Key Components of TRID

Presented by: Benjamin K. Olson

Buckley Sandler LLP

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TRID Effective Date and Enforcement

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June 17, 2015: CFPB Press Release

- CFPB Director announces proposal to delay effective date until October 1:

> "We made this decision to correct an administrative error that we just discovered in meeting the requirements under federal law, which would have delayed the effective date of the rule by two weeks. We further believe that the additional time included in the proposed effective date would better accommodate the interests of the many consumers and providers whose families will be busy with the transition to the new school year at that time."

- Reported that error was failure to submit final rule to Congress pursuant to Congressional Review Act
  - CRA provides 60-day period for Congress to "disapprove" rule by joint resolution of both houses
  - Only one rule disapproved: 2000 Dept. of Labor Ergonomics Rule

TRID Effective Date and Enforcement

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June 24, 2015: Proposed Rule Delaying Effective Date Until October 3

– Confirms administrative error was related to CRA, and that rule could not take effect until August 15, at the earliest

- Because "some delay in the effective date is now required, the Bureau believes that a brief additional delay may benefit both consumers and industry more than would allowing the new rules to take effect on [August 15]."
- Additional delay is being proposed to avoid challenges associated with a mid-month effective date and to allow more time to implement the rule in light of recent information the CFPB received that "delays in the delivery of system updates have left creditors and others with limited time to fully test all of their systems and system components to ensure that each system works with the others in an effective manner."

TRID Effective Date and Enforcement

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<u>June 24, 2015</u>: Proposed Rule Delaying Effective Date Until October 3

- Does not include any substantive changes to the rule, other than changes to reflect the new proposed effective date
- Does not propose to allow lenders to begin complying with the rule before the effective date
- Comments must be received on or before July 7, 2015

TRID Scope

- TRID only applies to “closed-end consumer credit transaction[s] secured by real property, other than a reverse mortgage subject to section 1026.33.”
- The rule does not apply to:
  - Home-equity lines of credit
  - Reverse mortgages
  - Mortgages secured by a mobile home or by a dwelling that is not attached to land
  - Loans made by a creditor who makes five or fewer mortgages in a year
  - Certain no-interest second mortgage loans made for the purpose of downpayment assistance, property rehabilitation, energy efficiency, or foreclosure avoidance

TRID Scope

- Are co-ops covered?
  - "Real property" is not defined by Regulation Z, so state law or the contract controls
  - CFPB staff have informally advised that they intended TRID to apply to co-ops and would interpret it to apply if the co-op is subject to state's real property transfer tax or real estate law
  - If creditor provides wrong disclosures, risk of private suit or rescission under TILA

Leads on File

- Which rule applies if the six application items are already in the file on August 1, 2015 but GFE and TIL have not been issued because the application was not complete under the existing definition?
  - CFPB has addressed in Official Interpretations (Comment 1(d)(5)-1.i):

> Assume a creditor receives an application, **as defined under § 1026.2(a)(3) of the TILA–RESPA Final Rule** [the new six-item TRID definition], for a transaction subject to § 1026.19(e) and (f) **on July 31, 2015**, and that consummation of the transaction occurs on August 30, 2015. The amendments of the TILA–RESPA Final Rule, including the requirements to provide the Loan Estimate and Closing Disclosure under § 1026.19(e) and (f), **do not apply to the transaction**, except that the provisions of § 1026.19(e)(2) [limitations on predisclosure activity], specifically § 1026.19(e)(2)(i) [prohibition on fees before intent to proceed], (e)(2)(ii) [requirements for worksheets], and (e)(2)(iii) [prohibition on requiring verifying information], do apply to the transaction beginning on August 1, 2015 because they become effective on August 1, 2015, without respect to whether an application, as defined under § 1026.2(a)(3) of the TILA–RESPA Final Rule, has been received by the creditor or mortgage broker on that date.

Pre-approvals & Pre-qualifications

- **Are pre-qualifications and pre-approvals allowed under the new rule?**

  Preamble to Final Rule:

  – "[T]he Bureau does not believe that the definition of application will restrict creditors'* ability to provide pre-qualification cost estimates or grant pre-approvals."

