January 21, 2020

**By electronic delivery to:**
[www.regulations.gov](http://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**

Ladies and Gentlemen:

The American Bankers Association, American Financial Services Association, Consumer Bankers Association, Housing Policy Council, and Mortgage Bankers Association (the Associations), on behalf of our respective members, appreciate the opportunity to respond to the Bureau of Consumer Financial Protection's request for information (RFI) on the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule (TRID or TRID Rule). The Bureau is requesting public comment on its plans for assessing this rule as well as certain recommendations and information that may be useful in conducting the planned assessment. Section 1022(d) requires that the Bureau evaluate each significant rule it issues and publish a report of that assessment within five years of the rule's effective date.

The TRID Rule implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act's directive to combine certain disclosures that consumers received under TILA and RESPA in connection with applying for and closing on a mortgage loan. As such, this rule advances a very important mortgage-related reform of the Dodd-Frank Act, laying out the key informational documents that consumers receive in the mortgage lending process.

Pursuant to section 1022(d) of the Dodd Frank Act, this assessment must address, among other relevant factors, the Rule's effectiveness in meeting the purposes and objectives of title X of the Dodd-Frank Act and the specific goals of the TRID Rule as stated by the Bureau. Sections 1098 and 1100A of the Dodd-Frank Act set forth two goals for the TRID Rule: "to facilitate compliance with the disclosure requirements of [TILA and RESPA]" and "to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."

The Associations support regulated markets where well-crafted rules provide clear and accurate information and consumer protection. The Associations share the Bureau's goals of assuring that these disclosure regulations succeed in providing consumers with information needed to navigate the mortgage origination and settlement process. Consumer protection is only part of the focus, however, because the Bureau must also observe their concurrent statutory mandate to ensure that markets for consumer financial products and services operate "transparently and efficiently to facilitate access and innovation,"[1] and that "responsible, affordable mortgage credit remains available to consumers."[2] The assessment must be guided by these twin objectives—facilitating consumer protection *and* market operations.

***Summary of Comment***

The Associations support the Bureau's efforts to gather relevant cost data via structured interviews and surveys with industry participants in order to assess firms' implementation costs and ongoing costs. However, consultation with our members suggests that precise cost data attributable to implementation efforts will be very difficult to obtain. These discussions reveal that historical cost data from the TRID implementation period dating from 2013 to 2015 (and beyond) were not identified as TRID-specific implementation costs. At that time, mortgage lenders faced multiple compliance deadlines, including implementation of new Ability-to-Repay, Loan Officer Compensation, RESPA Mortgage Servicing and Home Mortgage Disclosure Act (HMDA) regulations. Mortgage lenders did not attribute implementation expenses on a per-regulation basis; instead, they generally apportioned costs to overall "mortgage compliance." This is particularly true for the TRID Rule, which established a disclosure "grid" that affected other mortgage-related requirements. For instance, efforts to comply with new HMDA requirements regarding application outcomes or changes to the Uniform Residential Loan Application (URLA) and valuation disclosure forms under Equal Credit Opportunity Act would have been tightly intertwined with TRID's Loan Estimate (LE) and Closing Disclosure (CD) implementation processes. Because all these requirements had to work in tandem in lenders' loan origination systems, the dissection of costs related only to TRID would have been unfeasible, if not impossible.

In light of these challenges—and because we believe it is critical for the assessment to reflect the burdens of TRID implementation—our comments offer survey data collected by the American Bankers Association contemporaneously with TRID implementation. Although this data does not provide precise cost information, it sheds light on overall burden as well as the impact on consumers.

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[1] 12 U.S.C. § 5511(b)(5).
[2] 15 U.S.C. § 1639b(a)(1).

Our comments also include lender "experience" information and place it in the context of TRID's tumultuous regulatory process. While qualitative, we believe this contextual information must inform the Bureau's evaluation of the rule's costs and burdens and be reflected in the assessment report. Indeed, we note that the RFI states that a goal of the assessment is "to inform the Bureau's general understanding of implementation costs and regulatory benefits for future rulemakings."[3] Our survey data and contextual information underscore the fact that implementing the TRID Rule (and amendments and "clarifications") was enormously costly, technically difficult, and fraught with logistical and interpretive difficulties.

Equally important, the Associations believe that ongoing operational costs continue to be very high and place upward pressure on mortgage origination costs. As discussed in more detail below, we are currently gathering survey data on this topic, and anticipate submitting results by February 2020. We believe this information (or similar ongoing cost information gathered by the Bureau) should be included in the assessment report.

In addition, the Associations believe that the assessment must attempt to quantify the consumer impact of the TRID Rule with rigor. The Bureau should have concrete metrics to demonstrate the existence of, or degree of "improvement," that the TRID Rule achieved over the previous RESPA and TILA regimes. To that end, we believe the Bureau's analysis of consumer benefit should not only seek to measure purported improvements in individual understanding of the new disclosure forms, but it also must seek to identify changes to consumer behavior. Through consumer surveys, the Bureau should determine whether more borrowers shop for mortgages after TRID. If so, what is the scale of the difference, and is it possible to isolate the impact of disclosure changes from the evolving access to online information and availability of digital consumer facing applications that have occurred over the past 10 years? Quite simply, the Bureau's consumer survey should measure whether TRID changed consumer understanding and behavior in a manner that justifies the tremendous costs of the rule.

Finally, the Associations urge the Bureau to make targeted reforms to TRID that will benefit all mortgage stakeholders by reducing compliance burden while also promoting simplicity and clarity in the mortgage process. The list of targeted reforms is attached as an appendix.

***Information on TRID Implementation Burdens from Association Surveys***

As noted above, the Associations support the Bureau's plan to survey mortgage market participants to obtain cost data, but question whether survey respondents will be able to provide information that identifies specific TRID implementation costs. Because we believe it is critical for the assessment to reflect the burdens of TRID implementation, we offer the survey data from the American Bankers Association's annual Real Estate Surveys conducted during the TRID implementation period.

[3] 84 Fed. Reg. at 64437.

Data from ABA's **May 2015 Real Estate Lending Survey**[4] (for transactions covering the previous 12 months) demonstrate the adverse impact of increased layering of regulatory requirements on banks. The data show:

- 87% of responding banks report a "moderate to extreme" negative impact stemming from mortgage regulation, with 33% reporting "extreme" impact.

- Of the 99% of responding banks that reported mortgage-specific regulatory impact as a result of Dodd-Frank Act regulations, 83% reported increased personnel costs, 89% reported increased time allocations to mortgage transactions. 91% reported loss of efficiency due to compliance concerns.

- 68% of banks reported actual increases in third-party vendor services—meaning consulting on legal, regulatory, training, and other services.

- 37% of banks reported losses of customers due to increased paperwork and/or complexity in disclosures. 51% reported loss of customers due to delays or increased time between loan application and final approval.

- 21% of banks reported loss of profitable business lines due to compliance costs.

- The top two "primary concerns" regarding the residential mortgage market were "increased regulatory burdens," and TRID-specific compliance concerns.

The May 2015 Real Estate Lending Survey also included questions specific to TRID implementation, and they reflect the following:

- 74% of banks used a vendor or consultant to assist with implementation of.

