

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: DECEMBER 18, 2023

Services

Consumer Financial Services
Credit Unions

Professional

LESLIE A. SOWERS
WASHINGTON:
202.378.2384
LESLIE.SOWERS@
HUSCHBLACKWELL.COM

CFPB Approves Construction Loan Disclosure Pilot

The Consumer Financial Protection Bureau (CFPB) has approved an application from the Independent Community Bankers of America (ICBA) to pilot disclosures for construction loans, paving the way for lenders to use and test the usefulness and effectiveness of the alternative disclosures. This application approval is part of a CFPB program to utilize real-world tests of alternative disclosures to inform future regulatory changes.

In their application, the ICBA asserted that because the Loan Estimate and Closing Disclosure under the TILA-RESPA Integrated Disclosures (TRID) Rule are primarily designed for standard home purchase or refinance mortgage loans, the disclosures do not sufficiently disclose all components of consumer construction and construction-to-permanent loans. In proposing these alternative disclosures, the ICBA's primary motivation has been facilitating loan offerings for first-time homebuyers in rural areas who build homes rather than buying, the disclosure of which brings unique challenges.

A public feedback period on the ICBA's application in February 2023 played a role in the CFPB's decision to greenlight the project. The CFPB is now accepting applications for Trial Disclosure Program (TDP) Waivers from individual lenders interested in testing these alternative disclosures for one-time-close, construction-to-permanent loans, with an evaluation process in place to assess the potential effectiveness of any new disclosures suggested.

What this means to you

Many mortgage lenders have struggled with certain compliance uncertainties and regulatory risks created by the TRID Rule in connection with originating construction loans since the TRID Rule's effective date eight years ago. Although the CFPB offered webinars, dedicated guides, and FAQs related to how to disclose construction loans under TRID, many lenders decided the risk

was too significant and stopped offering some or all construction loan products. If your company has concerns with offering construction-to-permanent loans because of the regulatory uncertainty related to complying with the TRID Rule, the CFPB's approval of the ICBA's TDP Waiver Template could provide an opportunity for your company to be involved in addressing those concerns, by testing and developing better disclosures and regulatory guidance—while protected with a safe harbor from liability from certain TRID disclosure requirements.

Contact us

If you have any questions regarding applying for a TDP Waiver, construction loan disclosures, the impact of potential future changes to construction disclosures, or any other residential mortgage related compliance matter, please contact Leslie Sowers, Jacob Huston, or your Husch Blackwell attorney.