  – "The Bureau believes that creditors* could provide pre-qualification estimates and grant pre-approvals without obtaining all of the six specific items of information that make up the definition of application. Specifically, the Bureau believes that there is little need for creditors* to gather specific information about the loan transaction, such as the property address or loan amount sought, to make pre-qualification estimates because pre-qualification estimates and pre-approvals are not subject to the tolerance rules in § 1026.19(e)(3) and are generally for a range of loan amounts and property values."

* "[I]f the mortgage broker provides the required disclosures, it must comply with **all** relevant requirements of [the rule]," including retention of records for the later of three years after consummation, the date disclosures are required to be made, or the date action is required to be taken

Pre-approvals & Pre-qualifications

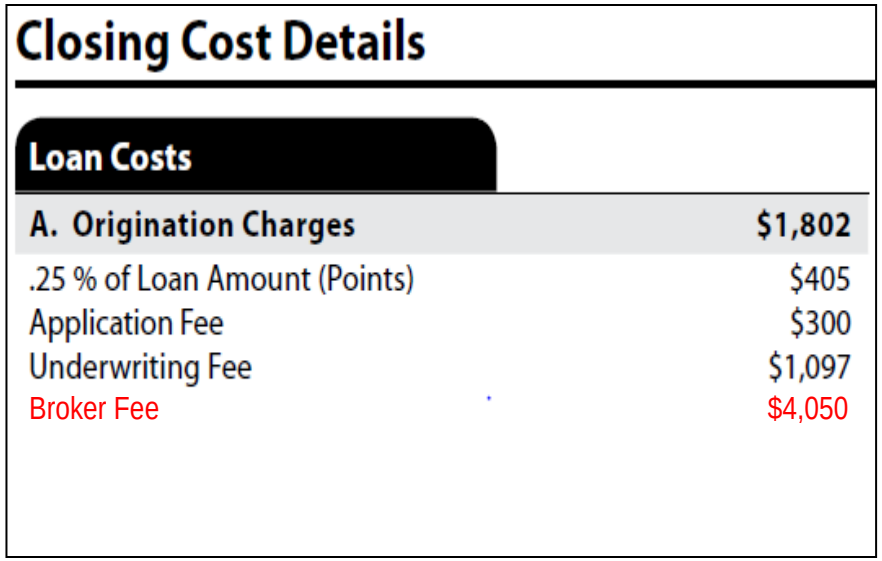
- **Can a creditor or broker require verifying documentation as a condition of providing a pre-qualification or pre-approval?**

May 26, 2015 CFPB Staff Webinar:

  - "The creditor [or broker] cannot explicitly or implicitly represent to the consumer that it will not provide a Loan Estimate without the consumer first providing verifying documentation."
  - "As long as there is no such restriction, if the consumer voluntarily provides documentation and requests a creditor [or broker] to review and consider that documentation to provide a pre-qualification or pre-approval, the rule does not prohibit the creditor [or broker] from accepting and reviewing that documentation."

Lender-Paid Broker Compensation

- Only borrower-paid broker compensation appears on the Loan Estimate
- Lender-paid broker compensation cannot be included
- Lender will have to verify compliance through other means (e.g., certification)



Closing Cost Details

Loan Costs

A. Origination Charges	**$1,802**
.25 % of Loan Amount (Points)	$405
Application Fee	$300
Underwriting Fee	$1,097
Broker Fee	$4,050

Lender-Paid Broker Compensation

- Lender-paid broker compensation disclosed on the Closing Disclosure as "Paid by Others"

Closing Cost Details

Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
A. Origination Charges	**$1,802.00**				
01 0.25 % of Loan Amount (Points)	$405.00				
02 Application Fee	$300.00				
03 Underwriting Fee	$1,097.00				
04 Broker Fee (XYZ Broker)					$4,050 (L)
05					
06					
07					
08					

Estimating Costs and Terms

- **Disclosures "must be provided in good faith"**
  - Disclosures must be "based on the best information reasonably available to the creditor [or broker] at the time the disclosure is provided to the consumer"
  - "[C]reditor [or broker], acting in good faith, [must] exercise due diligence in obtaining information"
  - "The creditor [or broker] normally may rely on the representations of other parties in obtaining information," such as consumer, settlement agent, and realtor

- **Standard appears to apply to all disclosures in all LE and CDs**
  - Not limited to closing costs subject to tolerances
  - Not limited to initial Loan Estimate and Closing Disclosure