- As of May 2015, and with compliance deadlines set for October 2015, 36% of banks had not received production software systems to comply with TRID, and had not been provided with a delivery date. 9% reported that they would receive systems in April, 12% in May, 21% in June, 17% in July, and 5 % after July.

- 42% of banks were told they would receive received software "in stages," while 35% would receive it "all at once." 22% reported the need to use multiple system vendors, with such systems to be provided "over time."

- For 23% of responding banks, the vendor software system did not include all types of loans that the institution planned to offer. Of these banks, 25% reported they would produce their own disclosures, 21% reported they would forego the product, with 59% reporting they would use multiple vendors.

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[4] ABA, 22nd Annual ABA Real Estate Survey Report, May 2015, https://www.aba.com/-/media/documents/reports-and-surveys/real-estate-survey-lending-report-2015.pdf?rev=fc587e37293441b791937952917fab5b&hash=BCB281AF3874C4B0E784EAD2190DC4F2.

Data from **ABA's April 2016 Real Estate Lending Survey**[5] (for transactions covering the previous 12 months) demonstrate the adverse impact of increased layering of regulatory requirements on banks. The data show:

- 75% of responding banks report a "moderate to extreme" negative impact stemming from mortgage regulation, with 24% reporting "extreme" impact.

- Of the 93% of responding banks that reported mortgage-specific regulatory impact as a result of Dodd-Frank Act regulations, 80% reported increased personnel costs, 92% reported increased time allocations to mortgage transactions, and 84% reported increased technology costs. 83% reported loss of efficiency due to compliance concerns.

- 69% of banks reported actual increases in third-party vendor services—meaning consulting on legal, regulatory, training, and other services.

- 36% of banks reported losses of customers due to increased paperwork and/or complexity in disclosures. 34% reported loss of customers due to delays or increased time between loan application and final approval.

- The two top "primary concerns" regarding the residential mortgage market were "increased regulatory burdens," and TRID-specific compliance concerns.

The survey results from mid-2014 through first quarter of 2016 reflect clear stress on institutions. Close to 90% of responding banks reported undeniable impact on their operations due to compliance burdens, which decreases somewhat to a still-significant 75% in 2016. In all years involved, upwards of 80% reported that it was necessary to increase staffing to handle compliance as well marked increases in technology costs. Close to 70% of banks in these time periods had to increase outside services to assist in compliance functions. Further, the "primary concerns" consistently expressed over this two-year period "increased regulatory burdens," with TRID-specific compliance concerns being specifically noted by institutions.

The May 2015 Real Estate Lending Survey confirms that three quarters of responding banks had to use vendors or consultants to assist with implementation of the TRID rules. The survey data also suggest that most of the general "compliance burden" reported from the 2014-2015 time period was attributable to TRID. Moreover, with TRID's effective date looming for October 2015, it is noteworthy that only 9% of the compliance systems were, or were expected to be, delivered by April 2015, and a startling 79% of responding banks could not verify a precise delivery date, or were told that they would not receive systems before June. Additionally, 23% reported that the systems received would not be compatible with all loan types that the bank offered.

This data is instructive as it clearly reflects the challenges in creating accurate compliance systems to sustain the sweeping reforms required by TRID. After nearly 18 months

[5] ABA, 23rd Annual ABA Residential Real Estate Survey Report, April 2016, https://www.aba.com/-/media/documents/reports-and-surveys/real-estate-survey-lending-report-2016.pdf?rev=95884e39d6204824860a60ba8644f1b5&hash=3DBDE8A0A56E69B8A7E7C44BA6600A92.

of preparation, specialized vendors were struggling to complete workable compliance tools that were deliverable to lenders. In April of 2015, a majority of banks had not received, and were offered no guarantees of timely deliveries of, production-version loan origination systems. This delay helps illustrate just how complex and burdensome the new rules were. More importantly, it left lenders with the troublesome predicament of having only several weeks to properly install, test and adjust systems. The limited window to accurately train compliance and loan origination staff, to the new forms and configurations required by TRID exacerbated the systems challenges institutions were already facing. It also delayed crucial coordination with service providers, including appraisers, escrow agents, settlement table partners, and others required to properly complete mortgage transactions. The additional costs, workarounds and risk-mitigation strategies required to handle this situation were immeasurable, and do not neatly fit into "compliance cost" categories.

Finally, we offer information from a TRID-specific survey conducted by ABA, the **2016 TILA-RESPA Integrated Disclosure (TRID) Survey**,[6] which was released in the first quarter 2016. This survey shows that TRID Rule compliance continued to impose heavy compliance burdens and customer dissatisfaction through delayed closings and increased fees and costs. The survey findings show:

- Many banks were forced to eliminate certain products, such as construction loans, ARMs, home equity loans, etc., as the rule did not provide adequate compliance direction.

- Over three-fourths claimed that TRID caused loan closing delays anywhere from one to 20 days.

- Approximately one quarter of respondents had increased the total cost to the consumer to obtain a loan.

- About 50% of participants claimed they would have to hire additional staff to comply with the TRID Rule.

- Additional staff training and staff compliance hours were needed by over 80% of respondents.

- LOS systems were still being updated and changed as 78% of bankers reported they were still waiting for system updates and 83% claim they are forced to use manual workarounds.

- An overwhelming 93% reported that uploading and loan processing times had increased as a result of TRID implementation.

- The average added cost per bank at that point was $300 per transaction, but some banks reported as high as $1,000 in additional cost.

[6] ABA, 2016 ABA TRID Survey, https://www.aba.com/-/media/documents/reports-and-surveys/migrated-2019/2016-trid-survey.pdf?rev=fd9568905a284e95bf21d2aaada23066.

- A resounding 94% of bankers needed further time to assure proper compliance and asked that a TRID "good faith" grace period be extended.

These surveys undeniably demonstrate that TRID caused disruptions in mortgage operations, mitigated only by extraordinary efforts and expenditures by industry participants. Although this conclusion may be difficult to reconstruct from responses to Bureau survey questions that require precise cost information attributable to the direct cost of one new regulatory regime, the historical record discussed above reflects the complexity, costs and burdens imposed by TRID.

***Contextual Information about the Regulatory Process***

Although the Dodd-Frank Act required the Bureau to create a single integrated disclosure for mortgage loan transactions covered by RESPA and TILA, the Bureau chose to create a merged disclosure paradigm with features and requirements that added complexity and fundamentally changed the entire loan delivery system for banks, credit unions, and independent mortgage companies. Inherent in such complexity is a need for continuous revisions to the regulations. The initial final rule released in November 2013 extended for 1,888 pages. Immediately following the final rule issuance, and before the final effective date of October 2015, the Bureau issued several substantive corrections and updates to the regulations.[7]

This difficult "first phase" of implementation was followed in August 2017 by "TRID 2.0" when the Bureau released a technical clarifications rule that extended 560 pages, and imposed implementation tasks that required careful integration and upgrades to compliance systems. This rule updated much of the previously issued guidance and clarified multiple provisions of the regulation. The Bureau finalized yet another rule in May 2018, resolving lingering, crucial issues regarding how tolerances were to be determined in Closing Disclosures to assure good faith compliance under the rules.

