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TRID 2.0 and the “Black Hole Fix” Final Rule

Presented by

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This Session Covers

- Important Dates
- What is the “Black Hole” and why BCFP instituted the fix
- BCFP’s Process to fix the rule and what the final rule does
- New BCFP official example of how the new rule works
- Implementation pitfalls (and CA SB2 recording fees)
- FAQs for “Black Hole” and TRID 2.0 generally
- Additional 2.0 Changes Taking Effect 10/1/2018

What is the “Black Hole” and why did it need fixing?

- TRID General rule #1: Loan Estimate (LE) disclosures for estimated closing costs must be made *in good faith*. [§ 1026.19(e)(1)]. A disclosure *in good faith* means the final closing cost appearing on the Closing Disclosure (CD) does not exceed the estimated cost originally disclosed on the LE and is based on information that is reasonably available to the lender at the time of disclosure. [§ 1026.19(e)(3)(i)].
- TRID General rule #2: Disclosure of certain third party services that a consumer may shop for, plus recording fees, are deemed to be made *in good faith* if the sum of all those charges paid or imposed on the consumer “does not exceed the sum of all charges disclosed on the [LE] by more than 10%.” [§ 1026.19(e)(3)(i).] The 10% Tolerance Rule.
- TRID General rule #3: Should the aggregate tolerance fees increase by more than 10%, the lender can provide a revised LE (“reset tolerance”) within 3 business days of learning that a permissible reason for revision applies. [§ 1026.19(e)(4)(i).]

What is the “Black Hole” and why did it need fixing?

- Rule on Revised LE’s known as the “Black Hole Rule:” Lenders shall not provide the revised LE on or after the date that a Closing Disclosure (CD) is provided. [§ 1026.19(e)(4)(ii).] ***The consumer must receive any revised LE not later than 4 business days prior to consummation.***
- ***Original comment 19e(4)(ii)-1 added to the BH Rule:*** “If...there are less than [4] business days between the time the revised [LE] is required to be provided...and consummation” creditors can use the CD to reset tolerance.
- The TRID Rule up through May 2018, therefore, limited lenders’ ability to provide a revised LE relative to the provision of a CD, and to consummation. A revised LE resetting tolerance could not be given to the consumer after the date that the consumer receives the initial CD and less than 4 business days to loan consummation. At the same time, commentary limited use of a CD to reset tolerance no more than 3 business days prior to loan consummation.

What is the “Black Hole” and why did it need fixing?

- In its 2017 Proposal, the BCPF recognized the BH Rule was causing significant confusion in the market and that the 4-business day rule caused situations where lenders could not provide a revised LE or a CD to reset tolerances.
- Due to TRID disclosure rules, industry over time was gaining greater certainty in closing costs and fees per loan transaction. With that certainty, industry was generally providing CD's sooner than 3 business days prior to consummation.
- An event unforeseeable to the creditor occurs after the CD is provided resulting in increase in closing costs and fees above 10% tolerance.
- The consumer requests a change after the CD is provided that causes an aggregate increase in closing costs to exceed 10% tolerance.
- Consummation scheduled date gets delayed or extended after the CD is provided.
- TRID and its Commentary lacked language that would allow the creditor to use a CD to reset tolerance 4 or more business days prior to Consummation.

Important Dates

- July 28, 2016 - TRID 2.0 Proposal. BCFP proposed clarifications and technical amendments to TRID, including a proposed comment 19(e)(4)(ii)-2 to clarify that creditors may use initial and corrected CDs to reset tolerance, but leaves in the 4-business day limit on resetting tolerance. [81 FR 54318 (August 15, 2016).]
- July 6, 2017 - TRID 2.0 Final Rule with Re-Proposal for "Black Hole" fix - BCFP reissues its proposal to amend §1026.19(e)(4) and associated commentary, to remove the 4-business day limit for resetting tolerance using the CD and for determining whether an estimated cost was disclosed *in good faith*. Instead, the proposal would not have restricted the creditor's ability to reset tolerances with a CD 4 or more business days in advance of consummation. [82 FR 37656; 37794 (August 11, 2017).]
- April 26, 2018 - Final rule issued with no change to 2017 Proposal. 83 FR 19159 (May 2, 2018)
- June 1, 2018 - Final rule takes effect. No retroactive application to loans closed before June 1.

