MORTGAGE BANKERS ASSOCIATION

July 7, 2018

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

Re: 2013 Integrated Mortgage Disclosures Rule under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay and Effective Date (Docket No. CFPB-2015-0029; RIN 3170-AA48)

Dear Ms. Jackson:

I. Introduction

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the proposed rule issued by the Consumer Financial Protection Bureau (CFPB) to postpone the effective date for the TILA RESPA Integrated Disclosure (TRID) rule from August 1 to October 3, 2015.

We also greatly appreciate the CFPB's extraordinary work in developing the TRID rule itself, which we believe--when finally implemented--will make the mortgage process considerably more understandable and navigable for consumers, an objective we have long shared.

Notwithstanding, experience has shown that the TRID rule is far more complicated and wide ranging than any other rule previously issued by the CFPB. It is causing significant implementation challenges which will increase as the process moves forward and the rule becomes effective. Accordingly, for the reasons explained in this comment, MBA not only strongly supports this change in the implementation date, but also supports making this effective date the start of a temporary "good faith" implementation and enforcement period.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

During this period, we urge that the rule expressly require that all covered persons implement the rule in good faith beginning October 3 and that the CFPB will examine entities using a "good faith standard" from that date. We also urge the CFPB to make clear that this period should preclude enforcement by other state and federal regulators and private litigants. Following the conclusion of the period—which we believe should span at least six months—the CFPB will commence regular enforcement and examination.

Under the circumstances, MBA regards such an approach as essential to ensuring that the new requirements are introduced in an orderly manner so they serve the consumers they are designed to protect and do not unduly confuse or, worse yet, impair their ability to purchase a home or refinance.

II. Background

By design, the TRID rule involves far more than the introduction of a new set of forms for the mortgage process. The rule ushers in new imperatives for virtually all settlement service providers including lenders, mortgage brokers, title and real estate agents, as well as other service providers and consumers themselves. The rule, in particular, necessitates coordination among some of these providers--lenders and mortgage brokers and lenders and title, closing and escrow agents--which is far beyond what has occurred in the past. This, in turn, has required the establishment of new technology systems to communicate among providers at mortgage application, throughout underwriting, and at closing so that that the process is efficient and timely for consumers.

These changes also must be accomplished alongside the development of myriad changes to origination and closing systems to implement the new rules. All of these changes must be made with great care mindful that the rule creates new liability and enforcement risks for lenders and investors if the rules are not followed.

Consequently, MBA members spanning the mortgage origination, purchase, settlement services and support industries are spending far more than the time and amounts originally estimated to implement the complex operational and systems changes necessary to comply with the new requirements.

Although the industry has made great progress in implementation, based on the complexity of the rule and the continuing need for clarification of issues, it is clear that systems providers have found the development of software for this rule much more challenging than anticipated. Many have not yet delivered essential systems to their business customers. As a consequence, many settlement service providers are unable to test and integrate new systems into their operations in time to meet the original August 1, 2015 effective date. It is not yet clear when satisfactory delivery will occur, which means the CFPB and stakeholders must work together to monitor progress toward an October 3 deadline.

An informal survey conducted by MBA indicates that as of June 1, 2015, approximately 65 percent of lenders are still awaiting necessary code or software from vendors.[2] A similar survey published by the American Bankers Association indicates that, as of May 13, 2015, 79 percent of surveyed banks could not verify a precise delivery date, or were told they would not receive systems before June.[3] MBA will continue to provide CFPB updates on these results.

From the time the rule was issued, numerous questions arose as lenders and others delved into the pages of detail in the preamble, commentary, rule and forms. Many of these issues remain unresolved. Examples include the ability to adjust charges after a failed closing, whether cooperatives are covered, how cash to close information is provided to consumers and the extent to which waivers may be used.

Since the rule prohibits the use of the new forms until after the rule is effective, many more questions can be expected after the effective date. That will be the first opportunity for service providers to take these forms for a first real "drive" and see how they work in real life situations.

Although lenders are in the testing and "debugging" phase of the implementation process, other entities who are also essential to implementation including real estate agents will only become aware of issues when the rule goes "live" and any adverse effects on consumers become clear. Many issues will emerge for even the most prepared actors. Instituting a "good faith" implementation and enforcement period will allow resolution of issues.

III. Comments

Considering these concerns, MBA strongly supports establishment of:

A. An October 3 Effective Date – Delaying the effective date to October 3, 2015 will not only allow time to address the reporting error identified by the Bureau but it will provide additional time for some lenders and other service providers to first obtain, test, integrate and train staff on the new systems.

Notably, the Bureau also asked for comment on alternative dates for extension including the Congressional Review Act (CRA) date of August 15. MBA understands that members who were prepared to go forward August 1 have already had to significantly revamp their systems to move from an August 1 effective date to an anticipated October date. If the CFPB instead moved to an August 15 date, we are advised that there would not be sufficient time to revamp these systems yet again to comply with that date. Under the circumstances, we respectfully urge the CFPB to finalize the October 3 effective date as promptly as possible so all lenders can recalibrate their plans to meet that date.