The regulatory amendments, clarifications, and realignments have led compliance specialists to call TRID the most difficult implementation process ever undertaken. This multi-tiered regulatory roll-out had the following impacts:

- *Sheer Quantity = Burden*: The TRID Rule, amendments and clarifications were extremely lengthy and complex, spanning thousands of pages of regulatory and interpretive material that required understanding, analysis and implementation. A significant impact to lenders was the sheer magnitude of change required to achieve a unified implementation of all provisions of this complex rule. Coupled with other Dodd-

[7] These included:
(1) A February 2015 modification to the final rule affecting several elements of timing and disclosure requirements, as well as instructions on NMLSR ID listings on the integrated forms. The Bureau also added other technical corrections that clarified a variety of provisions of the regulations through additional interpretive instructions;
(2) In July of 2015, the Bureau extended the rule's effective date and added further amendments to the Official Interpretations, as well as technical corrections; and
(3) Just a few months after the October 2015 effective date, the Bureau issued *two* more "technical correction" issuances, one in December 2015, and another in February 2016.

Frank mortgage reforms occurring at the time[8], TRID's voluminous scope destabilized business models and legal/risk calculations across all markets.

- *Continuous Tweaks = Burden*: While the changes to rule may have been necessary, and in some cases welcomed by industry, they nonetheless required significant process and system adjustments. Often, what the Bureau would classify as a "non-substantive" or "technical fix" would require institutions to revisit the configurations of their automated disclosure and compliance systems to assure the systems were aligned with rule adjustments. The large volume of such "small adjustments" led to large volumes of system upgrades—and significant costs.

- *Complexity = Burden*: In a qualitative sense, the TRID Rule is very prescriptive and detailed, imposing significant impediments to lenders' abilities to tailor or structure transactions in ways that even slightly deviate from the regulation's "black letter" instructions. The rule's timing requirements and mathematical calculations must be strictly observed.

- *Legal Doubt = Burden:* As more fully described in the appendix, a critical element of uncertainty under TRID is the applicability, scope, and effect of RESPA and TILA's liability provisions given the merger of the new regulations and overhaul of applicable mortgage-related disclosures. At the launch of the new rules, institutions faced significant legal uncertainty regarding liabilities, new statutory remedies, extent of applicable penalties, and the impact of technical or "glitch" violations that could render loans unsellable in the secondary market. Equally important was the uncertainty regarding assignee liability and the threat of buy-backs for unintentional errors. For instance, the lack of a regulatory cure for numerical clerical errors under TILA or RESPA causes potential liability and inhibits secondary market investors from purchasing immaterially non-compliant and otherwise saleable "dented" loans. With uncertain liability, market participants assume that the more stringent penalties will apply in all instances of non-compliance, even if that is not the intent of the law or the Bureau. The issue of legal uncertainty remains unsettled today, but at the initial stages of TRID implementation, it resulted in very high expenditures on outside counsel and compliance consultant reviews.

### *Contextual Information about Regulatory Structure & Implementation*

It is important to fully understand the reasons that TRID implementation was such a challenging and costly endeavor. Implementing TRID involved much more than just assuring that correct numbers are recorded into correct boxes. The scope and impact of this rulemaking was truly extraordinary, and we ask that the Bureau consider the following as part of the assessment of "burdens" associated with TRID.

[8] The Bureau should evaluate the wisdom of initiating multiple rulemakings concurrently. While many Dodd-Frank provisions had specific timing requirements governing the issuance of rules, there was no such "deadline" for the integrated disclosures. The Bureau should evaluate the internal decision process that determined that it would be prudent to launch both the statutorily required mortgage rulemakings and the TRID disclosures so close together.

- The TRID Rule is the Foundational Framework for Mortgage Transactions: Together, the TILA and RESPA disclosures provided (and still provide) the fundamental structure, or "grid," for the mortgage transaction. In this sense, most residential loan products, sales and marketing arrangements, compensation structures, business relationships, informational transfers to consumers, and transaction timing requirements are built with these two statutes as the foundation. The reformation of these two mortgage-related regulations under TRID required a reconstruction of the *entire* loan delivery system.

- Compliance Required Staggered "Phases:" As described above, vendors that built TRID compliance systems needed considerable time to construct completely new disclosure and compliance arrangements. Compliance with TRID involved the following stages, each of which was dependent upon the completion of the previous stage: (1) Compliance vendors developed new systems; (2) Compliance vendors tested these new systems; (3) Creditors and other system users reviewed vendor systems for compliance with the rules and compatibility with their products, systems, and workflows. This stage also required assessment of which product lines were still feasible, and which products had to be discontinued or altered to comply with the new legal regime; (4) Creditors and compliance vendors tested and troubleshot, and, for many institutions, confirmed that new systems interfaced with existing systems; and (5) All staff (including loan officers and supervisory staff) were trained extensively and new procedures for ongoing testing and quality control reviews were implemented.

- Implementation Required Coordination with Third Parties: TRID imposed a whole new set of stringent requirements on creditors regarding accuracy of real estate settlement fee disclosures and tolerances. The Rule thus significantly changed the contracts and relationships that lenders have with independent settlement service providers that are required to complete the mortgage transaction. TRID's fee disclosure tolerances forced creditors to minimize (or eliminate) risks of inadvertent price changes with any party selected to participate in the transaction. The new tolerances placed full legal responsibility on the lender to arrive at essentially guaranteed prices, even where they did not control the charges. Importantly, liabilities due to tolerance violations have been assumed to be high under TRID and all third-party agreements would therefore need to reflect this risk.[9] Both timing and disclosure content factors created and continue to pose risks to lenders under the TRID scheme, and all creditors had to reassess their relationship with outside providers and determine whether to produce and deliver the final disclosures rather than assign that function to closing agents. This "fee guarantee" and the systems necessary to issue accurate corrections or reimbursements to consumers when inaccuracies occurred continue to impose significant costs on lenders that cannot be controlled effectively.[10]

[9] Because the Bureau placed the integrated disclosures under Regulation Z, industry generally assumes the civil liability scheme for TILA disclosure violations would apply to all TRID violations. That scheme for residential real estate loans is set forth in Section 130 of TILA and, with respect to high cost loans, Section 131. See more discussion on this point below, at Appendix, #1.

[10] Banks and independent mortgage lenders had to assess ways to allow them to quote accurate fees within extremely tight timeframes—three days after application—a point there hardly any information is known about either the collateral property or the underwriting details of the consumer.

- Compliance Must Conform to Investor Demands: The most important third-party relationship for mortgage originators is with secondary market purchasers of originated loans. Since secondary market players are exposed to liability for compliance mistakes contained in the transferred asset, they often impose compliance overlays to guarantee conformity to law. Originators therefore have to assure strict compliance with TRID's requirements *as well as* investor guidelines in order to assure funding for mortgage transactions. Ambiguities in assignee liability standards became a major and very costly issue in the first months following TRID's effective date. Lenders experienced widespread difficulties in placing their TRID loans with investors due to concerns over potential liability for rule uncertainties, formatting errors, and technical mistakes. In the initial aftermath of the rule's implementation, very few loans were being sold at all—imperiling the liquidity of the market. Different investors and due diligence firms had different interpretations of the rule. Many investors and their third party due diligence providers took extremely conservative interpretations of the TRID Rule, and rejected loans due to immaterial, technical deficiencies. For instance, text alignments or rounding errors were deemed to be material, and therefore disqualifying faults in a loan file. The indeterminate liability and doubts about the cure provisions—problems that persist today—meant that errors stemming from ambiguity and conflicting interpretations caused large percentages of loans to be labeled as defective by investors, even where such defects were only technical and presented no credit risk nor risk of harm to consumers.

