

Client Alert

August 2015

Mortgage Regulatory Update: TRID-Related Changes to Section 404 Notice

The Hunton & Williams Structured Finance & Securitization Team presents the first in a series of Mortgage Regulatory Updates, authored by [Melanie Finkelstein](#). We are pleased to welcome Melanie to our team. Her practice will focus on the representation of financial institutions on a wide variety of structured finance transactions, as well as mortgage regulatory compliance. Melanie has several years of mortgage regulatory experience at a boutique mortgage origination law firm and has regularly written and spoken at industry conferences. Please reach out to Melanie or your preferred Hunton & Williams contact if you have questions or need additional information.

Amendments to Section 404 Notice (effective October 3, 2015)

On October 3, 2015, the long-anticipated Consumer Financial Protection Bureau (the CFPB) TILA RESPA Integrated Disclosure Rule (TRID) will finally take effect, and because of TRID there will be new requirements for the Section 404 Notice. Since October 3 is just the beginning, watch your inboxes as we will keep you informed of all the relevant TRID changes going forward.

Integrated Disclosures.

On October 3, 2015, the residential mortgage lending landscape will change dramatically when the TRID takes effect for certain transactions, most importantly residential mortgage loans.¹ TRID consolidates the four existing disclosures required to be provided to consumers under the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) — the initial and final Truth-in-Lending Disclosure Statement(s) (TIL), the Good Faith Estimate (GFE) and the HUD-1 Settlement Statement (HUD-1) — into two forms, collectively the Integrated Disclosures:

- The Loan Estimate that must be mailed no later than the third business day after receiving the consumer's application; and
- The Closing Disclosure that must be provided to the consumer at least three business days prior to closing.²

¹ Creditors continue to use the initial and final TIL, the GFE and the HUD-1 for transactions not subject to TRID, such as home equity lines of credit (HELOCs).

² The Loan Estimate and the Closing Disclosure may be found on the CFPB's regulatory implementation website at <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>.

Section 404 Notices.

In addition to the Integrated Disclosures, as part of its TRID rulemaking pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), the CFPB has amended the Section 404 Notice requirements under TILA Section 131(g) and § 1026.39 of Regulation Z.³ While the current Section 404 Notice requirements apply to both HELOCs and first and second lien residential mortgage loans, the new requirements under § 1026.39 of Regulation Z apply only to first and second lien residential mortgage loans. TILA Section 131(g) and § 1026.39 of Regulation Z currently require the new owner or assignee of a mortgage loan to notify the consumer of the sale or transfer of a mortgage loan no later than 30 days after the date on which the new owner/assignee acquired the loan. These requirements apply to HELOCs and first and second lien residential mortgage loans. Section 1414(d) of the Dodd-Frank Act amended TILA Section 129C to impose additional disclosure requirements on new owners or assignees of residential mortgage loans. Specifically, Section 129C(h) requires the following disclosure regarding partial payments: (i) the lender's policy regarding the acceptance of partial payments; and (ii) if they are accepted, how such payments will be applied to the mortgage loan, and if such payments will be placed in escrow. This is the identical disclosure required on the Closing Disclosure by TRID, § 1026.38(l)(5) of Regulation Z.

Effective October 3, 2015, for first and second lien residential mortgage loans, the content of the Section 404 Notice must identify the mortgage loan that was sold, assigned or otherwise transferred and state the following:

- The name, address and telephone number of the owner of the mortgage.
- The date of transfer.
- The name, address and telephone number of an agent or party authorized to receive notice of the right to rescind and resolve issues concerning the consumer's payments on the loan, if different from the owner.
- Where transfer of ownership of the debt to the new owner of the mortgage is or may be recorded in public records, or, alternatively, that the transfer of ownership of the mortgage has not been recorded in public records at the time the disclosure is provided.
- Under the subheading "Partial Payment":
 - If payments that are less than the unpaid principal amount are accepted, a statement that partial payments are accepted and such payments are applied to the consumer's loan;
 - If payments that are less than the unpaid principal amount are accepted but not applied to a consumer's loan until the final payment, a statement that partial payments will be retained in a separate account by the owner until the final payment and then applied to the full periodic payment to the consumer's loan;

³ Section 1026.39 of Regulation Z and its Commentary may be found on the CFPB's website at <http://www.consumerfinance.gov/eregulations/1026-39/2015-0132#1026-39-a>.

- If periodic payments that are less than the unpaid principal amount are not accepted, a statement that the owner does not accept any partial payments; and
- A statement that, if the loan is sold again, the new owner may have a different policy.

With regard to the format of the new disclosure requirement for the Section 404 Notice, the Commentary to § 1026.39(d)(5) of Regulation Z provides that an owner may utilize the format of the disclosure illustrated by Form H-25 of Appendix H to Regulation Z for the information required to be disclosed by TRID. For example, the statement required that a new owner may have a different partial payment policy, which may be disclosed using the language illustrated by Form H-25, which states “If this loan is sold, your new lender may have a different policy.” The text illustrated by Form H-25 may be modified to suit the format of the new owner’s Section 404 Notice disclosure. For example, the format illustrated by Form H-25 begins with the text “Your lender may” or “Your lender does not,” which may not be suitable to the format of the new owner’s other disclosures in its Section 404 Notice. This text may be modified to suit the format of the new owner’s integrated disclosure, using a phrase such as “We will” or “We are your new lender and have a different Partial Payment Policy than your previous lender. Under our policy we will.” Any modifications must be appropriate and not affect the substance, clarity or meaningful sequence of the disclosure.

If you need assistance with updating your Section 404 Notice, please feel free to contact us.

Contacts

Steven H. Becker
sbecker@hunton.com

Amy McDaniel Williams
awilliams@hunton.com

Robert J. Hahn
rhahn@hunton.com

Melanie R. Finkelstein
mfinkelstein@hunton.com