Finally, we appreciate that the CFPB proposes to establish the effective date on a Saturday. Lenders will be able to migrate their systems after close of business

[2] MBA Survey of MBA's Independent Mortgage Banker Network
[3] ABA TRID Readiness Survey, available at http://www.aba.com/Press/Pages/051315TRIDComplianceSurvey.aspx

on Friday, introducing the new changes over the weekend when application volumes are ordinarily lower.

B. An Implementation Period after October 3 – MBA appreciates the comments of the Bureau on June 3, prior to the issuance of this proposal that—for a reasonable time—the Bureau would be "sensitive to the progress made by those entities that have squarely focused on making good-faith efforts to come into compliance with the rule on time." [4]

MBA believes that in order to truly accomplish this objective and allow orderly compliance to benefit consumers, a good faith implementation and enforcement period after October 3 should be expressly established under the final rule. As discussed below, the final rule would require use of the new forms under specific "good faith" standards. The Bureau would examine to these standards and, if they were met, it would constitute compliance with the TRID rule during the implementation period.

The good faith period also would provide an opportunity for the CFPB to assess if issues with the TRID rule that have already been raised or appear following implementation should be addressed through interpretations and/or revisions of the rule.

1. There is Legal Basis for Establishing a Good Faith Implementation and Enforcement Period Prior to Regular Enforcement

Under Section 105(a) of TILA, Section 19 (a) of RESPA and Section 1022(b)(1) of the Dodd-Frank Act there is ample authority to establish an implementation and enforcement period followed by a subsequent regular enforcement period. Section 105(a) not only provides authority to issue regulations under TILA but it also provides for the Bureau "to provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA…or to facilitate compliance." Similarly, Section 19 (a) of RESPA authorizes the Bureau to "grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA." Finally, Section 1022(b)(1) grants the Bureau general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws…"

These provisions were aptly cited by the CFPB in support of this proposal and would likewise support establishment of the implementation period requested to effectuate the purposes of TILA and RESPA to protect consumers.

2. The Good Faith Implementation Period Should Be Expressly Established

[4] Letter from CFPB Director Richard Cordray, available at http://www.housingwire.com/ext/resources/files/Editorial/Trey-Files/20150603-RC-to-Donnelly-and-Scott-et-al-re-TILA-RESPA.pdf

Express establishment of a good faith implementation and enforcement period would assure assignees and the secondary market that good faith efforts during the implementation period meet the rule's requirements. Making the standards explicit also would clearly signal to other federal and state regulators the CFPB's expectations for implementation. Without such an express statement from the Bureau, in a milieu of uncertainty concerning liability, borrowers are likely to experience reduced access to mortgage credit, since some lenders are likely to curtail operations and limit loan product offerings until they are confident they can proceed without issue.

Please note that although MBA believes the implementation period should extend for a reasonable time of six months, we would urge that the period not end until the CFPB is satisfied that implementation is satisfactory. To that end, the rule should provide a minimum period of six months but we think it should also allow the CFPB to extend the period if necessary by notice in the Federal Register.

3. *"Good Faith" and the CFPB's Standards for Review Should Be Defined*

To ensure that lenders and others are provided appropriate standards, the satisfaction of which constitute compliance with the TRID rule during the good faith implementation period, the Bureau should make the requirements for "good faith" compliance explicit. Such action would ensure expectations are clear for regulated entities as they move forward to implement the rule. We believe the rule also should provide that during the implementation period, the Bureau will examine in accordance with such standards to ensure that implementation is on track.

MBA recommends "good faith" for purposes of the implementation period should be defined in the rule to include:

- **a.** Attempting to comply with the TRID rule and relevant guidance including providing the new forms to borrowers;
- **b.** Investing in technology updates, where technology is employed and updates are necessary, to comply with the TRID rule, and conducting a reasonable amount of testing of the updates;
- **c.** Updating the compliance management system for the TRID rule, including establishing policies and procedures, quality control, and compliance audit plan; and
- **d.** Providing staff training on the rule.

4. *The Implementation Period Should Address Key Areas*

Although we understand that the Bureau does not intend to make substantive changes to the Regulation at this time, we respectfully urge that two remaining ambiguities deserve special attention during the good faith implementation period because they could unduly harm both lenders and consumers. In this regard, we urge the CFPB to:

a. Allow Changes to the Charges on the Closing Disclosure Based on Changed Circumstances and Borrower Requested Changes if Closing is Delayed

Currently, unlike under other instances covered by the rule, there are few options for the lender to address increased charges, in the event a lender has provided a Closing Disclosure (CD) and closing is delayed for unforeseen circumstances outside the lender's and/or the borrower's control.

