

Date: September 29, 2015

To: ABA Members

From: Bob Davis, Executive Vice President
Mortgage Markets, Financial Management and Public Policy

Re: TRID READINESS

ABA is issuing this member memorandum to assist executive management and line business managers in decision making as the industry completes final arrangements to comply with the TILA-RESPA Integrated Disclosure Rule (TRID) that is effective on October 3. TRID is also known as the “Know Before You Owe” rule.

Bankers are making assessments of systems readiness, staff training, capabilities of settlement services providers, and potential compliance risk mitigation actions that might include steps such as curtailment of certain product offerings and development of back-up or work-around procedures. Even at this late stage, many banks find it challenging to fully comply with these reforms.

In light of the various issues highlighted below, banks engaged in residential mortgage lending will have to analyze individual preparedness under these new requirements, and assess legal and compliance risks associated with mortgage operations. The TRID rule poses compliance and litigation risks that will be unique to each institution’s circumstance, management preferences and particular product mix. However, all banks are subject to a number of common problems and impediments, and the best decisions regarding a bank’s mortgage lending operations will take this environment into consideration.

Background

The banking industry is less than a week away from compliance deadlines for rules that completely change all residential mortgage origination disclosures and the systems which generate and track them. These new rules carry substantial new administrative and legal liabilities, and there is widespread concern that affected industry stakeholders will not always be able to ensure full compliance by the deadline.

Late Software Deliveries

The most immediate worry expressed by member banks is that compliance vendors and Loan Origination System (LOS) providers have been severely late in delivering software systems required to comply with the rule. In a few instances, these systems will not be delivered until after compliance deadlines have passed. Other banks state that only portions of the systems needed for full compliance have arrived, with other installments to be delivered later. Only 60 percent of bank report having received production versions of systems by September 1. In almost

all instances, banks report that they have had inadequate time to properly install and test the software.

Software Not Functioning

The delivery of systems is, however, only the initial concern. In the onboarding process, banks report considerable problems with software errors and malfunctions, and such breakdowns occur across various vendors, both large and small. In order to be deemed “ready” for TRID compliance, systems must possess capabilities to generate the required disclosures in compliant format, generate the required calculations accurately, provide adequate instructions for input of required data on costs and fees, and provide the necessary integration functions vis-à-vis other vendor systems. Even when systems are delivered in a timely fashion, critical elements of TRID compliance programs are often not completely operational, or are malfunctioning. To reiterate, appropriate testing of systems is difficult or impossible within the current timeframes when deliveries are significantly delayed, and when in some cases vendors are simultaneously trying to debug the TRID software.

Regulatory Complexity and Lack of Clarity

A further element of concern involves inadequacies that are inherent to the TRID regulation itself, which explains some of the problems that vendors are encountering. ABA 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 because of its complexity. Bankers have expressed concerns based on several factors—

- The rule contains numerous potentially high-liability provisions that are unclear and require CFPB clarifications to resolve;
- There are substantive mistakes in explanatory materials issued by CFPB, and misstatements in the rule preamble that cause uncertainty and confusion and require CFPB clarifications to resolve;
- The regulations are not workable for all programs or product lines that banks currently offer; 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 pose critical compliance complications for all industry stakeholders. In short, getting TRID compliance “right” in every respect will likely require 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 even after the rule becomes effective.

These regulatory concerns and their consequences can be illustrated with some concrete examples.

- First, the disclosure methodology for single-closing construction-to-permanent loans is not adequately addressed in the regulation, and some banks are therefore eliminating that product in the interim to remove regulatory risk.
- Second, lenders have expressed concerns that official explanations in one portion of the regulatory text may state that property insurance is not subject to cost tolerances, and in another portion the rule describes such insurance as subject to tolerance.
- Third, the regulations are silent as to how to treat tolerance calculations in instances where consumers exercise their option to shop for their own services.

Other examples exist, but the salient point is that situations such as those described above are not unique. It will be incumbent on bankers and regulators to work together during this transition to keep credit channels open even as necessary corrections and adjustments are made.

Examination Environment

In response to bankers' concerns and ABA advocacy, CFPB and the banking regulators have acknowledged the magnitude of TRID compliance burdens, and have made verbal representations that lenders will be credited with their good faith efforts toward compliance during transition. This standard has been characterized as an expectation of efforts to "get it right" on the effective date, and showing continued progress toward higher levels of compliance between examinations. TRID supervision is expected to follow a "consumer risk" approach, where examinations initially focus primarily on potential harm to consumers rather than technical compliance details. CFPB has indicated that regulators will be sensitive to the good-faith efforts of lenders to comply in a timely manner, and has offered to "assist" lenders with implementation. Their described examination approach is promised to focus on "diagnostic" and "corrective" elements—not on "gotcha" enforcement. What constitutes a "good faith effort" is not, however, defined in official guidance. ABA has requested that the Federal Financial Institution Examination Council offer such guidance in a timely manner. ABA also continues to advocate for legislation which would mandate an official safe harbor period for good faith compliance efforts through the end of 2015.

Conclusion

This advisory letter describes the environment under which all banks are making decisions regarding their mortgage operations, and some of the key drivers affecting those decisions. ABA advises that banks carefully consider options, including the extent to which the goal of maintaining business continuity and product offerings might be affected by other risks or liabilities. Bank management should carefully consider compliance, operational, buy back and other risks, and should take into account the unique circumstances that apply to their institution. To understand how the TRID transition continues to unfold, it will be very important that banks closely monitor TRID-related activities, including legal, legislative, regulatory and investor developments, as well as supplemental ABA reports and analysis.

ABA will continue to closely monitor and report on TRID implementation challenges, and will continue to advocate to regulators and legislators for a better defined transition period that addresses, in more detail, how regulators will examine regulated institutions for TRID compliance.

See additional resources at:

<http://www.aba.com/Tools/Function/Mortgage/MemDocs/FAQsOnTRID.pdf>,

<http://www.aba.com/Issues/Index/Pages/Issues-TILA-RESPA.aspx> and

<http://www.aba.com/Tools/Function/Mortgage/Pages/TILA-RESPA-FAQs.aspx>