BCFP's Process To Change the "Black Hole" Rule

- BCFP observed that the 4 business days rule was originally intended to curb premature delivery of CDs containing cost information that was not reliable (ie, further estimates) and not made by creditors *in good faith* (based on information reasonably available to them at the time of disclosure). Unintended consequence: lenders were absorbing cost increases incurred 4 or more business days prior to consummation.
- By 2017, the BCFP had changed its opinion on this - creditors in most cases learn about cost increases prior to providing the initial CD to a consumer. BCFP expected going forward that creditors would still be using revised LE's in most as to reset tolerance and to determine whether disclosures were being made *in good faith*.
- *Noted Circumstances where a CD would need to be used to reset tolerance:*
 - *See events on prior slide.*
 - *Weather related events that delay closings and lead to additional inspection and appraisal costs.*
 - *Illness by a buyer or seller that could delay closing and lead to additional costs, such as rate lock extension*

The Final Rule to Fix the “Black Hole”

- Changes to Section 1026.19(e)(4)(i) — now allows for a creditor to issue a revised LE, initial CD, or revised CD to reset tolerance and determine good faith disclosures, within 3 business days of receiving information sufficient to establish that the aggregate cost estimates for certain third party service charges and recording fees increased by more than 10%.
- Changes to comment 19(e)(4)(i)-1 — Disclosures on the CD and revised CD must still be made in good faith and based on best information reasonably available to the creditor at the time of disclosure. The “4 business day” requirement is no longer needed.
- The revised LE still may not be delivered at the same time as the CD. [Comment 19(e)(4)(ii).]

The Final Rule to Fix the “Black Hole”

- The final rule made no change to the following events requiring a revised CD be delivered at least 3-days prior to consummation. Otherwise, provide revised CD @ or prior to consummation.
 1. The APR becomes inaccurate (see §1026.22 for finance charge tolerances; 1/8 or 1/4 up or down).
 2. Changes made to loan product.
 3. A prepayment penalty is added. [§ 1026.19(f)(2)(i), (ii).]

Note: Consumers are afforded the right to inspect a CD one business day prior consummation under § 1026.19(f)(2)(i). Budget your time accordingly.

Also Note: In the event any of the above 3 events occurs after consummation, the creditor has 30 days from date of discovery to deliver a revised CD. [§ 1026.19(f)(2)(iii).]

The Final Rule to Fix the “Black Hole”

- The final rule made no change to the limited events that can allow for tolerance reset at or prior to consummation:
 1. Changed circumstance causes 10% tolerance breach
 2. Changed circumstance adversely affects consumer’s creditworthiness or value of property, AND causes the consumer to be ineligible for an estimated charge.
 3. At the consumer’s request, changes made to credit terms or settlement.
 4. Interest rate becomes locked (or extended).
 5. New construction loan - settlement extended beyond 60 days.

New BCFP Examples

- Comment 19(e)(4)(ii)-1.iv

Sun	Mon	Tue s	Wed	Thurs	Fri	Sat	
	1	2	3	4	5	6	
					Step 1: Initial CD personally delivered to consumer		
7	Step 3: Consumer reschedules consummation for 8/17 and requests a rate lock extension.	8	9	10	11	12	13
			Step 2: Original Consummation Date	Step 5: Revised CD resetting tolerance is delivered; there is no new 3-day waiting period.			
14	15	16	17	18	19	20	
			Step 4: New Consummation Date				

Implementation Pitfalls

- Post Consummation, Pre- Loan Close. [Preamble, FR page 19171:] *Regarding a commenter's request to allow creditors to reset tolerances after consummation when settlement occurs after consummation, the Bureau declines to adopt this change because existing § 1026.2(a)(13) provides that, once consummation occurs, the consumer is already contractually obligated on the credit transaction.*
- Rate lock extension fees (waivers) - UDAAP issues
- CA SB2 recordation fees, per page - \$75-\$225 add on. Exact fee confirmed after security instrument is recorded.
- Whole and bulk loan purchases on and after June 1, 2018 - no retroactive application of the fix.

FAQs for “Black Hole” and TRID 2.0 Generally

- Can the changed circumstance occur within the “black hole” days?
- Does any changed circumstance cause a new 3-day waiting period for the CD?
- If the changed circumstance does not cause a new 3-day waiting period, can the revised CD be delivered at the closing table?
- This final rule takes effect June 1, 2018 but is not retroactive. What about loans that are in process on that date?
- Does this change permit disclosure of a rate lock on a CD instead of an LE if the rate is locked too close to the closing date?
- If a borrower signs loan documents but then requests a change in loan terms, can they choose to move forward and sign new docs?

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Melissa Richards, CMB is a California licensed attorney with a national practice specializing in federal and multistate compliance, licensing and enterprise risk management for the financial services industry. Her clients are engaged in residential and commercial mortgage, fintech, licensed non-depository and depository institution consumer and commercial lending, either directly or in supporting vendor roles. Ms. Richards has both outside counsel experience as well as general counsel experience. From 2012-2018, Ms. Richards served as the Chief Legal & Risk Officer of a mid-size independent mortgage company ranked as one of Scotsman Guide's Top 15 Mortgage Lenders in 2018-2019.

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