

August 12, 2015

By electronic delivery to:

The Honorable Richard Cordray, Director
Bureau of Consumer Financial Protection
1275 First Street, NE
Washington, DC 20002
Richard.cordray@cfpb.gov

The Honorable Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW, Room 6000
Washington, DC 20429
Mgruenberg@fdic.gov

The Honorable Dr. Janet L. Yellen, Chairman
Board of Governors
20th and C Streets, NW
Washington, DC 20551
Ingrid.naylor@frb.gov

The Honorable Thomas J. Curry, Comptroller
Office of the Comptroller of the Currency
400 7th Street, SW, Mail Stop 3E-218
Washington, DC 20219
Thomas.curry@occ.treas.gov

Re: TRID Supervision Transition

Ladies and Gentlemen:

The American Bankers Association and our members¹ urge the Federal Financial Institutions Examination Council (FFIEC) to articulate its policy for examining and supervising financial institutions for the initial months after the TILA-RESPA Integration Rules (TRID) become effective. As you know, the mortgage disclosure rules have been entirely revamped and new regulations will become effective on October 3, 2015. In communications to Congress, the CFPB has indicated that regulators will be sensitive to the good-faith efforts of lenders to comply with the TRID rules in a timely manner. We request that the FFIEC – on behalf of all banking regulators – formally establish a transition period and clarify how regulators will oversee and examine regulated institutions for TRID compliance during this time. In so doing, the FFIEC would provide needed certainty to the credit markets and encourage lenders to continue to provide mortgage credit to qualified borrowers.

All stakeholders are united in their belief that clearer and more effective mortgage disclosures are an important and worthy endeavor. These new rules, however, are so complex, and pose such high levels of potential liability, that we believe special consideration should be given to affording added opportunity to achieve compliance. Bank compliance activities must

¹ The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans. Learn more at aba.com.

accommodate system alterations, third party vendor coordination, testing and a full sequence of related activities in order to provide accurate disclosures to consumers and to minimize legal and regulatory risk for lenders. This implementation process has been complicated by widespread vendor delays in delivering the new systems as they take advantage of the shift in the TRID effective date to debug and improve mortgage origination and disclosure systems to meet the new regulatory requirements. While fine-tuning by the vendors is necessary for lenders to comply with the new rules, many lenders have yet to receive operational systems, even though the effective date is only 51 calendar days away.

The solution to this dilemma is not further delay of the effective date, but better articulation of a transition period by FFIEC. Bankers will be more likely to maintain credit flows if they have greater assurance that supervisory reviews will reflect consideration of factors such as the dates compliance systems were received, operational problems that required debugging efforts, the extent to which necessary training was possible before systems are fully operational, and the adequacy and reasonableness of training programs once systems are functional. In light of the volume, intricacies and delays associated with the TRID regulations, the only way to realistically ensure an orderly transition is to confirm that supervisory standards work in tandem with lender efforts to refine and debug systems following the effective date.

The comments submitted by ABA in response to the CFPB's proposal to delay implementation are attached. These comments offer more detailed recommendations on how to achieve an orderly approach to TRID supervision during this transition period.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Keating', with a stylized flourish at the end.

Frank Keating

Attachment

July 7, 2015

Ms. Monica Jackson
Office of Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Re: Integrated Disclosures Under Truth in Lending Act and Real Estate Settlement
Procedures Act Amendments; Delay of Effective Date (Docket No. CFPB-2015-0029,
RIN 3170-AA48 2013)

Dear Ms. Jackson:

The American Bankers Association (“ABA”)¹ appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s proposed rule to delay the August 1, 2015, effective date of the Integrated Mortgage Disclosure Rule (TRID) to October 3, 2015.²

The postponement of regulatory effective dates requires very complex considerations and attention to all potential consequences. The reforms imposed by TRID constitute a complete replacement of the existing mortgage disclosure regime, and as such, represent sweeping changes to the entire origination chain. To fully comply with these changes, banks must engage in multifaceted alterations, including full replacement of compliance and LOS systems, coordination of new processes and staffing functions, synchronization of activities with third party settlement service providers, and recalibration of compliance with new investor requirements. Liability and risk for non-compliance under TRID is high, so all these implementation prongs must be orchestrated with precision. In short, compliance timeframes matter, and must accommodate the sequence the activities necessary to achieve compliant disclosures to consumers.

