



MORTGAGE BANKERS ASSOCIATION

January 21, 2020

By electronic delivery to:
www.regulations.gov

Comment Intake
TRID Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Docket No. 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

The Mortgage Bankers Association (“MBA”)¹ appreciates the opportunity to comment on the Bureau’s assessment plan for the TILA/RESPA Integrated Disclosure Rule (TRID Rule). We submit the following comments in addition to the comments MBA offered with other trade associations on the Bureau’s assessment plan, the Rule’s significant implementation and ongoing burdens, and necessary improvements to the rule after five years of experience with its requirements. The comments below illustrate some of the issues raised by the TRID Rule regarding wholesale creditors and brokered transactions. Brokered transactions are an important segment of the mortgage market, and the TRID rule should enable consumers that choose to use a mortgage broker rather than provide possible hinderances or a source of confusion.

I. Loan Estimate Timing Requirements

When a consumer’s application is received, the rule states that the creditor must provide the consumer with a Loan Estimate (LE) that complies with the delivery, timing, and content requirements of § 1026.19(e). While the creditor is ultimately responsible for ensuring that the § 1026.19(e) requirements are satisfied, TRID provides that “[i]f a mortgage broker receives a consumer’s application, either the creditor or the mortgage broker shall provide a consumer with

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, DC, the association works to ensure the continued strength of the nation’s residential and commercial real estate markets, to expand homeownership, and to 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, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA’s website: www.mba.org.

*the [Loan Estimate] in accordance with [the timing requirements of § 1026.19(e)(1)(iii)][.]*² When a mortgage broker provides the LE, the mortgage broker must comply with the requirements of § 1026.19(e).³ According to the rule's commentary, "[t]his means that "mortgage broker" should be read in the place of "creditor" for all provisions of § 1026.19(e), except to the extent that such a reading would create responsibility for mortgage brokers under [the rule's sections dealing with the Closing Disclosure]."⁴

TRID's timing requirements, found in § 1026.19(e)(1)(iii), state:

- (A)** The creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the creditor receives the consumer's application, as defined in § 1026.2(a)(3).
- (B)** Except as set forth in paragraph (e)(1)(iii)(C) of this section, the creditor shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

Following the commentary's directions to read "mortgage broker" in place of "creditor" results in:

- (A)** The [mortgage broker] shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the third business day after the [mortgage broker] receives the consumer's application, as defined in § 1026.2(a)(3).
- (B)** Except as set forth in paragraph (e)(1)(iii)(C) of this section, the [mortgage broker] shall deliver or place in the mail the disclosures required under paragraph (e)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

Thus, TRID's timing requirements create two options for providing the LE to the consumer: (1) the creditor provides the Loan Estimate by the third day after the creditor receives the application, or (2) the mortgage broker provides the Loan Estimate by the third day after the mortgage broker receives the application. Unfortunately, the rule is unclear on the timing requirements for a third, explicitly permissible scenario—i.e. where an application is received by a mortgage broker and the LE is provided by the creditor.⁵ The regulatory language would seem to indicate that the creditor must provide the LE within three business days of receiving the application. Given that the application in this scenario was initially provided to the mortgage broker, the requirement to provide an LE within the three-business day timeframe *would begin when the creditor receives the application from the mortgage broker.*

² 12 C.F.R. § 1026.19(e)(1)(ii)(A).

³ *Id.*

⁴ Comment § 1026.19(e)(1)(ii).

⁵ Section 1026.19(e)(1)(ii) states that "[i]f a mortgage broker receives a consumer's application, *either the creditor or the mortgage broker* shall provide a consumer with the [Loan Estimate] in accordance with [the timing requirements of § 1026.19(e)(1)(iii)][.]"

While such an interpretation is consistent with the text and Official Commentary of § 1026.19(e), it conflicts with language in the preamble to the TRID Rule.⁶ The rule's preamble supports an interpretation that holds that when an application is received by a mortgage broker and the LE is provided by the creditor, the three business day timeframe begins when the mortgage broker receives the application. The lack of clarity on this issue is problematic and should be addressed by the Bureau.

II. Electronic Submissions

The Bureau should clarify when an application submitted electronically is received for purposes of TRID. The mere act of submitting an electronic application should not be deemed received if the application was rejected contemporaneously and automatically because the data failed a validation rule. Clarity on this issue would be helpful for all mortgage lenders who rely on electronically submitted applications.