If, as examples there is a closing delay because of a storm or fire necessitating repair and reinspection or, even the need for loan changes based on last minute negotiations between the seller and borrower, the lender apparently has no ability to provide a revised CD or Loan Estimate (LE) with increased charges because of these unforeseen, changed circumstances. The only choices are for the lender to force the consumer to start over with a new LE or for the lender to absorb any increased charges no matter how much they might be.

We understand the CFPB clearly intended the rule to ensure that consumers receive the benefits of what they bargained for in applying for a loan but, except under these circumstances, the rule does not require that lenders assume the costs of unforeseen circumstances outside its control. At the same time, the rule does not otherwise force a borrower to reapply when they are facing unanticipated difficulties.

Considering the potential for undue delay and other harm to consumers, we respectfully urge that lenders be allowed to use the Closing Disclosure to reset the tolerances for changed circumstances beyond the control of the lender (including changes requested by the consumer).

b. Clarify that TRID Rule Covers Loans on Cooperatives

For all applications for closed-end consumer credit transactions secured by real estate received on or after August 1, 2015, a lender must provide consumers with the new Loan Estimate and Closing Disclosure. For those loans that are subject to other disclosures under TILA or RESPA, the lender must provide the otherwise applicable disclosure (*i.e.*, a Good Faith Estimate or TIL, etc.). Lenders are prohibited from providing TRID disclosures for those loans for which the TIL disclosure is required.

Historically, cooperatives have been treated as secured by real estate for disclosure purposes under TILA and RESPA. This was true even though cooperatives are secured by shares in a corporation rather than by real estate. Notably, in its discussion of the differences in coverage of RESPA and TILA, the CFPB said it viewed the requirements of Section 4 of RESPA (the settlement statement) to apply to "federally related loans." The definition of "federally related loans" in section 3 of RESPA and Regulation X explicitly treats loans on cooperatives as secured by real estate because it includes a loan secured by a "lien on residential real property (including individual units of condominiums and cooperatives designed principally for the occupancy of one to four families). Also, while the preamble contains such a discussion regarding the CFPB's decision to exclude loans secured by personal property that could be used as a dwelling, it does not mention cooperatives.

Moreover, the rule itself does not explicitly state that cooperatives should continue to be treated as real estate secured. Instead, the CFPB limited the rule's coverage to those loans that are closed-end and that are secured by real estate.

Staff have informally advised that at this point lenders have to look to state law to determine whether cooperatives are secured by real or personal property, which is varied and murky. Also, to the consumer a loan on a cooperative is no different than a loan on a condominium or detached single-family home. It is a loan on their home, and the consumer should be entitled to the benefits and protections of the TRID rule.

To provide maximum flexibility to provide the consumers the new forms and avoid disruptions in the availability of cooperative loans, as a result of liability concerns, we urge that the CFPB take the position that pending further clarification, a lender may comply with TILA and RESPA by using the old forms or use the new forms. As long as the lender is acting in good faith, it should be insulated from enforcement and civil litigation claims during the good faith implementation period until such time as the Bureau adopts a formal clarification.

C. Other Issues - Delay the Effective Date of the HMDA Rule Appropriately Until After the TRID Dust Settles

Considering the enormous resources that have been consumed by this rule and the resources that will be needed in the months ahead to complete implementation, MBA respectfully requests that the CFPB delay the effective date on which financial institutions must begin collecting data under the soon-to-be-issued revisions to the Home Mortgage Disclosure Act (HMDA) rule. For lenders of all sizes, the same staff and the same systems providers are frequently dedicated to implementing TRID requirements as well as the HMDA rule implementation. Until TRID is complete, needed resources for what is yet another major systems change will be strained if available at all.

As requested in our comments on the proposed HMDA rule, we urge that the Bureau provide an uninterrupted period of at least 18 months after the rule is issued to implement the rule and prepare for the collection of data to begin the year following the eighteen months, with reporting commencing the following year.

D. Conclusion

MBA greatly appreciates the Bureau's consideration of these comments. We would also appreciate a meeting with the CFPB and MBA members to discuss these issues particularly concerning the operations of a good faith implementation and enforcement period and to continue that dialogue with the Bureau as implementation goes forward.

While these new rules will be valuable for consumers, having an orderly introduction of them is essential as well. Consumers who buy homes or refinance mortgages should not bear the burden of delayed closings or other harm as these rules and forms are introduced.

MBA looks forward to continuing to work with the CFPB to ensure the goals of the integrated disclosures effort are achieved.

If you have any questions on this comment, please contact Ken Markison at kmarkison@mba.org, MBA's Regulatory Counsel, or Elizabeth Kemp, MBA's Assistant Regulatory Counsel at ekemp@mba.org.

Thank you for your attention to these issues.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Member Services