Voluntary Redisclosure

- If a closing cost increases but the prior estimate remains "in good faith," creditor or broker has the option of providing a revised Loan Estimate **but optional revised LE will not reset 10% tolerance if a changed circumstance results in increase of 10% or less**

Comment 19(e)(3)(iv)(A)-1.ii:

> Assume a creditor [or broker] provides a $400 estimate of title fees, which are included in the [10% tolerance] category ... An unreleased lien is discovered and the title company must perform additional work to release the lien. However, the additional costs amount to only a five percent increase over the sum of all fees included in the [10% tolerance] category ... A changed circumstance has occurred (i.e., new information), but the sum of all costs subject to the 10 percent tolerance category has not increased by more than 10 percent. **Section 1026.19(e)(3)(iv) does not prohibit the creditor [or broker] from issuing revised disclosures, but if the creditor issues revised disclosures in this scenario, when the disclosures required by § 1026.19(f)(1)(i) are delivered, the actual title fees of $500 may not be compared to the revised title fees of $500; they must be compared to the originally estimated title fees of $400 because the changed circumstance did not cause the sum of all costs subject to the 10 percent tolerance category to increase by more than 10 percent.**

Voluntary Redisclosure

- Optional revised LE **will not** reset 10% tolerance if a changed circumstance results in increase of 10% or less (continued)

  May 26, 2015 CFPB Staff Webinar:

  – "[E]ven if the creditor [or broker] determines the changed estimates remain in good faith, the rule does not prohibit the creditor [or broker] from issuing an updated disclosure reflecting the changed estimates and the creditor [or broker] has the option of doing so."

  – "However, keep in mind that in that case, the updated disclosure would not impact the good faith analysis under Section 1026.19(e)(3)(i) through (iii) and the creditor [or broker] must have a mechanism for tracking which disclosure controls for purposes of determining good faith."

Tolerances and Shopping

- **The importance of permitting the consumer to "shop" for a settlement service provider**
  - Not permitted – zero tolerance applies
  - Permitted – 10% tolerance applies
  - Permitted and consumer selects own provider – tolerances do not apply
- **How does a creditor or broker permit the consumer to "shop"?**
  - Consumer allowed to select provider, subject to reasonable requirements (e.g., licensure)
  - Loan Estimate identifies services for which consumer may shop
  - Written List of Providers identifies at least one available provider for each service and informs consumer that they may choose a different provider
- **If broker is providing Loan Estimate, Written List of Providers still must be provided within three business days of application**

Tolerances and Shopping

- **What if a shoppable service is added after the initial LE is provided?**
  - Section 1026.19(e)(1)(vi)(C) requires the written list to be provided separately from the Loan Estimate but also within three business days of application
  - No provision in TRID rule allowing for subsequent written lists with revised LEs
  - For example, if a changed circumstance occurs such that a termite inspection is required on the home and the original written list did not include a termite inspector, the rule does not provide for the provision of a new written list with the revised LE that identifies a termite inspector

Tolerances and Shopping

- **What if a shoppable service is added after the initial LE is provided?** (continued)

  May 26, 2015 CFPB Staff Webinar states:

  - "When an event that would permit resetting of tolerances or variations under Section 1026.19(e)(3)(iv) occurs and an additional settlement service is required, the creditor [or broker] may disclose service providers of that additional service on the written list at the same time as issuing the revised Loan Estimate. Although the regulation does not expressly address the scenario, we recognize that a creditor [or broker] may want to permit the consumer to shop for this new service."
  - "There are two ways that a creditor [or broker] may approach adding this new service to the written list.
    - First, the creditor [or broker] may include the additional service and provide an updated written list or
    - [S]econd, because the rule does not require the written list to be updated and accompany a verified Loan Estimate, the creditor [or broker] may provide a written list showing only service providers of the additional service. Either method would comply with the rule."

