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New York Department of Financial Services
One State Street
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RE: TILA-RESPA Integrated Disclosure Rule

Dear Mr. Goberdhan:

The Consumer Financial Protection Bureau (“CFPB”) issued a final rule in November 2013 integrating several mortgage loan disclosures. On July 21, 2015 the CFPB issued a final rule which provided for a new effective date of October 3, 2015.

The TILA-RESPA Integrated Disclosure Rule (“TRID”) consolidates existing disclosures into two forms: a Loan Estimate which is required to be delivered or mailed no later than the third business day after receipt of the consumer’s loan application; and a Closing Disclosure which is required to be provided to the consumer at least three business days prior to loan consummation. Part 1026 – Truth in Lending in 1026.2(a)(13) defines consummation as “...the time that a consumer becomes contractually obligated on a credit transaction.” This definition is determined by applicable state law.

New York State does not have a specific statutory definition of consummation which would be applicable. There is some concern, however, that a 1984 Second Circuit Court of Appeals decision, Murphy v. Empire of America FSA (746 F.2d 931) might be applied. In Murphy, the court was determining whether consummation occurred under the right to rescind as provided for in 15 U.S.C. § 1635(a). The court found under New York law that acceptance of a lender’s commitment offer constituted a binding contract. The borrower argued that consummation did not occur until execution of the note and mortgage. The application of this decision would result in significant operational and compliance problems, since banks would not be able to provide detailed data disclosures that early in the process. The Murphy decision was specifically focused on consumer rescission and not on “know before you owe”

disclosures.

A specific determination from DFS targeted only to the Closing Disclosure would provide needed guidance as to the appropriate definition of consummation. It should be noted that the CFPB TILA timeline (version 2.0 – July 2015) uses in its example a state where consummation is the day of closing or signing of documents between the consumer and seller. This example should provide some guidance on the practical implementation as intended by the CFPB. I would also point to a Banking Interpretation dated April 2, 2003, entitled “Revisions to Good Faith Estimates,” which determines in part that a licensed mortgage banker must provide the consumer with revised final disclosure at the time of the consummation of the disclosure. There is no specific definition of consummation included in this Banking Interpretation. It arguably applies to when the promissory note is executed at closing. To consider consummation in this context to occur at the point of acceptance of the lender’s commitment offer is not a viable approach to provide the consumer with appropriate disclosure.

The objective of this regulation is to provide the consumer with disclosure, transparency and protection. This goal is best achieved by interpreting consummation to occur at the execution of the promissory note at closing.

A determination on this matter is critical to ensure that banks are compliant.

Thank you for your consideration, and if you have any questions please do not hesitate to contact me.

Very truly yours,

William Y. Crowell, III
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