



January 29, 2016

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Dear Director Cordray,

The undersigned organizations greatly appreciate the important work of the Consumer Financial Protection Bureau (CFPB) in assisting implementation of the Know Before You Owe (KBYO) Rule. As the industry moves forward in “live” implementation, we respectfully request additional short- and long-term actions to continue to facilitate this process and ensure that KBYO does not result in unnecessary cost increases for consumers or impediments to the smooth functioning of the mortgage finance system.

First, we greatly appreciate your letter to David Stevens, President and Chief Executive Officer of MBA, dated December 29, 2015, concerning the Bureau’s early examination policies and the ability to cure minor errors on the new disclosure forms. Uncertainty about the treatment of minor errors and oversights has broadly affected mortgage originators, inhibiting lenders from making loans and investors from purchasing them. These impacts—if left unaddressed--will increase costs and deprive borrowers of needed credit.

While the December 29 letter is helpful, many lenders, investors, due diligence firms, and other compliance experts still report--on the advice of legal counsel--they cannot fully rely on its contents unless it is published as official CFPB guidance. Absent such action, liquidity in key portions of the market will remain threatened, damaging consumer access to affordable credit and the viability of key mortgage channels and businesses.

For this reason, we strongly urge the CFPB to publish the substance of the December 29 letter in the Federal Register as an interpretative rule, bulletin, statement of policy, supervisory guidance, or other authoritative form. Publishing the letter as authoritative CFPB policy would provide entities greater confidence to correct errors for the larger purpose of preserving liquidity in the system and affordable loans for consumers.

Second, while we also laud your establishment of a diagnostic “good faith” period for implementation of the rule, now that we are more than three months into implementation, it is clear that critical compliance questions – some of which could not have been anticipated – still need to be addressed. Examples include:

the proper correction of alterations to closing disclosures based on unforeseen circumstances (also referred to as the “gap” or the “black hole” problem); calculating the correct disclosure of cash to close, principal reductions, and lender credits; illustrating appropriate disclosures for construction loans including single close construction to permanent loans and other niche loan products; clarifying the coverage of cooperative share loans; as well as resolving conflicts between model forms and text.

Notably, many issues appeared relatively recently as the intricacies of the mortgage financing system met with the complexities of the new rule in the live environment. Consequently, there is considerable urgency that necessitates an early start to this work. These and other questions must be resolved before the good faith period ends, since there are considerable liability and enforcement risks, that, if not resolved, will ultimately harm the availability of credit

In order to address the issues that are known today and others that will arise before the corrective and diagnostic period ends, we urge the CFPB to form an internal KBYO Task Force of key Bureau staff to engage with key stakeholders to identify remaining compliance problems and help the CFPB prioritize and select the best solutions. Some concerns could be resolved through informal means, while others will need additional published guidance or interpretative rulemaking, and some likely will require resolution in a “clean up” rule to be issued after notice and public comment. The CFPB used this approach effectively during the critical implementation phase of the ATR/QM and other Title XIV rules. Given the substantially greater complexity of the RESPA/TILA integration, and the various industries involved, this tiered and orderly approach is warranted for issues currently at stake under KBYO as well.

Thank you again for your commitment to the implementation of this Rule and your consideration of these comments. Taking the additional steps of publishing the December 29 letter as authoritative and initiating a KBYO Task Force will help ensure that the purposes of the KBYO will be carried out without undue confusion and harm to consumers. Senior representatives of our associations would appreciate an opportunity to meet with you at your earliest opportunity to address these important issues. We will be reaching out to you to arrange a meeting shortly.

Sincerely,



Rob Nichols  
President and CEO  
American Bankers Association



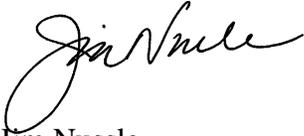
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Richard Hunt  
President and CEO  
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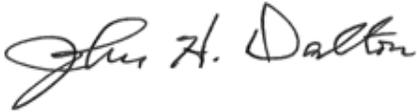
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