- Compliance had to Accommodate Variances across States and Programs: The magnitude of the TRID changes was overwhelming for institutions of all sizes, and the enormous changes brought about by TRID had to be implemented upon a very wide array of products that had been designed to accommodate varying consumer needs. The complexity of this rule was exacerbated by the fact that each transaction differed in accordance to customer negotiations, arrangements and fee apportionments that occur in typical mortgage transactions. In addition, the new rules had to accommodate existing variances in state and local requirements and customary local practices that had evolved over decades. In short, TRID applies to a transaction that is not monolithic or static—it is flexible and may fluctuate from deal to deal, product to product, and market to market. Consumers benefit from this variation, and creditors' compliance efforts had to resolve diverse issues with accuracy and efficiency.

***Ongoing Costs & Burdens Remain Elevated***

The Bureau's request for information reflects that an important element in assessing the TRID Rule's effect on firms will be an analysis on "what are the TRID Rule's ongoing costs and cost savings to firms."[11] To this end, we offer data from **ABA's May 2018[12] and 2019 Real**

[11] 84 Fed. Reg. at 64439.
[12] ABA, 25th Annual ABA Residential Real Estate Survey Report, May 2018, https://www.aba.com/-/media/documents/reports-and-surveys/real-estate-lending-survey-report-2018.pdf?rev=b2a6e23dca234eb5b003e0ce0ddd56a0&hash=041B12660E036B4944615AAFB433C01C.

**Estate Lending Surveys**[13] (for transactions covering the previous 12 months) to demonstrate that the adverse impact of regulatory burdens on banks remain very high. This latest data show –

- In 2017, 77% of responding banks report a "moderate to extreme" negative impact stemming from mortgage regulation, with 24% reporting "extreme" impact. In 2018, the data reflect 58% reporting a "moderate to extreme" negative impact stemming from mortgage regulation, with 9% reporting "extreme" impact.

- In 2017, 96% reported higher mortgage-specific compliance costs in light of regulations; in 2018, 63% reported increasing regulatory costs.

- In 2017, 83% of responding banks reported that they increased, or planned to increase, personnel costs in light of regulations, and in 2018, the number settled somewhat at 43%.

- In 2017, 97% of reporting banks registered actual increases in legal/regulatory consulting costs because of regulations; in 2018, 69% reported increases.

- In 2018, the primary drivers of increased compliance costs were: loss of efficiency, increased costs for third-party vendor services, increased personnel costs, increased education and training costs, increased time allocation, and increased technology costs.

Although the 2018 and 2019 Real Estate Lending Surveys did not isolate TRID-specific burdens on institutions, they do indicate that regulatory impact continues to be substantial in ongoing operations and that there is a critical need to focus on compliance burden reduction. In both 2018 and 2019, regulatory and compliance burdens remained one of the top 5 "Primary Concerns" related to residential mortgage operations.

The Associations believe these results to be significant information that should be considered in the TRID assessment. As described above, regulatory compliance burdens associated with residential mortgage lending are inextricably tied to TRID systems and TRID-related expenditures because the consumer interface and origination processes that underlie all mortgage compliance efforts are tightly intertwined with TRID. For instance, although the 2017 and 2018 data compliance burden may be attributable, in large part, to the new HMDA regulations that became effective in that time frame, these burdens are still tied to TRID, as the systems and data points necessary to fully comply with HMDA directly impact TRID compliance.

The Associations recognize the importance of the Bureau's attempts to collect cost and burden information attributable only to TRID. To that end, we are currently conducting additional member surveys to gather more information to isolate the impact of the TRID Rule upon creditor operations. However, we are mindful that in most instances, cost-specific data will not be feasibly available. Therefore, working with our members we have designed supplementary surveys that should reflect information lenders do have on TRID's impact. These surveys will seek more data on: TRID-specific processes instituted by creditors to comply, the

[13] ABA, 26th Annual ABA Real Estate Lending Survey Report, May 2019, https://www.aba.com/-/media/documents/reports-and-surveys/real-estate-lending-survey-report-2019.pdf?rev=8689adc29f634cddad62f9e678b0f4aa.

incidence of delays in loan closings, impact on product offerings, frequency of refunds or lender credits, and other matters.

The Associations respectfully request that the Bureau keep the comment docket open until we can complete this survey. We believe that data and findings from our additional survey can be submitted to Bureau staff by the end of February 2020.

***Conclusion***

The regulatory reforms imposed by TRID required a complete overhaul of existing mortgage disclosure regimes and affected the entire origination chain; as such, these reforms were expensive and time-consuming, and they continue to impose burdens to this day. The Associations appreciate the Bureau's efforts to assess TRID's effectiveness in meeting legislative objectives, and we largely agree with the assessment plan set forth in the RFI to evaluate the costs, benefits and value of the TRID Rule for both the industry and consumers. We believe this assessment should result in identifying paths to reducing regulatory costs, facilitating compliance, and assuring that the TRID disclosure scheme succeeds in informing and empowering consumers in the mortgage origination process. In the appendix that follows, we set forth our priority recommendations towards helpful reforms that will advance efficiency and promote RESPA and TILA's statutory objectives.

We commend the Bureau's efforts to improve its regulations and look forward to offering further assistance in this worthy endeavor.

Respectfully,

American Bankers Association

American Financial Services Association

Consumer Bankers Association

Housing Policy Council

Mortgage Bankers Association

## APPENDIX: TARGETED REFORMS

***The Bureau Should Amend the TRID Rule to Simplify and Clarify Disclosure Requirements, Correct Inconsistencies, and Ensure Requirements Align with Statutory Authority***

The requirements for completing and issuing the TRID forms are incredibly complex. In some areas they are incomplete or inconsistent (*e.g.*, the rounding rules and treatment of specific credits are different between the Loan Estimate and Closing Disclosure). This creates significant risk for creditors and increases costs for consumers given the potential for broad creditor liability under the rule. The Bureau could eliminate these issues by clarifying, correcting, and simplifying the TRID Rule.

As an initial matter, the Bureau should consider wholesale revisions to ensure the rule does not extend beyond its statutory mandate. In particular, TILA and RESPA require creditors to provide "good faith estimates" of costs.[14] The Bureau expansively interpreted these provisions to adopt a complex set of "tolerance" rules. In most circumstances, these rules prohibit creditors from charging borrowers for the actual costs associated with a transaction if those costs exceed the amount originally disclosed.[15] In other words, the Bureau converted a statutory requirement to provide a cost estimate into a regulatory requirement to provide a cost guarantee. Under TRID, such cost "guarantees" even apply to transfer taxes and other items that consumers bear even if they were not obtaining a loan. The Bureau should amend the regulation so that it meets, but does not exceed, the actual statutory mandate.

