American Bankers Association
Building Success. Together.

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The Honorable Blaine Leutkemeyer
Chairman
Subcommittee on Housing and Insurance
Washington, D.C. 20515

The Honorable Randy Neugebauer
Chairman
Subcommittee on Financial Institutions and Consumer Credit
Washington, D.C. 20515

Dear Chairmen Leutkemeyer and Neugebauer:

Thank you for your continued interest and support regarding the implementation of the Consumer Financial Protection Bureau's (CFPB) TILA-RESPA Integrated Disclosure (TRID) rulemaking. As you noted in your recent letter, TRID is one of the most fundamental alterations to the mortgage disclosure and settlement process in recent history, and is having an unintended impact on the market. Moreover, TRID follows closely on the heels of the adoption of the "Ability to Repay/Qualified Mortgage" rules mandated by CFPB. The two rules together have required profound systems changes, training efforts, testing, customer and vendor outreach and the attendant costs of such efforts in a relatively short period of time. Your continued interest and oversight through your subcommittees are both appreciated and essential to ensure that TRID implementation and administration achieves the intended goals of better, clearer and more helpful disclosures to consumers.

ABA banker working groups have, for the past several months, analyzed the rule's provisions with the assistance of top legal and regulatory experts, and have concluded that compliance risks under the new TRID rule are substantial due to various factors.

- The rule contains numerous potentially high-liability provisions that are still unclear and require CFPB clarifications to resolve;
- There is uncertainty in explanatory materials issued by CFPB, and ambiguity in the rule preamble that require CFPB clarifications to resolve;
- The regulations are not workable for all programs or product lines that banks currently offer;
- There is lingering difficulty in determining the degree of liability that may result from mistakes or oversights in disclosure timing or content, because the TRID provisions reconfigure provisions subject to penalties under two different statutes, TILA and RESPA; and
- Many bankers are uncertain about the validity of the substantial amount of unofficial, often verbal, agency staff guidance that has accumulated since the final rule was issued.

These problems continue to pose critical compliance complications for banks. In short, getting TRID compliance "right" in every respect will likely require additional months of cooperative dialogue between rule writers, supervision staff and bankers. Rule amendments and official interpretations will be needed where the regulations are incomplete or deficient in material respects. Bankers and their vendors will adapt systems and product offerings as they receive additional guidance through supervisory dialogue, including during examinations. In sum, system changes are expected to be a continuing occurrence over the next several months.

The ABA has been actively engaged, via letter and verbal communications, with Director Cordray and CFPB staff with the objective of attaining guidance to address lingering problems. ABA and other trade associations are pleased to report that Director Cordray has offered verbal commitments to provide clarifications in key areas. ABA and other financial industry stakeholders have identified various priority issues requiring CFPB guidance, and these items have been recently shared with CFPB. ABA is pleased with the Director's openness regarding the TRID issues, but we remain cautious about the potential success of these efforts. We will keep you and your staffs apprised of developments and share our recommendations to the CFPB.

Regulatory concerns and their consequences are well illustrated by a recent ABA member survey on the impact of TRID on bank lending practices and on the services they offer their customers. The full survey and press release is here. Conducted in February of this year, the survey had 548 responses from banks representing a diverse mix of geographies and asset sizes. The survey found that 25 percent of respondents have eliminated certain mortgage products because the rule does not provide enough clarity. Types of products eliminated include construction loans, adjustable rate mortgages, home equity loans or payment frequency options.

More than 75 percent of survey participants said loan closings are being delayed as a result of TRID. On average, those bankers reported a delay of 8 days with responses ranging from one to 20 days. More than 90 percent said data collection and loan processing times have increased. Consumers are seeing the greatest impact due to increased loan costs, fewer choices and delayed closings. The survey found that 78 percent of respondents are still waiting for system updates from their vendors and 83 percent are forced to use manual workarounds. About half of survey participants said their banks have or soon will hire additional staff to comply with the new rule.

As we anticipated, our bankers are struggling to comply in part because the systems being provided by vendors are incomplete or inaccurate. Many of these systems problems trace back to ambiguities in the TRID rule described above.

Finally, we note that a full 94 percent of the survey respondents felt that the current enforcement and examination "good faith" grace period being offered by CFPB should be extended. However, it has also been pointed out by numerous bankers in our ongoing working groups that this "grace period," absent the requested authoritative guidance, still leaves many banks susceptible to private litigation and "put-back" risk. This chills banks' willing to make loans, and investors' willingness to purchase loans.

We will continue to work with Director Cordray and the CFPB staff in an effort to address the ambiguities and unanswered questions presented by TRID implementation in an authoritative and reliable fashion. We will keep you apprised of those efforts and welcome your engagement with the CFPB to exercise further oversight. If you would like to discuss any of these issues or the attached survey with me or ABA staff, please do not hesitate to contact me.

Sincerely,

Rob Nichols

Rob Nichols
President and CEO