For these reasons, ABA believes that a postponement of the implementation of this rule is crucial. We note, however, that given the unique circumstances posed by the TRID rulemaking, the only way to realistically ensure an orderly transition to the new regulatory framework—and to guarantee uninterrupted service to consumers—is to institute a subsequent supervisory transition period that restrains enforcement and liability during a 3-month period following the proposed effective date. ABA strongly advises that the Federal Financial Institutions Advisory Council (FFIEC) issue formal guidance that after October 3 affords creditors that demonstrate reasonable and good faith efforts to comply with the new TRID requirements a more flexible opportunity to convert to, debug, and refine new systems. For various reasons, as set forth

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² Find the proposed rule [here](#).

below, we urge that the enforcement and examination transition period extend from October 3 (the proposed effective date for TRID) to January 4th, 2016.

In light of the tight timeframes involved in this rulemaking, *ABA urges the Bureau to communicate any final decision on this delay at the earliest possible moment.* Compliance teams in large and small institutions will need to quickly react to the Bureau's determinations, so immediate announcement, even if informal and distinct from any *Federal Register* publication, would be of great value to the planning processes in banking institutions.

Vendor Readiness

Members report that the single-most serious challenge that banks face in meeting TRID's compliance deadlines is that compliance systems vendors have been challenged in delivering functioning systems to our member banks. In the month of April, ABA conducted a structured survey in connection with the TRID rule. ABA shared a survey on vendor readiness with the Bureau in May, and the results merit further mention here. The ABA survey reveals that, at the end of April 2015, 74% of banks declared they were using vendors or consultants to assist with TRID implementation. However, only 9% of the compliance systems had been delivered by the end of April. A startling 58 percent of banks were told that systems would not be delivered until after July 1 or were not given a delivery date.

In a May 13 letter to the Bureau, ABA analyzed these April survey results, and assessed this information as "critical and very troubling." Significantly, this ominous situation regarding preparedness remains very concerning at this juncture. In questionnaires that ABA subsequently sent to members that participate in mortgage-specific committees, a large majority of bankers are reporting that they still have not received production-version loan origination systems, and many are reporting that systems will not be delivered until late July. Of those members that have received systems, many describe their new software as containing "multiple defects," or being "incomplete" as additional portions of the system are yet to be delivered. Further, following the proposed change to an October 3 effective date, many vendors have pushed system delivery dates back by up to a month, and some bankers expect delivery as late as September.

In virtually all responses, bankers are reporting that systems are still undergoing testing and that faults are still being identified. Bankers are being told that when the compliance systems arrive, the testing and "debugging" phase will last anywhere from 5 to 6 weeks. This optimistic time frame assumes, of course, that no major problems are uncovered. Any defect detection will potentially elongate readiness and correction schedules by weeks.

Coordination With Third Parties

In light of the rule's new liabilities concerning fee tolerances and document disclosures, TRID significantly changes the contracts and relationships that banks have with settlement service providers required to complete the mortgage transaction. As a most important item, banks must minimize (or eliminate) risks of inadvertent price changes with any party selected to participate in the transaction. Liabilities due to tolerance violations are high under TRID, and all third-party agreements must reflect this risk. A particularly important decision point for banks is that of

having third party settlement agents complete and deliver the final settlement disclosures, or bringing that function in-house to maintain quality control. Both timing and disclosure content factors pose grave risks to lenders in the new TRID scheme, and all banks continue to assess whether to produce and deliver the final disclosures rather than assign that function to closing agents. This internalizing function requires significant resources and poses cost increases for institutions, making such an option impracticable for some community banks. As alternatives, and to avoid prohibitive overheads, banks are assessing ways to “partially” internalize relevant functions of the settlement services process. In all instances, institutions need to actually engage in the new disclosure process in order to fully resolve all the difficulties and controls needed in light of the complexities and liabilities involved.

These “risk” decisions are crucial for mortgage operations, but most importantly, they require experimentation that can only occur through real-life transactional experience under the new TRID system. These processes will evolve as lenders and service providers flow through the new rules and discover weak points and regulatory holes. This trial process is expected, and is beneficial to all stakeholders, including consumers. The Bureau must, however, reassure banks that they can (and must) engage in this careful testing and evaluation of appropriate compliance approaches and cost-lowering mechanisms. In the end, this testing will increase consumer options and add efficiency to market operations, which will greatly benefit borrowers across the board.

Assuring Fully Compliant Processes

The magnitude of the TRID changes is overwhelming for institutions of all sizes, and the enormous changes brought about by TRID must be implemented upon a very wide array of products that accommodate varying consumer needs. The complexity of this rule is exacerbated by the fact that each transaction is different—the many products that are available are considered in accordance to customer negotiations, arrangements and fee apportionments that occur in typical mortgage transactions. In addition, the new rules must accommodate existing variances in state and local requirements. In short, TRID applies to a transaction that is not fixed or static—it is flexible and may fluctuate from deal to deal. Consumers benefit from this variation, and the Bureau must respect and afford the time that is required to settle these diverse issues with accuracy and efficiency.