This could be achieved by removing the overly burdensome and complex "tolerance" and redisclosure scheme. In its place, we recommend the Bureau adopt a simplified requirement that (1) the initial Loan Estimate ("LE") be based on the best information reasonably available; (2) revised LEs be issued and updated based on the best information reasonably available when the borrower requests a change to the loan terms or product (including if the rate is locked or otherwise changed); and (3) the CD disclose actual costs or the best information reasonably available when actual costs are unknown.

In addition, the Associations propose the following targeted changes, which would, consistent with the Bureau's statutory mandate, resolve uncertainty surrounding TRID liability and eliminate unnecessary compliance burden associated with the TRID Rule's technical requirements.[16]

### *1. Clarify Liability Associated with TRID Errors and Create Mechanisms for Cures.*

Properly completing TRID disclosures requires careful application of a hyper-technical rule to complex mortgage and real estate transactions that involve multiple unrelated parties. Technical errors—minor errors that are unlikely to have a material impact on the consumer's understanding of the transaction, particularly if they are corrected quickly—are inevitable. The

[14] 12 U.S.C. § 2604(c); 15 U.S.C. § 1638(b)(2)(A).
[15] 12 C.F.R. § 1026.19(e)(3).
[16] Pursuant to the Dodd-Frank Act, the Bureau is to "exercise its authorities under Federal consumer financial law for the purposes of ensuring that … outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens[.]" 12 U.S.C. § 5511(b).

rule should acknowledge this reality by allowing creditors to correct errors and by ensuring that the associated liability is commensurate with potential consumer harm.

Currently, liability associated with TRID errors is unclear and disproportionate to the potential consumer harm caused by common and unavoidable mistakes. While the Dodd-Frank Act directed that the TILA and RESPA disclosures be combined into a single disclosure, it did not amend the statutory provisions governing liability for the disclosures. This omission continues to cause concern because TILA permits borrowers to sue creditors and assignees for failing to comply with the pre-existing TILA mortgage disclosure requirements and RESPA does not. Despite industry requests for clarity, the Bureau declined to create a bright line rule. Instead, it initially chose to address the issue by stating that it "believes these detailed discussions of the statutory authority [in the section-by-section analysis of the final rule] for each of the integrated disclosure provisions provide sufficient guidance for industry, consumers, and the courts regarding the liability issues raised by the commenters."[17]

The Bureau subsequently stated—albeit not in formal guidance—that, "while the [TRID] rule does integrate the TILA disclosures with the disclosures required under [RESPA], it did not change the prior, fundamental principles of liability under either TILA or RESPA."[18] Industry has continued to express concerns regarding the lack of clarity regarding liability. In response, the Bureau published annotated versions of the LE and CD that provide citations to the underlying statutory provisions of TILA. However, these "TILA Mapping Disclosures" are not completely aligned with the preamble to the TRID Rule.

While the Bureau's actions to address industry's liability questions have been helpful, significant ambiguity remains, and the possibility that minor errors trigger maximum liability remains. This lack of certainty has unnecessarily hindered the sale of loans, resulting in reduced credit availability. For example:

- Loan purchasers—who have potential TILA liability exposure—have refused to purchase loans where the settlement agent's license ID number is missing.[19]
- Creditors wishing to sell mortgage loans are directed to refund fees where the fee amount was disclosed accurately but placed in the wrong section of the form.

These technical issues do not result in borrower harm and should not create liability for a creditor or an assignee that inhibits the sale of a loan on the secondary market. Instead, creditors should be given the opportunity to correct these errors. If liability attaches, it should be appropriately related to the severity of the error that occurred.

To resolve these issues, the Bureau should amend the TRID Rule by:

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[17] 78 Fed. Reg. 79730, 79757 (Dec. 31, 2013).
[18] Letter from Richard Cordray, Director, CFPB to David Stevens, President and CEO, MBA (dated Dec. 29, 2015), http://static.ow.ly/docs/Director%20Cordray%20to%20David%20Stevens%20MBA%202015.12.29%20copy_49CV.pdf.
[19] While this is due to the Dodd-Frank amendments to TILA, the Bureau should consider using exemption authority to address issues with non-finance charge "numerical" disclosures.

- Clarifying in a formal interpretation that errors on the initial LE, or any CD other than the final CD provided to the consumer, do not provide for a separate private right of action. As noted above, former Director Cordray stated that this was the case in a non-binding letter to the MBA in December 2015.[20] Although welcome, that letter does not afford a sufficient level of certainty and protection to creditors or loan purchasers.

- Amending Regulation Z to create a "cure" for items that do not affect the finance charge so that statutory damages do not apply to those errors.[21] Disclosures related to finance charges are generally the most important and, thus, they should carry the most significant potential liability. The Bureau should provide additional mechanisms for correcting errors to avoid liability, including:

    - Allowing creditors to cure numeric and non-numeric errors on the LE using a revised LE or a CD, unless the error was associated with a closing cost subject to tolerances (to the extent that the Bureau retain tolerances in the Rule);

    - Establishing a mechanism to correct clerical numeric errors that do not affect the finance charge, even if the CD provided at consummation contained the error; and

    - Establishing a mechanism to cure untimely provision of the LE and CD. For example, today, creditors can cure errors that extend the rescission period by issuing corrected disclosures and informing the borrower that their rescission period has not expired. This is commonly referred to as "reopening rescission." A similar cure mechanism could be made available for timing errors associated with an untimely CD.

    - Clarifying that that TILA Section 130(b)[22] can be used to correct errors (1) associated with disclosures that were not adopted under TILA Part B and (2) that are not "mathematical."

In addition, we urge the Bureau to expand upon interpretations that state that there is no civil liability for errors that are unknown at closing and figures must be based on the "best available information" available at that time. The Bureau should clarify how to satisfy the "best

[20] Letter from Richard Cordray, Director, CFPB to David Stevens, President and CEO, MBA (dated Dec. 29, 2015), http://static.ow.ly/docs/Director%20Cordray%20to%20David%20Stevens%20MBA%202015.12.29%20copy_49CV.pdf.

[21] Alternatively, the Bureau should provide interpretive guidance that TILA section 130(b) allows creditors to cure all TRID violations by providing a refund of any understated cost and a corrected disclosure.

[22] TILA § 130(b), which is codified at 15 U.S.C. § 1640(b), provides that "[a] creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 1607(e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower."

information reasonably available" standard for these items. For example, the Bureau should issue guidance illustrating how a creditor can satisfy the standard for estimated property taxes when it is known that publicly available information is not correct because taxes will change at or after purchase (e.g., the purchaser may lose a homestead exemption or taxes will eventually increase after construction).

### 2. *Clarify and expand the definition of "bona fide personal financial emergency."*

The TRID Rule requires a certain amount of time to pass after the LE and CD are delivered before a mortgage transaction can be consummated, but these "waiting periods" can be waived in certain circumstances. In particular, the initial LE must be delivered at least seven business days before consummation, and the initial CD (and certain corrected CDs) must be received at least three business days before consummation.[23] However, consumers may modify or waive these waiting periods if "the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency."[24] The official interpretations only provide one example of a qualifying bona fide personal financial emergency: "The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period…."[25]

By adopting an "intentionally narrow" illustration,[26] the Bureau effectively has eliminated the statutory exception established by Congress. Indeed, we have been unable to identify a lender that would make a loan to a consumer who is days away from losing their home in a foreclosure. Further, very few creditors are willing to grant a waiver for any other reason because they are concerned that a regulator or court will later determine that the emergency did not qualify as a bona fide personal financial emergency under the rule. This is true even when consumers are faced with potential loss of thousands of dollars.