Tolerances and Shopping

- **What if a shoppable service is added after the initial LE is provided?** (continued)

Comment 19(e)(3)(iii)-2 states that, when no list is provided, the 10% tolerance still applies to an otherwise shoppable service:

> If the creditor [or broker] permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) [select the provider subject to creditor's reasonable requirements] but **fails to provide the list required by § 1026.19(e)(1)(vi)(C)** [which includes a timing requirement], good faith is determined pursuant to § 1026.19(e)(3)(ii) [10% tolerance] instead of § 1026.19(e)(3)(iii) [no tolerance] regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor [or broker] in which case good faith is determined pursuant to § 1026.19(e)(3)(i) [zero tolerance].

Tolerances and Shopping

- **What if a shoppable service is added after the initial LE is provided?** (continued)

May 26, 2015 CFPB Staff Webinar states:

> Note, however, that if the creditor [or broker] intends to allow the consumer to shop for the additional service but fails to provide an updated or revised written list of service providers, that service would be subject to zero tolerance.

Tolerances and Lender Credits

- Lender credits subject to zero tolerance and cannot decrease absent a changed circumstance or other exception
  - Comment 19(e)(3)(i)-5: "If the creditor [or broker] discloses a $750 estimate for 'lender credits' to cover the cost of a $750 appraisal fee, but subsequently reduces the credit by $50 because the appraisal fee decreased by $50, then the requirements of § 1026.19(e)(3)(i) have been violated because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased"
  - Preamble: "With respect to whether a changed circumstance or borrower-requested change can apply to the revision of lender credits, the Bureau believes that a changed circumstance or borrower-requested change can *decrease* such credits, provided that all of the requirements of section 1026.19(e)(3)(iv), discussed below, are satisfied."

Tolerances and the Closing Disclosure

- LE & CD must be provided in good faith and to be based on the “best information reasonably available”
  - For closing costs subject to tolerance, the estimated amounts are in good faith if the actual charge paid by or imposed on the consumer does not exceed the amount originally disclosed on the LE by the applicable tolerance (i.e., zero or 10% in the aggregate) unless a permitted change occurs and the creditor or broker “resets” the tolerances by redisclosing within three business days.

- The creditor or broker may “reset” the tolerances and charge more than originally disclosed by providing a revised LE within three business days of receiving information sufficient to establish that the permitted change occurred

Tolerances and the Closing Disclosure

- However, a revised LE cannot be received on or after the date the CD is received, so the consumer must receive the revised LE at least four business days before consummation.
  - If there are less than four specific business days between the time the revised Loan Estimate would be provided and consummation, tolerances can be reset using Closing Disclosure [Comment 19(e)(4)(ii)-1]
  - "If the event occurs after the first Closing Disclosure has been provided to the consumer (i.e., within the three-business-day waiting period before consummation), the creditor may use revised charges on the Closing Disclosure provided to the consumer at consummation, and compare those amounts to the amounts charged for purposes of determining good faith and tolerance. (Comment 19(e)(4)(ii)-1) [Small Entity Compliance Guide § 9.5]
- But if closing date is delayed after initial Closing Disclosure provided, a revised Closing Disclosure may or may not reset the tolerances

Tolerances and the Closing Disclosure – Example 1

If initial CD is mailed or delivered seven business days before consummation and consummation is not delayed:

- Can the creditor charge borrower for rate lock extension fee incurred the day before consummation?
  - Yes, tolerances may be reset by disclosing rate lock extension fee on revised CD at consummation

Tolerances and the Closing Disclosure – Example 1

Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat. Std. Bus. Day But Not "Open for Bus." Day
6	7	8 Initial CD mailed based on expected closing date of 9/15	9	10	11 Initial CD presumed received; closing may occur on 9/15	12
13	14 **Rate Lock Extended** -1	15 **CLOSING DATE** Revised CD discloses rate lock extension fee +1	16 +2	17 +3	18	19
20	21	22	23	24	25	26

Tolerances and the Closing Disclosure – Example 2

- Can the creditor charge borrower for rate lock extension fee incurred seven business days before consummation?
  - Yes, tolerances may be reset by disclosing rate lock extension fee on initial CD or, if fee was not “reasonably available,” on revised CD at consummation

Tolerances and the Closing Disclosure – Example 2

Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat. Std. Bus. Day But Not "Open for Bus." Day
6	7 Rate Lock Extended	8 Initial CD mailed based on expected closing date of 9/15 +1	9 +2	10 +3 -4	11 Initial CD presumed received; closing may occur on 9/15 -3	12 -2
13	14 -1	15 **CLOSING DATE** Revised CD discloses rate lock extension fee	16	17	18	19
20	21	22	23	24	25	26

Tolerances and the Closing Disclosure – Example 3

- Can tolerances be reset if rate lock extension fee is incurred one day before original consummation date but closing is delayed by eight days?
  - Probably not.