In this setting, the task of assembling additional internal controls, policies and procedures, compliance systems, and quality assurance checks is immense and is currently ongoing at all banks. Our members report that the process of assuring compliance is slowed and even compromised by ongoing clarifications regarding the application of the TRID rules. Although ABA is greatly appreciative of the countless guides and official presentations by CFPB to clarify the regulations, these interpretive efforts require adjustments and modifications to systems and processes. The Bureau must take into account that official agency webinars on these rules—webinars that added crucial guidance on important compliance points—occurred as late as May 2015, only three months before the implementation deadline. Note also that the Bureau’s compliance and examination guides continue to undergo updates. Although necessary, these

continuing guidances and fine-tunings should be fully weighed in the Bureau's deliberations to extend the deadlines and open transition phases for these rules.

Training and Education Requirements

Our member surveys further reflect that the training and education demands occasioned by the TRID rule cannot, at this juncture, be satisfactorily completed within the remaining August 1 timeframes. Institutions report that bank employee training can only begin once all LOS and compliance systems are installed, tested and operational. Member banks have reported that employees' education on the "structural" and "theoretical" elements of TRID is essentially complete. For compliance purposes, however, such training has only limited value in assuring preparedness. Employees must be able to train on the actual LOS interface that the individual bank will employ. Until the software systems are delivered and operational, the most critical part of training is not possible. In light of the delays in system deliveries, this applied training is still pending or only just beginning at most banks.

In addition, the training required to fully prepare for these rule changes extends to all employees that communicate with consumers regarding mortgages or manage administrative and underwriting processes. These new rules affect timing and content of fundamental customer information, and must therefore be managed only by knowledgeable and dedicated staff. ABA notes that this broader employee re-education process is currently advancing, but will take considerable time and resources to realize. The additional two months proposed by the Bureau will serve somewhat to facilitate bank employee training, but the re-education that these rules demand will continue past October and take months to fully complete.

ABA's Recommendation and Request

The technical and regulatory management issues described above are complex and very difficult to resolve. ABA thanks the Bureau for the additional time being proposed on TRID implementation, and we offer an important addition that CFPB must consider.

As set forth above, CFPB's proposed extension of compliance deadlines to October 3 is immensely helpful, and will result in disclosure systems that are better tested, more accurate and more finely calibrated. However, in light of all the very real compliance and implementation hurdles described above, banks strongly request that regulatory liabilities be controlled and governed by a "best efforts" standard for an additional 3 months following October 2015 to achieve orderly transition into the new legal regime. Should the Bureau deem this additional "hold harmless" period to be unfeasible, ABA must request that TRID be delayed further than the CFPB has proposed, preferably to January 4, 2016.

We recommend that CFPB stay the course regarding requirements that creditors migrate to the new TRID regime at the October 3 deadline. After this deadline, creditors would be subject to enforcement and examination standards that take into account reasonable and good faith efforts to comply with the new rules. This "good faith" criteria must, however, be adequately identified to afford banks better assurances in compliance. We would note that there is a precedent for establishing a "good faith compliance" standard. In 2009, HUD issued a complex regulation that

reformed RESPA and posed operational challenges to both lenders and regulators. To meet the challenges of compliance, HUD issued a written letter describing an agency commitment to a 120-day restraint in enforcement for originators and other settlement service providers who demonstrated the good faith effort to implement RESPA's new rules. (*See attached HUD General Counsel Letter, dated November 13, 2009.*) The details of that HUD communication identified what specific factors would be assessed to determine whether a mortgagee made a good faith effort to comply. These included—

- Whether the mortgagee had relied on the new RESPA rule and other written guidance issued by the Department,
- The extent to which the mortgagee has made sufficient investment and commitment in technology, training, and quality control designed to comply with the new rule.

The letter clarified that there were “unanticipated questions and problems” that surfaced in the implementation process, and this compelled that HUD work with those entities that engage in honest efforts to comply. HUD also offered a well-defined recognition of existing regulatory difficulties, statements that were helpful in making the point that institutions operating in good faith should not be punished during ongoing reform efforts.

Conclusion

We thank the Bureau for the proposal to postpone the TRID rule implementation deadlines. A delay that defers compliance dates to October 3 is critical, and must be accompanied by a clearly articulated and well defined restraint in enforcement for an additional 3-month period. If a written enforcement transition period is unworkable, ABA requests that the Bureau defer the effective date of TRID to January 1, 2016, thus allowing industry stakeholders to realize the common goal of providing accurate and compliant disclosures.

If you have questions about these comments, please contact Rod J. Alba at ralba@aba.com.

Sincerely,

Rod J. Alba