To appropriately align the rule with Congress' intent, the Bureau should clarify and expand the definition to ensure that consumers are permitted to waive waiting periods when they determine that satisfaction of the waiting period could lead to financial loss. In particular, we request that the Bureau provide additional examples of qualifying events that creditors may encounter. This should include an example that allows a consumer to waive the waiting period to ensure the loan closes within the time required by a purchase contract if the consumer would otherwise lose their earnest money deposit. This circumstance should be considered a bona fide personal financial emergency because the failure to close on time could prevent borrowers from becoming homeowners and the lost earnest money deposit could represent a significant portion of their life savings. Other circumstances, including being without a residence because of an expiring lease or property sale occurring before closing or job orders to relocate by a certain date, also have the potential for such serious negative financial consequences that justify treatment as bona fide personal financial emergencies.

### 3. *Correct current sample disclosures and create more.*

The Bureau created several sample LEs and CDs that illustrate how the disclosures should be completed for various transactions when it finalized the 2013 TRID Rule. However, it

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[23] 12 C.F.R. §§ 1026.19(e)(1)(ii)(B) and (f)(1)(ii)(A).
[24] 12 C.F.R. §§ 1026.19(e)(1)(v) and (f)(1)(iv).
[25] Comments 19(e)(1)(v)-1 and 19(f)(1)(iv)-1.
[26] 78 Fed. Reg. 79730, 79806 (Dec. 31, 2013).

has not updated them to correct errors, reflect changes to the rule, or to address other transactions where guidance is seriously needed. We respectfully request that the Bureau do so.

These completed sample disclosures have been instrumental in helping the industry understand how to apply TRID's technical requirements for basic transactions. However, many creditors have been hesitant to offer complex products that do not have completed sample forms out of fear that they will misinterpret the TRID Rule's hyper-technical requirements. This has limited access to credit by limiting consumers' ability to shop for these types of loans to a limited number of lenders who are willing to take on risk as a result of the lack of guidance.

Further, updating the current sample forms and providing additional examples of other common transactions would be tremendously helpful in ensuring the industry applies the TRID Rule consistently and accurately. Consistent with Section 109(b) of the Economic Growth, Regulatory Relief, and Consumer Protection Act, the Bureau should consider creating additional illustrations of representative transactions, including assumptions, construction-to-permanent loans, construction-only loans,[27] buy downs (lender & borrower) and simultaneous subordinate lien transactions. It would be most helpful if the Bureau provides sample disclosures for the most common transactions, including 5/1 and 7/1 ARM loans.

These sample disclosures would be particularly helpful if the examples included common features that are not directly addressed by the rule, such as how a construction-to-permanent loan disclosure should be made if (1) the construction agreement includes separate pricing for upgrades that may be considered personal property; and (2) the loan will include two different adjustable rates, with the construction period calculated using one index and margin and the permanent phase featuring another.[28]

4. ***Clarify when Regulation Z applies to Down Payment Assistance loans and loans made by Housing Finance Agencies and, to the extent Regulation Z applies, clarify how such loans should be disclosed.***

Down payment assistance ("DPA") and housing finance agency ("HFA") loans have unique features that do not appear to have been contemplated when the TRID Rule was promulgated.

As an initial matter, the Bureau should clarify when these loans are subject to Regulation Z. Regulation Z generally "applies to each individual or business that offers or extends credit … when four conditions are met: (i) The credit is offered or extended to consumers; (ii) The offering or extension of credit is done regularly; (iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and (iv) The credit is primarily for personal, family, or household purposes."[29] This appears to be an entity level test that evaluates whether an "individual or business that offers or extends credit" is subject to Regulation Z rather than a transaction based test that determines whether a particular transaction is subject to Regulation Z. However, the definition of "creditor" suggests that a particular credit transaction must be both subject to a finance charge and payable in a written agreement in more

[27] While the Construction Loan Guides that the Bureau recently published are helpful, they do not address every single disclosure required by the rule (such as, for example, the "Product" disclosure). Also, please note our request that the Bureau exempt construction lending from TRID (Appendix, #14).
[28] Please note our request that the Bureau exempt construction lending from TRID (Appendix, #14).
[29] 12 C.F.R. § 1026.1(c)(1).

than four installments to be subject to Regulation Z, even if whether the entity making the loan is a creditor under the regulation.[30] This limitation is only found in the commentary to the definition of "creditor," as opposed to the scope of Regulation Z provision that seems to apply more broadly. As a result, creditors are concerned that Regulation Z could be interpreted to apply when an individual loan does not meet the criteria in § 1026.1(c)(1), but the entity offering the loan is a "creditor" because the person regularly makes other loans that are subject to a finance charge and are payable in more than four installments.

Further, these loans often contain unique features that are not addressed by the rule. For example, some of these loans will be forgiven after a certain period of time if certain events do not occur. However, if those events do occur, the loan may be subject to repayment and a finance charge.

The Bureau should work with HFAs and the industry to develop specific guidance on how to disclose these transactions.

***5. Adopt a simplified disclosure regime for assumptions.***

Consumers who wish to assume an existing mortgage loan generally face different questions and concerns than the typical applicant for a new mortgage loan. For example, the person assuming the loan is less likely to be "shopping" for other loan products, and costs associated with the assumption are likely more limited. Given the differences between assumptions and "new" transactions, the consumer benefits of following TRID's complex regime are limited. As a result, the Bureau should exempt loan assumptions from the TRID Rule and work with the industry to adopt a simplified disclosure regime that consumers will better understand.

Absent a wholesale exemption, the Bureau should issue clarifying guidance to address ambiguities. For instance, many features of legacy loans do not translate into a typical TRID disclosure, particularly with regard to products originated before the ATR Rule. A non-exhaustive list of ambiguities includes:

- Calculation of the Adjustable Interest Rate ("AIR") and Adjustable Payments ("AP") Tables;
- Calculation of the projected payments table;
- Completion of settlement agent-related disclosures when settlement agents are not used;
- Completion of disclosures affected by adjustable interest rates (e.g., Product, Interest Rate, AIR table) when Adjustable Rate Mortgages ("ARMs") are at their final rate increase or the interest rate has reached its cap;
- Completion of rate-lock disclosures for fixed rate loans and ARMs, including ARMs where the interest rate may adjust between provision of the disclosure and completion of the assumption;
- Disclosure of servicing fees that are routinely disclosed in other communications such as periodic statements;

[30] Comment 2(a)(17)(i)-1.

- The effect of delinquent payments;
- Completion the Contact Information table when a loan originator is not involved;
- Issues arising when funds are exchanged;
- Timing requirements for disclosures, including whether a LE is required, when the LE is required if an application is never completed, and whether advance timing requirements apply to the CD;
- Determination of when a seller's CD is required and who must provide it if there is no independent settlement agent; and
- The effect of existing escrow balances, including when funds will be returned to the original consumer, when they will be transferred to the new consumer, and when a portion of the funds will go to both the original and new consumer.

