
As the industry is acutely aware, there has been a great deal of uncertainty and differing legal interpretations related to the permissibility of re-disclosing increases in settlement charges on a Closing Disclosure for the purposes of determining good faith in the event that the initial Closing Disclosure was issued greater than three (3) Business Days prior to Consummation.

Effective for Closing Disclosures processed by Impac Mortgage Corp. (“Impac”) **on or after February 1, 2018**, in the event that the initial Closing Disclosure is issued greater than three (3) Business Days prior to Consummation, Impac will not permit settlement charges to increase on a Closing Disclosure for the purposes of determining good faith. As such, Impac will require tolerance cures to be issued within sixty (60) days of Consummation for any such fees in order for the loan to be closed by Impac. Due to this fact, Impac will require a Clear to Close prior to issuing a Closing Disclosure.

Impac appreciates the magnitude of this change and would like to assure you that it would not make such a change unless it was absolutely necessary. Impac values your business and feels it appropriate to provide its legal rationale behind its decision making process.

Initial Rule

On November 3, 2013, the CFPB issued the initial Rule which became effective on October 3, 2015 which provided in relevant part:

“If, however, there are less than four business days between the time the revised version of the [Loan Estimate] is required to be provided pursuant to §1026.19(e)(4)(i) and consummation, creditors comply with the requirements of §1026.19(e)(4) if the revised disclosures are reflected in the [Closing Disclosure].” 12 CFR 1026.19(e)(4)(ii) – Comment 2.

While this verbiage is far from clear, the Consumer Financial Protection Bureau (“CFPB”) provided clarification through a webinar on August 26, 2014. Specifically, in a Q&A webinar published on the CFPB’s website, they addressed the question “May a Closing Disclosure be provided early and revised Closing Disclosures used in place of revised Loan Estimates for redisclosing estimates that changed due to changed circumstances.” The CFPB responded “while creditors may provide a Closing Disclosure earlier than required, the Rule does not provide a mechanism for re-disclosure using revised Closing Disclosures in place revised Loan Estimates in the event that the Closing Disclosure is provided earlier than required and the timing for re-disclosure does not fit neatly within the timing mechanism in 19(e)(4)(ii).

2016 Proposed Amendment

On August 15, 2016, the CFPB published a proposed amendment which provided in relevant part:

“The Bureau proposes to add comment 19(e)(4)(ii)-2 to clarify that creditors may use corrected Closing Disclosures ... to reflect further changes in costs that will be used for purposes of determining good faith under § 1026.19(e)(3).” “A creditor may use a corrected Closing Disclosure to reset applicable good faith tolerances when there are fewer than four business

days remaining before consummation or when the Closing Disclosure has already been issued, provided that the creditor also complies with the other requirements of § 1026.19(e)(4).

As a result of the proposed amendment purporting to clarify the existing state of the Rule, many industry participants, including Impac, elected to permit settlement charges to increase on a Closing Disclosure even if the initial Closing Disclosure was issued outside the less than four (4) Business Day prior to Consummation timing requirement.

2017 Final Amendment

On August 11, 2017, the CFPB issued the Final Amendment which became effective October 10, 2017, wherein they provided in relevant part:

“Although the Bureau recognizes that the text of proposed comment 19(e)(4)(ii)-2 could plausibly be interpreted as also removing the existing four business day limit for providing corrected Closing Disclosures to reset tolerances, the preamble to the proposal does not describe that the Bureau intended such a change.”

“The Bureau recognizes that the current rules may lead to circumstances under which creditors might be unable to provide revised estimates for purposes of resetting tolerances where the Closing Disclosure has already been provided and there are four or more days between consummation and the time the revised version of the [Loan Estimate] is required to be provided pursuant to § 1026.19(e)(4)(i). The Bureau believes, however, that before finalizing a rule that addresses this issue it is advisable to propose more explicit language and to seek comment so that stakeholders who understood the proposal in accordance with the Bureau’s intent will have the opportunity to provide their perspectives on this issue. For this reason, the Bureau is issuing a new proposal, concurrent with this final rule that would address this issue. Accordingly, the Bureau declines to finalize proposed comment.”

Fortunately, the CFPB has issued a proposed amendment which would permit increasing settlement charges on the Closing Disclosure even if the initial Closing Disclosure was issued greater than four (4) Business Days prior to Consummation provided the revised disclosure is issued within three (3) Business Day of a Valid Change of Circumstance. However, the final rule has not been published as of the date of this Announcement.

Impac will continue to monitor the state of the proposed amendment and will provide an update as more information becomes apparent.

We thank you for your continued business.

If you have questions, please contact 855-GO-IMPAC (855-464-6722).