Tolerances and the Closing Disclosure – Example 3

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Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat. Std. Bus. Day But Not "Open for Bus." Day
6	7	8 Initial CD mailed based on expected closing date of 9/15	9	10	11 Initial CD presumed received; closing may occur on 9/15	12
13	14 CLOSING DELAYED UNTIL 9/23 & Rate Lock Extended	15 ORIGINAL CLOSING DATE +1	16 +2	17 REVISED LE DISCLOSING RATE LOCK EXTENSION FEE WOULD HAVE BEEN DUE +3	18 -4	19 -3
20	21 -2	22 -1	23 NEW CLOSING DATE	24	25	26

Tolerances and the Closing Disclosure – Example 4

- Can tolerances be reset on the CD at consummation if the initial CD is provided 10 business days before consummation?
  - It depends on when you are notified of the changed circumstance or other tolerance reset event.

Tolerances and the Closing Disclosure – Example 4

Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat. Std. Bus. Day But Not "Open for Bus." Day
6	7	8	9	10	11 Initial CD mailed based on expected closing date of 9/23 -10	12 -9
13	14 BORROWER REQUESTED CHANGE -8	15 Initial CD presumed received; closing may occur on 9/23 +1 -7	16 +2 -6	17 REVISED LE DISCLOSING CHANGE WOULD HAVE BEEN DUE +3 -5	18 -4	19 -3
20 -2	21 -1	22	23 NEW CLOSING DATE	24	25	26

APR Tolerances

- Revised Closing Disclosure and new three business day waiting period required if the APR "becomes inaccurate, as defined in § 1026.22"

- Only change to Reg. Z accuracy standards is addition of cross-reference to § 1026.38(o)(2)
  - § 1026.22(a)(4) continues to provide that, "[i]f the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate … , the disclosed annual percentage rate shall also be considered accurate if (i) The rate results from the disclosed finance charge; and (ii)… The disclosed finance charge would be considered accurate under §1026.18(d)(1) or § 1026.38(o)(2), as applicable…."
  - § 1026.38(o)(2) mirrors current § 1026.18(d)(1) by providing that, "the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge . . . is greater than the amount required to be disclosed."

APR Tolerances

- In June 3 Fact Sheet, CFPB stated that "[a] **decrease in APR will not** require a new 3-day review if it is based on changes to interest rate or other fees."

  - The Fact Sheet also stated, incorrectly, the 1/4 of a percent APR tolerance applies to "adjustable loans," rather than an "irregular transaction" as provided in § 1026.22(a)(3) (i.e., a transaction that "that includes one or more of the following features: multiple advances, irregular payment periods, or irregular payment amounts (other than an irregular first period or an irregular first or final payment)").

Home Loan Toolkit

- HUD's "Shopping for Your Home Loan: Settlement Cost Booklet" replaced with CFPB's "Your Home Loan Toolkit: A Step-by-Step Guide" and made available on April 1, 2015.
  - Updated to work with Loan Estimate and Closing Disclosure
  - Creditor or broker must provide Toolkit to consumers for applications received on or after August 1 *[October 3, 2015]*
  - Not required for refinances, second lien mortgages, or reverse mortgages

- Electronic and printable versions available at: http://www.consumerfinance.gov/learnmore/#respa

- Creditors and brokers may add name and logo to cover

- Spanish version and additional guidance on permissible revisions forthcoming

Home Loan Toolkit

- Creditor or broker must deliver or place Toolkit in the mail not later than three business days after application received

- May 26, 2015 CFPB Staff Webinar: “By simply making a special information booklet, also known as the toolkit, available on its web site, a creditor [or broker] does not satisfy the rule's delivery requirement.”