For assumptions that are not subject to TRID but could be subject to the RESPA disclosure requirements, the Bureau should modify Regulation Z to allow lenders the option of satisfying RESPA by providing the simplified TRID disclosures or by exempting those assumptions from disclosure entirely. Additionally, the Bureau should provide examples of completed disclosures for assumptions that the industry may rely on.

6. ***Update the TRID Rule to reflect the fact that electronic delivery occurs instantaneously and clarify requirements for transactions involving multiple consumers who use different communication methods.***

The TRID Rule provides that, if the LE or CD is not hand delivered, the disclosure is considered received three business days after it is sent, unless the creditor has evidence that the consumer received the disclosures earlier than three business days.[31] This "mailbox rule" is generally consistent with TILA itself, which states that, "[i]f the [LE is] mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed."[32]

The Bureau applied the same rule for electronically delivered disclosures, even though TILA's three-day rule only applies to mailed disclosures.[33] The Bureau created this bright line rule because it was concerned that, without it, creditors "would likely seek to document evidence of receipt, such as through recorded verbal or written acknowledgements or affidavits, which may unnecessarily delay many transactions."[34]

While welcome guidance, the Bureau should consider further refining and modernizing the rule to reflect efficiencies created by electronic delivery. In particular, because electronic delivery does not possess the same logistical challenges that apply to mailed disclosures, the rule should be revised so that disclosures are deemed to be received the same day they are sent electronically, absent evidence that the electronic delivery failed (e.g., bounce back of email), and as long as they are delivered in accordance with the Electronic Signatures in Global and

[31] 12 C.F.R. §§ 1026.19(e)(1)(iv) and (f)(1)(iii).
[32] 15 U.S.C. § 1638(b)(2)(E).
[33] Comments 19(e)(1)(iv)-2 and 19(f)(1)(iii)-2.
[34] 78 Fed. Reg. at 79855.

National Commerce Act.[35] This could be done by amending the mailbox rule to specifically state that the consumer is considered to have received disclosures delivered electronically "on the same day the disclosures are delivered using the electronic delivery method agreed upon by the consumer and creditor, if the creditor previously obtained consent to deliver such disclosures electronically and the consumer has not withdrawn such consent."

The Bureau should also provide additional examples illustrating how technology impacts receipt of disclosures, including examples involving loans with multiple borrowers who use different communication methods (*e.g.*, one receives electronic disclosures and the other receives mailed disclosures).

***7. Eliminate confusion caused by special disclosures for simultaneously issued title insurance.***

We understand the Bureau's desire to ensure consumers understand the difference in cost between a title insurance policy covering the lender only and one covering both the lender and the owner. However, the special disclosure requirements have created confusion for consumers and creditors alike. Consumers have been confused because the TRID disclosures do not align with the actual charges imposed by title agents or allowed by state law. Creditors report that it can be difficult to obtain the appropriate information to calculate charges consistent with the TRID Rule's special disclosure requirements. Considering these difficulties, the Bureau should amend the rule to allow optional disclosure of the actual costs of title insurance.

***8. Clarify how the TRID Rule applies to wholesale transactions.***

There is almost no guidance on how the TRID Rule applies to brokered transactions. This has resulted in inconsistent interpretation and application of the rule. Part of the problem stems from the unique structure of brokered transactions, which involve a mortgage broker serving as an intermediary between consumers and multiple creditors. Certain TRID provisions, such as those governing delivery of the LE and liability for errors, fit poorly to transactions structured in this way. We therefore strongly encourage the Bureau to revisit the TRID requirements for brokered transactions.

In the interim, the Bureau should provide examples of the creditor's and broker's obligations in specific scenarios, such as when the broker submits an application to one creditor and then later decides to submit the same application to another creditor. The examples should describe both disclosure requirements and liability associated with errors.

The Bureau should also clarify when the requirement to provide the LE is triggered for wholesale transactions, as the Bureau's position that the LE must be provided within three business days of the broker's receipt[36] does not align with the plain language of the rule.[37]

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[35] *See* 15 U.S.C. § 7001.

[36] 78 Fed. Reg. 79730, 79801 (Dec. 31, 2013).

[37] 12 C.F.R. § 1026.19(e)(1)(iii)(A); comment 19(e)(1)(ii)-1. These provisions state that the requirement to deliver the LE is triggered when the *creditor* receives the application. Nothing requires "broker" to be read in the place of "creditor" until the broker issues the LE.

***9. Clarify that non-borrowers who have a right to rescind need only receive the CD delivered at or before consummation.***

Comment 17(d)-2 states that, "[i]n rescindable transactions, the disclosures required by § 1026.19(f) must be given separately to each consumer who has the right to rescind under § 1026.23." Because the comment cites § 19(f) generally, which includes the requirement to provide a CD in 19(f)(1)(i), the three business days before consummation receipt requirement in 19(f)(1)(ii), and the mailbox rule in 19(f)(1)(iii), many have concluded that non-borrowers who have a right to rescind must receive the CD at least three business days before consummation. This obligation can delay closings and harm consumers because non-borrowers are not part of the credit transaction and often have not provided consent to receive disclosures electronically. This means that, even when the creditor has actual proof that the borrower has received disclosures and is ready to proceed, it may be forced to wait until the non-borrower constructively receives them.

The Bureau should revisit this comment and consider clarifying that creditors need only ensure that non-borrowers who have a right to rescind receive the CD at or before consummation. This would ensure these non-borrowers are afforded the rights required under 15 U.S.C. § 1635 while removing unnecessary burden imposed on creditors and borrowing consumers.

***10. Amend the definition of "application" to allow critical information necessary to process the application and provide the LE.***

The Bureau narrowed the definition of application for purposes of the TRID Rule to provide certainty to consumers and encourage shopping. However, the Bureau did not achieve its goal. Instead, the narrower definition hinders the creditor's ability to collect essential information needed to provide reliable estimates and avoid surprises for consumers later in the process. The Bureau should expand the definition to allow creditors the discretion to require additional information necessary to process the application including, for example, the following:

- Government monitoring information required by Regulations B and C;
- The consumer's current address so that the creditor can deliver or mail the LE to the consumer as required; and
- The consumer's desired loan product so that the creditor can provide a useful estimate.

***11. Clarify how post-consummation CDs should be completed.***

TRID requires creditors to provide post-consummation CDs in certain instances. However, the form is not designed to disclose activities that occur after consummation, and the rule provides little guidance on how to complete disclosures provided after consummation. This could create consumer confusion, and the lack of clarity on what may and must change only exacerbates the issue by increasing risk and the potential for confusion. To address these issues, the Bureau should clarify disclosure requirements for these post-consummation CDs, including whether:

- The "best information reasonably available" standard requires that each disclosure be updated, even for changes that would not have triggered a new disclosure;

- Post-consummation changes to closing costs should affect amounts in the “At Closing” column and “Cash to Close” lines. For example, if a borrower paid a $40 deed recording fee at closing but that amount was refunded back to the borrower after consummation, the rule should clarify whether that refund should reduce the amount disclosed:
  - In the “At Closing” column and on the “Deed” line under E.01; and
  - In other disclosures affected by line E.01, including the Calculating Cash to Close and Summaries of Transactions tables on page 3 and, on page 2, the amounts disclosed on the following lines: E. Taxes and Other Government Fees, I. Total Other Costs (Borrower-Paid), Other Costs Subtotals, J. Total Closing Costs (Borrower-Paid), and Closing Costs Subtotals;
- Changes that can increase the finance charge and APR.

