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To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: May 2, 2018

Subject: **CFPB Finalizes TRID Know Before You Owe Rule to Address the Black Hole issue**

We wanted to alert you that on May 2, 2018, the CFPB published in the Federal Register its Final Rule to address the so-called “Black Hole” issue under TRID. The “Black Hole” refers to the inability, under the original TRID rule, for a Lender to reset tolerances with a Closing Disclosure, except during the four business days prior to closing. The original rule created a potential issue if (i) the lender decided to issue the advance Closing Disclosure more than 4 business days before closing, or (ii) there was a delay in the closing causing the advance Closing Disclosure to be delivered more than 4 business days before the actual closing date. In those circumstances, if costs increased more than applicable tolerances, the lender was NOT able to pass the costs on to the borrower (if such costs were subject to tolerances) unless the redisclosure of such fee occurred within the four business day tolerance reset window and also within 3 business days of the lender learning of the change of circumstances.

In the Final Rule, the CFPB has eliminated the reference to this four business day window as the only period that a CD can be used to reset tolerances. As a consequence, a lender can use a CD to reset tolerances based on an otherwise valid change of circumstances at any time prior to closing, as long as the lender provides the updated CD to the borrower within 3 business days of the lender becoming aware of the change of circumstances.

We believe that the Final Rule will be beneficial to lenders in that it provides greater flexibility in the resetting of tolerances due to unforeseen circumstances, after a Closing Disclosure has been provided to the borrower. Lenders may now be less reluctant to issue a Closing Disclosure more than four business days prior to closing, as some lenders chose not to do so to avoid exposure to unforeseen tolerances in the so-called “Black Hole” period. Borrowers should also benefit, as we know that some lenders elected to cancel loans and start over when the tolerance amount became too great, even though both the borrower and the lender would have preferred to close the transaction, with the borrower bearing the additional cost. The prior rule simply did not allow for this option because of the

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restrictive four business day tolerance reset window after a CD was issued. A link to the final rule in the Federal Register can be found at:

<https://www.federalregister.gov/documents/2018/05/02/2018-09243/federal-mortgage-disclosure-requirements-under-the-truth-in-lending-act-regulation-z>

The CFPB also issued an Executive Summary to the Final Rule and it can be found at:

[https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb\\_2018-TILA-RESPA-rule\\_executive-summary.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_2018-TILA-RESPA-rule_executive-summary.pdf)

**The new rule will become effective 30 days after it is published in the Federal Register, which was on May 2, 2018.** If you have any questions regarding this memorandum, please contact any of our firm attorneys below.

Allan Polunsky at [Allan.Polunsky@mortgagelaw.com](mailto:Allan.Polunsky@mortgagelaw.com)

Jay Beitel at [Jay.Beitel@mortgagelaw.com](mailto:Jay.Beitel@mortgagelaw.com)

Marty Green at [Marty.Green@mortgagelaw.com](mailto:Marty.Green@mortgagelaw.com)

Lauren Polunsky Dreszer at [Lauren.Polunsky@mortgagelaw.com](mailto:Lauren.Polunsky@mortgagelaw.com)

Jonathan Jaskot at [Jonathan.Jaskot@mortgagelaw.com](mailto:Jonathan.Jaskot@mortgagelaw.com)