowers may still obtain pre-approvals before applying for a loan, as long as all six items of information which constitute an “application” are not provided and any documentation provided is submitted voluntarily. Nevertheless, confusion remains regarding how to collect information necessary for a pre-approval or pre-qualification without triggering disclosure requirements. The Bureau could clarify through FAQs that pre-approvals are a different stage of the loan application process, and as long as consumers are clear that a pre-approval, and not a loan, is being sought, any information needed by the credit union may be requested from the consumer to provide a pre-approval or pre-qualification without triggering disclosures. In the alternative, the Bureau could clarify that although pre-approvals are a different

stage of the process, (a) the credit union may not request all six items of information for an application, and (b) the consumer may voluntarily provide all information required by the credit union, if a pre-approval is sought.

Payoff in a Purchase Money Loan

In the 2017 amendments, the Bureau issued clarifications about how payoffs in a purchase money loan could be disclosed; however, there is no guidance or sample form addressing this situation. As a result, TRID places credit unions in the position of choosing between two or more violations to make their disclosure. Even though this is not a persistent issue for most credit unions, it is not rare or unlikely for a credit union to encounter such an issue. NAFCU urges the Bureau to provide straightforward, written guidance and sample forms to advise how these should be disclosed.

Conclusion

NAFCU appreciates the Bureau's recently released TRID FAQs and encourages you and all relevant staff to carefully review the above list of additional recommended topics warranting FAQs. NAFCU looks forward to continuing to work with you to identify more opportunities for regulatory clarity. If you have any questions or concerns, please do not hesitate to contact me at akossachev@nafcuh.org or (703) 842-2212.

Sincerely,



Ann Kossachev
Director of Regulatory Affairs