***12. Simplify requirements for completing the Cash to Close tables.***

The instructions for completing the cash to close table are overly complex and unnecessarily restrictive. The Bureau should relax requirements for completing the table so that the requirement is only to require that (1) Total Closing Costs and Closing Costs Paid Before Closing mirror the amount disclosed on page 2 of the LE and CD; (2) Seller Credits match the amount of general seller credits the seller will provide unless those amounts have already been disclosed or otherwise incorporated into amounts disclosed on page 2 of the LE and CD; and (3) the Cash to Close match the actual estimated Cash to Close (which should also match the amount disclosed at the bottom of page 3 on the CD).

***13. Simplify the requirements for completing the Written List of Providers.***

The requirements for the Written List of Providers are overly restrictive. In particular, the rule currently requires the list to “correspond to the required settlement services for which the consumer may shop.”[38] The Bureau should clarify that this is not a requirement to mirror the LE, which requires an itemization of various services that a single service provider performs and would lead to unnecessary duplication and confusion. Instead, lenders should only need to disclose a provider for each category of services. For example, lenders should only need to disclose a provider for “title and settlement services,” assuming the provider listed can perform or manage all required services. Lenders should not need to separately disclose providers for other services required by the title/settlement agent, such as notary or carrier services.

***14. Exempt Construction Financing.***

Institutions that engage in construction lending report that TRID’s disclosure requirements for construction and construction-to-permanent (CTP) loans remain convoluted, and required disclosures, such as “Cash to Close,” are inconsistent with actual amounts. Repeated attempts by the Bureau to clarify the disclosures for this type of financing have been inadequate.

In addition to the lack of regulatory clarity, construction lending is not a commoditized transaction; the precise terms and/or structure of these transactions vary greatly. Construction loans may be for initial construction (building the home where the borrower will reside) or

[38] Comment 19(e)(1)(vi)-3.

subsequent construction (such as rehabilitation or remodeling). Construction periods usually involve several disbursements of funds at disparate times throughout the project, some of which may include fees for mandatory inspections. Transactions also differ as to conversions: some provide that the obligation is paid at the conclusion of construction, and others provide for a conversion to permanent financing. Adding to these variations, there are local laws and requirements that create disparities in financing arrangements and methodologies. All of these variants result in loan products that do not conform to the extremely detailed and rigid disclosure structure of TRID. TRID was not designed to provide information to consumers for construction loans that involve negotiations, disparate disbursements of funds at times and in amounts that are unascertainable at the start, and interest-only payments to the lender by the consumer.

The Associations observe that the ongoing regulatory difficulties in construction lending have sparked a flight away from construction financing by traditional lenders. Those that remain must assume the risk that their loans could be subject to regulatory penalties or even litigation. In many instances, institutions do not do enough construction lending to justify establishing the expensive and complex compliance systems to support it. A lender that would have customer requests to finance two or three dozen construction projects may simply pull out of this market because those volumes do not justify the costs and risks to the institution.

The Associations recommend that the Bureau exempt construction lending from TRID, and classify these loans as temporary or bridge financing that are excluded from coverage. We believe that doing so would be consistent with other instances in which the Bureau has appropriately exercised it exemption authority. For example, the Bureau excluded reverse mortgage loans from TRID.[39] Similarly, the Bureau concluded that subjecting home equity lines of credit to TRID, "would likely result in confusion because many parts of the disclosures would be inapplicable to open-end credit transactions."[40] Finally, the Ability-to-Repay rule exempts construction loans with a phase of 12 months or less (with possible renewals of that temporary financing) of a construction-to-permanent loan.[41]

Construction lending is as much about project management as it is about financing. The Bureau should seek to balance product availability with consumer protection, and recognize that TRID's disclosure requirements are incompatible with the myriad arrangements consumers have with their general contractors. We recommend full exclusion of construction-only loans and the construction phase of construction-to-permanent loans.[42]

### *15. Clarify and simplify the "Product" disclosure and provide additional compliant disclosure examples for complex products.*

The "Product" disclosure requirements are ambiguous and complex, and applying a plain language interpretation appears to lead to confusing disclosures. The Bureau should simplify the requirements and clarify how they should be applied through sample forms.

[39] 78 Fed. Reg. at 79794.
[40] 78 Fed. Reg. at 79795.
[41] 12 CFR § 1026.43(a)(1)-(3)(ii).
[42] The regulations could allow for the *optional* use of the existing TRID instructions regarding construction loans, or alternatively, the old TILA and RESPA disclosures, as per previous Regulation Z and X rules and instructions.

For example, the TRID Rule leads to particularly confusing disclosures for construction transactions and other transactions where interest rate adjustments lead to odd results.[43] To lessen the likelihood of consumer confusion and eliminate unnecessary complexity, the Bureau should make clear that a construction-to-permanent loan that has a fixed rate for both periods can be disclosed as a fixed rate loan, rather than an ARM. While it is possible that the fixed rate may theoretically change, it is functionally impossible to disclose a permanent rate loan with all the required disclosures for an adjustable rate mortgage. For example, the Bureau's December 2019 guidance that creditors should disclose the AIR table for CTP loans with a permanent phase fixed interest rate that may change at conversion, and disclose the Fannie Mae required net yield as the index in the table is unworkable and would be extremely confusing to consumers.

The Bureau should also consider creating guidance clarifying that a one-time close CTP transaction with the following characteristics can be disclosed as "1 Year Interest Only, 5/1 Adjustable Rate" without regard to whether or not the interest rate on the construction phase is similar or different than the interest rate on the permanent phase:

- An initial 12-month construction phase with interest only and a fixed introductory rate; and
- Then modifies to the 30-year amortizing phase based on a 5/1 ARM.

This would reduce consumer confusion by matching the "Product" used in the TRID disclosures to the terms of the Promissory Note, Deed, and ARM Disclosure required by Fannie Mae.

As another example, we understand that some systems are set up to disclose a product that is commonly known as a 5/1 ARM as a 0/1 ARM where the fixed interest rate for the first five years of the loan is not lower than the fully indexed rate. This is confusing for consumers. To resolve this issue, the Bureau should define the term "introductory rate" for purposes of completing the Product disclosure to mean the initial fixed rate of an ARM loan, regardless of whether the initial rate is lower than the fully indexed rate.[44]

[43] Please note our request that the Bureau exempt construction lending from TRID (Appendix, #14).

[44] The regulation is ambiguous because: (1) the first number in the Product disclosure for an Adjustable Rate loan on page 1 is "the duration of any introductory rate;" and (2) introductory rate is not defined in the TRID Rule. 12 C.F.R. § 1026.37(a)(10)(iv). Elsewhere in Regulation Z, "introductory rate" is defined for purposes of the advertising requirements for credit cards and other open-end (not home-secured) products as "a promotional rate offered in connection with the opening of an account." 12 C.F.R. § 1026.16(g)(2)(ii). A "promotional rate," in turn, "any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions." 12 C.F.R. § 1026.16(g)(2)(i) (emphasis added).