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January 21, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
Comment Intake
1700 G Street NW
Washington, DC 20552

Re: CFPB-2019-0055 Request for Information Regarding the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule Assessment

Dear Director Kraninger:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to respond to the request for information regarding the Rule Assessment for the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) - collectively called the TILA-RESPA Integrated Disclosures Rule and commonly known as TRID. In accordance with section 1022(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd Frank Act), the Consumer Financial Protection Bureau (CFPB or Bureau) is seeking comment on its proposed plan to assess the effectiveness of this Rule. The Bureau must assess each significant rule and publish the results of the assessment no later than five years from the rule's effective date. The assessment must address the rule's effectiveness in meeting the objectives of both Title X of the Dodd-Frank Act and the Bureau's stated goals. The assessment must also consider public comments calling for

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

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modifications, expansions, or elimination of the rule. The assessment, however, does not compel the CFPB to make any such changes and does not represent any formal or informal rulemaking.

Background

In 2010, the Dodd-Frank Act directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA Sections 4 and 5. In December 2013, the CFPB issued a final rule amending Regulation Z and Regulation X to integrate several mortgage loan disclosures. On July 21, 2015, the CFPB issued a final rule establishing October 3, 2015 as the new effective date for implementation of these new forms and the associated rules. Subsequent to the implementation of the final rule, the Bureau issued amendments in July 2017 and April 2018.

Broadly speaking, the purpose of TRID was to modify the mortgage loan disclosure process to more clearly guide the consumer through the key details of their loan, including closing costs, interest rate, monthly payments, etc. The Rule attempted to consolidate and remove the overlapping, inconsistent sections on the TILA-RESPA forms and simplify the complicated language and misleading information that were confusing to consumers during the already stressful process of buying a home.

Comprised of six elements, the TRID Rule (1) integrated certain aspects of TILA and RESPA; (2) redesigned/standardized the disclosure forms; (3) reallocated legal responsibility and liability to creditors to provide disclosures; (4) defined what qualified as a mortgage loan application; (5) changed the timing requirements of when consumers receive information; (6) constricted the tolerance rules, expanding the “zero tolerances” categories for variances between the amounts of costs and fees disclosed during the application process and those charged at closing.

All the above elements impacted community banks in critical ways. Perhaps most significantly, the TRID-RESPA integration resulted in changes to the two most important documents of a mortgage loan: The Loan Estimate form (a combination of the previous Good Faith Estimate and the initial Truth-in-Lending disclosure) was intended to help consumers understand the key features of their loan early in the process, thereby anticipating the costs and risks of the loan. The Closing Disclosure form (a combination of the previous HUD-1 and final Truth-in-Lending disclosure) was designed to disclose information that would aid consumers in understanding all the costs of the transaction.

Additionally, the timing requirements introduced in TRID specify that a creditor must provide a Loan Estimate to a consumer within three business days of receiving an application. Under the Rule, an application encompasses six specific items: the consumer’s name, income, social security number, property address, estimated property value, and the mortgage loan amount.

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Further, closing disclosures must be provided to consumers at least three business days before consummation of the loan. This three-day period is meant to allow consumers to potentially identify unexpected changes compared to the Loan Estimate.

Another consequential change enacted tighter restrictions on tolerances that limit third party service providers and creditors from exceeding previously disclosed settlement charges, essentially broadening the "zero tolerance" category. It includes fees charged by affiliates of creditors, fees charged by service providers selected by the creditor, and fees for services for which the Rule does not permit consumers to shop.

Nearly five years after TRID's implementation, the Bureau is undertaking this assessment in order to determine the effectiveness of the Rule and weighing its costs and benefits. ICBA is pleased to use this opportunity to convey to the Bureau some of the acute challenges the TRID Rule has presented to community banks that are trying to compete in the increasingly competitive and cost-prohibitive mortgage industry.

General Comments

ICBA has long been supportive of the CFPB's efforts to clarify and streamline mortgage loan disclosure regulations by making them less complicated, easing the compliance burden, and providing consumers an easy-to-read, clear, and meaningful set of disclosures that help them better understand the costs of a mortgage loan transaction.

Ultimately, the TRID Rule in its final form remains a well-intentioned but flawed regulation. TRID is a very rigid and prescriptive disclosure regime that is inserted into the very dynamic mortgage lending/homebuying process. However, we commend the Bureau for determining the TRID Rule to be significant enough to conduct a detailed five-year assessment. We believe that the Bureau will find that the Rule has resulted in considerable costs and disruption in the industry and especially for community banks competing against larger lenders with enough capital to easily absorb the costs associated with the TRID Rule.

Additionally, ICBA was directly involved throughout the lengthy development and implementation of the TRID Rule. We advocated on behalf of community banks by working with the Bureau to craft a rule that would strike a balance between providing consumers with clear, timely, and reliable information regarding their mortgage loan without creating a convoluted regulatory framework that is inflexible, laden with rules that increase costs, extends processing times, and creates delays which result in consumer dissatisfaction. Through numerous response letters and frequent engagement with member banks, the Bureau, and other stakeholders, ICBA warned of the challenges and disproportionate costs to community banks that would result from an onerous TRID Rule.

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TRID's implementation and ongoing costs created additional challenges to community banks trying to offer reasonably priced mortgages to members of their community. Community banks value transparency, honesty, and a positive customer experience as they guide a borrower through the often-stressful process of buying a home. We therefore support the CFPB's statutory mission of implementing and enforcing Federal consumer financial law for the purpose of ensuring that all consumers have access to markets for consumer financial products and services, and that markets for consumer financial products and services are fair, transparent, and competitive.[2] Unfortunately, we believe that TRID both added unnecessary costs and undermined the consumer experience of buying a home.