III. Wholesale Creditor Liability

TRID's approach to liability for LE errors in transactions originated in the mortgage broker-wholesale creditor model is also problematic. Comment 19(e)(1)(ii)-2 of the rule's Official Interpretations states:

“Creditor responsibilities. If a mortgage broker issues any disclosure required under § 1026.19(e) in the creditor's place, the creditor remains responsible under § 1026.19(e) for ensuring that the requirements of § 1026.19(e) have been satisfied. For example, if a mortgage broker receives a consumer's application and provides the consumer with the disclosures required under § 1026.19(e)(1)(i), the creditor does not satisfy the requirements of § 1026.19(e)(1)(i) if it provides duplicative disclosures to the consumer. In the same example, *even if the broker provides an erroneous disclosure, the creditor is responsible and may not issue a revised disclosure correcting the error.* The creditor is expected to maintain communication with the broker to ensure that the broker is acting in place of the creditor.” (emphasis added)

This comment and language in the rule's preamble, establish that wholesale creditors are liable for errors on broker issued LEs, regardless of whether the broker was authorized by the wholesale creditor to provide the LE.⁷ Moreover, absent changed circumstances, wholesale creditors are unable to correct errors on broker issued LEs, meaning wholesale creditors are bound by the terms of a broker issued LE. This effect of this interpretation is broad. Every wholesale creditor to whom the mortgage broker submits the loan application is bound by the terms of the initial broker issued LE. Each creditor will have to match the pricing and terms the mortgage broker first disclosed, even if the pricing disclosed was the result of an error.

The only recourse—which is unsatisfactory to both consumer and creditor—is to reject the application on grounds that it does not accept applications on the terms requested. This issue could

⁶ 78 Fed. Reg. 79730, 79801.

⁷ “The final rule also does not require mortgage brokers to get authorization from creditors before providing Loan Estimates.” 78 Fed. Reg. 79730, 79801-79802.

be resolved by withdrawing or modifying comment 19(e)(1)(ii)-2 to limit wholesaler creditor liability to instances where the LE was authorized by the wholesale creditor.

IV. Revised Loan Estimate

As previously explained, a wholesale creditor is bound by the terms of the initial broker issued LE. While such a result is understandable when the wholesale creditor authorizes a broker to issue an LE, this is not always the case. Brokers work with multiple creditors and may change creditors after issuing the initial LE. Such a change isn't unusual given TRID's requirement that LEs be issued early in the process, at a time when a broker may be unlikely to possess a complete understanding of the consumer's credit profile and preferences.

Thus, while wholesale creditors can and do change, the rule holds that subsequent wholesale creditors are bound to the costs disclosed in the initial LE. They must either match the terms of the initial LE, or risk potential liability for TRID violations, or decline to accept the consumer's file. These results have foreseeably negative consequences for consumers in that they are likely to reduce the availability of options in a particular transaction and add otherwise unnecessary friction to the process.

While a revised LE reflecting the new creditor's estimates could resolve these concerns, there are varying interpretations as to whether a change in wholesale creditor meets the criteria for revision under the rule. We believe the rule provides multiple grounds for the Bureau to provide such clarity. For example, a change in wholesale creditor satisfies the requirements for revision as a "*Changed circumstance affecting settlement charges*" as it is a change in information specific to the transaction that changed after the initial Loan Estimate was provided, as permitted by § 1026.19(e)(3)(iv)(A)(2). Further, the new creditor's pricing and fees are information that the mortgage broker did not rely upon when providing the original Loan Estimate, as permitted by § 1026.19(e)(3)(iv)(A)(3).

A change to wholesale creditor may also qualify as a "*Changed circumstance affecting eligibility*" under § 1026.19(e)(3)(iv)(B) given that the initial wholesale creditor's conditions, denial, or delays, may affect the consumer's eligibility for the fees and terms initially disclosed.

V. Paid Outside Closing Reimbursement to the Broker on the CD

It is not uncommon for mortgage brokers to pay for certain upfront costs. There does not seem to be a unanimous interpretation on how to best do this. The Bureau should clarify exactly how these costs should be disclosed on the Closing Disclosure.

VI. Contact Information Section (LE/CD)

The Bureau should clarify how the requirements of § 1026.36(g) and (k)—dealing with completion of the LE's and CD's Contact Information sections—apply to transactions involving a wholesale creditor. A wholesale transaction typically involves a single loan officer employed

by a mortgage broker. Given the nature of the wholesale origination model, where a mortgage broker serves as the primary consumer point of contact, the wholesale creditor does not assign a loan officer to a wholesale transaction. We therefore encourage the Bureau to clarify that a wholesale creditor is not required to list a loan officer name and contact information on page three of the LE under the Lender section for Loan Officer and Loan Officer Contact Information. Instead, the Bureau should allow wholesale creditors to complete these fields with contact information that corresponds with staff best suited to assist the consumer as determined by the wholesale creditor.

MBA appreciates the Bureau's request for feedback on its Assessment plan and its undertaking the review of the TRID rule. If you have any questions on these comments, please feel free to contact me at PMills@mba.org or my colleagues Justin Wiseman, Managing Regulatory Counsel at jwiseman@mba.org or Blake Chavis, Associate Regulatory Counsel at bchavis@mba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is written in a cursive, flowing style.

Pete Mills
Senior Vice President
Residential Policy and Member Engagement
Mortgage Bankers Association