- Toolkit subject to same electronic delivery rules as Loan Estimate
  - CFPB contemplates delivery of TRID disclosures by email
  - Creditor or broker may deliver LE and Toolkit electronically subject to Electronic Signatures in Global & National Commerce Act (ESIGN) and Uniform Electronic Transactions Act (UETA)
  - Creditor or broker must obtain ESIGN consent from consumer before LE and Toolkit are delivered or presented
  - Creditor or broker may be able to send an email containing a hyperlink that is used to provide ESIGN consent and then to provide access to the disclosures

TRID, HMDA & ECOA

- TRID did not alter the definition of "application" under HMDA and ECOA

Preamble to Final Rule:

> **The definition [of "application"] being adopted today does not change the current definitions of application under Regulations B and C.** The Bureau recognizes the potential benefits of a single definition of application, including reduced regulatory burden. However, the definition of application in this final rule determines when consumers must be given disclosures that enable them to shop for and compare different loan and settlement cost options.

TRID, HMDA & ECOA

- TRID did not alter the definition of "application" under HMDA and ECOA (continued)

  Preamble to Final Rule:

  - "The definition of application in this final rule serves a different purpose than the definition of application in Regulations B and C."
  - "'Application' as defined by this final rule triggers a creditor's obligation to provide disclosures to aid consumers in shopping for and understanding the cost of credit and settlement."
  - "On the other hand, a creditor's receipt of an application under Regulation B triggers a creditor's duty to make a credit decision and notify the borrower within a specified time frame."
  - "Under Regulation C, receipt of an application triggers a duty to collect and report information on the disposition of that application and on other aspects of the transaction as well as the applicant's characteristics."

TRID & QM

- TRID disclosures do not document compliance with QM points & fees
  - May 26, 2015 CFPB Staff Webinar stated: "The creditor is responsible for tracking charges offsheet to ensure that the amounts disclosed on the Loan Estimate were made in good faith and that the charges at closing do not exceed the applicable tolerances."
  - Similarly, creditor is responsible for tracking finance charges and points and fees "offsheet" (for example, in the LOS or in a speadsheet)
  - Records must be sufficient to demonstrate compliance with standards for points and fees as well as finance charge and tolerance determinations

Thank you for your time today!

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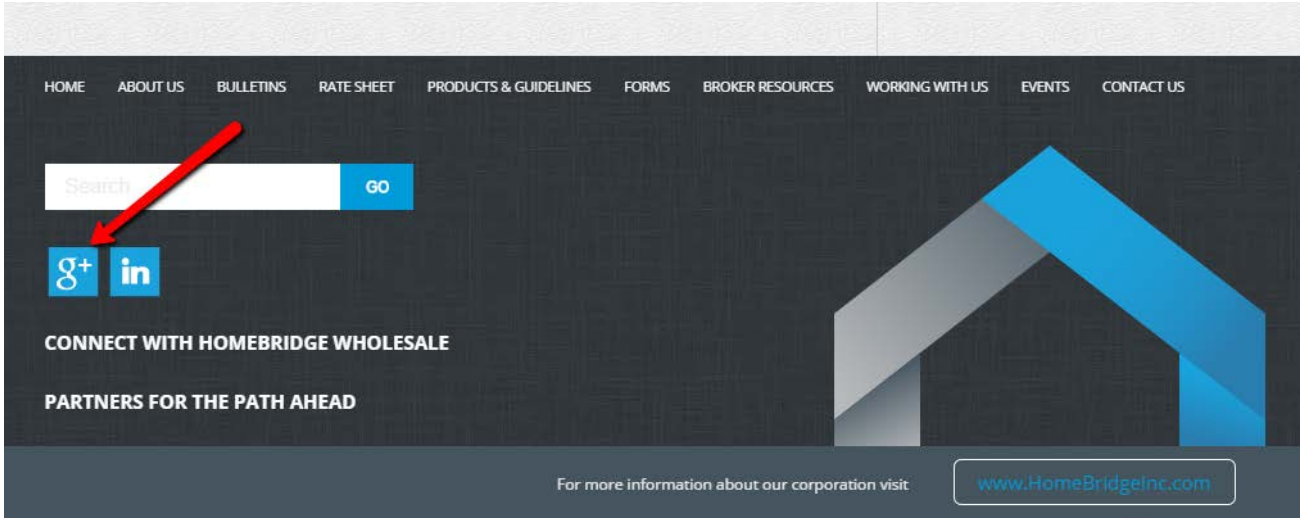

Questions?


Buckley
Sandler LLP


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