Negative Consequences After TRID Implementation

Feedback from community banks indicates that the changes made by TRID have done little to help guide and educate the consumer. Many borrowers still do not understand the Loan Estimate and banks sometimes offer a supplemental cost breakdown that more clearly conveys the cost of the loan.[3] It remains unclear whether the TRID changes gave rise to tangible benefits that were worth the cost. Moreover, five years later it is still unclear the extent of TRID's benefit to the customer experience. Our bankers also doubt whether the Loan Estimate allowed consumers to more easily "shop" for loan offers between creditors. In fact, many of our members that specialize in mortgage lending maintain that less than 10 percent of their customers acquire multiple Loan Estimates. They attribute this to the burdensome and sluggish nature of TRID's origination procedure.

It is also important to emphasize that the consumer experience is adversely impacted by higher costs and delays in closing. ICBA agrees that the fees on the Loan Estimate should meet a good faith standard, and a lender should not knowingly underestimate charges to gain competitive advantage over another lender. However, removal of the tolerance does not necessarily eliminate underestimation by some unscrupulous lenders. Rather, it will penalize consumers by forcing all lenders to redisclose more often, thereby delaying loan closings and causing prices for these services to be higher from the outset in order to compensate for unforeseen developments that may occur during the processing of the loan. For example, an appraiser may charge a base fee for an appraisal. That fee assumes a typical type of property for that area in terms of lot size, type of dwelling, etc. However, if once on site, the appraiser discovers there are out-buildings, unique site issues, atypical construction or design, the fee for the appraisal

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[2] 12 U.S.C. 5511(a)
[3] See attached examples

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will increase, as it will require more time from the appraiser to complete the appraisal. The same can apply to title work, especially in outlying areas that are not platted, as well as for property inspections as a result of deferred maintenance. These items are not known at the time the bank would issue a Loan Estimate, and only reveal themselves during the processing of the loan.

Implementation and Recurring Costs

The final TRID Rule was a comprehensive rewrite of the consumer disclosure requirements associated with the financing of a home purchase. Predictably, implementation of the Rule required extensive systems reprogramming and staff training. Banks paid for webinars, conferences, and the development of processes to assure compliance requirements would be met. Employee hours were devoted to deciphering information, working with loan operating system vendors, and implementing efficient and compliant processes to reduce tolerance cures. In terms of implementation and recurring costs, community banks inevitably shouldered disproportionate expenses after TRID was enacted.

Recurring costs often come in the form hiring and keeping additional staff which can cost close to $100,000 annually just to manage mortgage disclosures. Some banks have established a separate disclosure desk that handles all disclosures. Due to the complexities of TRID, some community banks have prohibited commercial lenders from using residential properties as collateral for small business loans or have required those loans be handled solely through the residential lending department. Some community banks may outsource to a third party that provides compliance solutions if they can afford it. These expensive and burdensome measures are frequently good faith attempts to avoid tolerance cures or other costly errors that can result in fines, or actions from examiners that impose additional legal liability.

Suggested Solutions

As mentioned above, some banks are providing a supplemental Cost Breakdown to better provide an easily understandable “snapshot” or “executive summary” of the loan costs. This presents a great opportunity to bring in industry experts to make use of the Bureau’s Disclosure Sandbox to revise and simplify TRID disclosures in a responsible, legal way.

We ask that the Bureau reexamine the costs and benefits of the three-day closing disclosure requirement, and timing challenges in general. Requiring the customer to wait three business days to close after receiving their Closing Disclosure is likely correlated with more consumer complaints and higher costs. Consumers want to close sooner, not later.

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We also recommend the Bureau conduct a study to reassess the positive and negative effects of removing the 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. The Bureau's goal is to make sure that the cost estimates provided by lenders are more meaningful and meet the "good faith" standard, but it is likely that the consequence may be increased prices as banks overestimate their charged fees to compensate for low or non-existent TRID tolerances.

To encourage shopping, we recommend removing the property address as a required item for purchase transactions. In order to issue a Loan Estimate, the lender must have the address of the property to be financed. In order to issue a Loan Estimate to a borrower who wishes to "go shopping" for a home and home loan, the lender must issue a preapplication estimate, and would then issue the Loan Estimate once a property is selected. This creates further confusion.

We recommend exempting commercial or small business loans from TRID where the borrower's residential property is used as additional collateral for the loan.

Persistent Challenges

Without providing solutions and clarity to both consumers and lenders, there will continue to be confusion, delays, and unnecessary costs during mortgage origination. For example, many banks rely on third party title companies when estimating transfer taxes and recording fees. Through no fault of their own, banks are forced to pay for tolerance cures if a title company provides inaccurate information or causes a delay. Additionally, in rural markets it is often challenging to quickly find an appraiser who both charges a reasonable fee and provides an accurate property assessment. Banks again are positioned to cover tolerance cures resulting from appraisal delays or unintentional mistakes.

Other unique challenges for community banks include lacking detailed guidance on how to disclose construction to permanent loans. While ICBA appreciates the Bureau's recently released FAQs on this issue, there is still needs to be definitive, official guidance. The same applies to challenges regarding bridge loans with a balloon feature, and a lack of guidance on how to disclose homeowner's insurance premiums.

ICBA appreciates the opportunity to comment on this Rule Assessment and hopes the Bureau will consider our concerns in future rulemakings. We believe a thoughtful assessment of an established, complex rule like TRID is a useful and important exercise. The mortgage industry is constantly evolving and presenting new challenges to community banks. We look forward to a working with the Bureau on future proposed rules going forward.

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Please contact Tim Roy at tim.roy@icba.org or the undersigned at ron.haynie@icba.org if you have any questions regarding this letter.

Sincerely,
/s/
Ron Haynie
Senior Vice President, Mortgage Finance Policy
Independent Community Bankers of America