



**Statement of the
Mortgage Bankers Association**

**Subcommittee on Housing and Insurance
Committee on Financial Services
U.S. House of Representatives**

**“TILA-RESPA Integrated Disclosure: Examining the Costs
and Benefits of Changes to the Real Estate Settlement
Process”**

May 14, 2015

Chairman Luetkemeyer and Ranking Member Cleaver, thank you for the opportunity to submit a statement for the record for your hearing titled “TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process.”

The Mortgage Bankers Association (MBA)¹ represents mortgage lenders and servicers of all sizes and business models: from small independent mortgage bankers, community banks, and credit unions to the nation’s largest financial institutions. MBA’s members each play their own unique role in serving the mortgage financing needs of families across the country.

MBA member companies are spending countless hours and more than a billion dollars to implement the complex operational and systems changes to comply with the new rule by August 1, 2015. This is a massive undertaking that requires unprecedented coordination between disparate vendors (loan origination, document preparation, quality control) and across different industries (lending, title insurance, escrow companies, settlement attorneys, Realtors, etc.) to ensure that consumers’ home purchase and refinance transactions can close on time. While the industry and vendors have made great progress, we believe an undertaking of this magnitude and complexity involves too many unknown contingencies that neither the Consumer Financial Protection Bureau (CFPB) nor the industry can anticipate. For this and other reasons, we urge that the rule be introduced with an enforcement “grace period,” implemented by rule, to provide industry the flexibility to ensure consumer transactions are not adversely impacted, and to provide the Bureau time to fine tune the rule to address unforeseen contingencies.

Specifically, we have joined with other key stakeholders including other trade associations and advocacy groups in requesting that the CFPB establish a six-month “grace period” after the August 1, 2015, effective date for the rule, for enforcement and liability to ensure a smooth implementation. Additionally, we would like to highlight the need for clear, authoritative, written guidance from the CFPB to address questions that will arise when TRID takes effect.

The final rule, comprising 1,888 pages, is far more than a new set of forms – it is a wide-reaching new regulatory regime that changes the timing and requirements for the entire real estate settlement process, not just the mortgage transaction. Following the issuance of this rule, it has taken virtually all of the implementation period to discern the countless implementation questions it has raised and it has also taken most of that time for the CFPB to provide answers to some but not all of these questions.

MBA is grateful that the CFPB has participated in its conferences and forums focused on implementing the TRID rule. Nevertheless, notwithstanding its responsibility for TRID regulation, the Bureau has refused to offer authoritative guidance to address the myriad of important issues left unresolved by the final rule and commentary. CFPB staff have offered oral guidance at industry events and on webinars, but this oral guidance is always prefaced with a disclaimer that says that the information provided “does not represent legal interpretation, guidance, or advice

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.mortgagebankers.org.

of the Bureau” and that it “does not bind the Bureau” or create any defenses that can be used in an enforcement proceeding.²

While MBA believes that rules and commentary with an opportunity for public comment must remain the primary means of implementing the myriad laws for which the CFPB is responsible, the agency’s refusal to also offer other authoritative written guidance in a timely manner – through FAQs or supervisory memoranda – as questions arise has slowed the process. Moreover, it has made lenders understandably concerned that implementation of the new disclosures will open them to new liability. The Bureau has indicated that other agencies’ issuance of FAQs, namely by HUD, in recent years was disruptive. Our members point out, however, that a body of reliable guidance would be far superior to the confusion created by this rule and the lack of authoritative guidance.

As the August 1 implementation date approaches, key questions remain unanswered. As examples, it remains unclear how a closing can be rescheduled without harm to the borrower or lender following an unforeseen circumstance. At the same time, other issues such as the rule’s very narrow waiver criteria should be revisited. And all of these issues arise against a backdrop of severe liability, which the Bureau has not defined.

Because of these and other concerns – including the finite bandwidth of technology providers facing countless changes – software and systems in many cases are arriving late, impeding the ability of lenders to comply. In fact, most lenders depend on technology vendors that, in turn, frequently depend on the work of other vendors. Even where lenders are ready, there is no opportunity under this rule to comply early, which means that the industry is unable to fully test systems – in real-time, under real circumstances – until after the August 1 effective date.

We would like to make it clear that we are not asking that the transition to the new forms be delayed. Under the circumstances, however, vigorous enforcement and litigation should not apply until after a reasonable grace period ends. Accordingly, and consistent with requests made by a bipartisan group of members of this very subcommittee, we are asking that the Bureau or, if necessary, Congress take action to establish a period until January 31, 2016, suspending enforcement and liability where those subject to the rule use the forms and make their best efforts to follow the rule.

A grace period would allow both stakeholders and the CFPB a much needed opportunity to identify friction points and for the Bureau to actively engage and address concerns authoritatively. The grace period should also apply to other federal and state enforcement.

² From a Bureau PowerPoint presented on April 14, 2015, the disclaimer in full provides, “This presentation is current as of April 14, 2015. This presentation does not represent legal interpretation, guidance, or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.”

While both enforcement and clear rules of the road protect consumers, having an orderly introduction of this wide reaching rule during some of the busiest months for closings will avoid undue harm to borrowers. Consumers who buy homes or refinance mortgages should not bear the burden of delayed closings or other harm as these rules and forms are implemented.

MBA commends the efforts of members of this subcommittee for holding this timely hearing. We look forward to working closely with this subcommittee and the CFPB to ensure the stated goal of the integrated disclosures effort helps consumers and does not impede their access to homeownership and needed mortgage credit.