

# CFPB Director Offers Cold Comfort on TRID

April 26, 2016

The Consumer Financial Protection Bureau's TILA-RESPA Integrated Disclosure (TRID) Rule took effect October 3, 2015. The TRID Rule requires two new forms – the Loan Estimate and Closing Disclosure – in connection with residential mortgage loans, replacing the old TILA disclosures, good faith estimate, and HUD-1 Settlement statement. It also establishes detailed requirements as to the timing, content, and furnishing of the new forms. Despite months of industry preparation, the TRID rule's implementation has been fraught with uncertainty. While closings have not ground to a halt as some predicted, questions remain and reports of the lack of compliance – and perhaps the industry's inability to comply – with the rule abound. Accordingly, on December 21, 2015, the Mortgage Bankers Association (MBA) wrote to CFPB to outline the issues, express the industry's concerns, and propose an interim solution. The problem is that, in reviewing loans for compliance, due diligence companies have adopted an "extremely conservative interpretation" of the TRID rule, resulting in a 90 percent non-compliance rate. This could render loan originators unable to move loans to the secondary market, or force them to sell them at substantial discounts, ultimately leading to liquidity problems. It is also unknown how government-sponsored enterprises (GSEs) will interpret the TRID rule, and whether they will demand repurchase and indemnification for the lack of technical compliance. The MBA proposed written clarification on a lender's ability to correct a variety of these technical errors. On December 29, 2015, Director Cordray responded, offering reassurances that the "first few months" of examinations would be corrective, not punitive. He also noted the GSEs' intent not to exercise remedies where good faith efforts are present. He downplayed the potential for civil liability, citing caps on statutory damages under TILA. Investors rejecting loans based on technical TRID rule violations, he concluded, would be doing so for reasons unrelated to potential TRID rule liability. A good faith implementation period provides some comfort. However, the director's letter is not a compliance bulletin or supervisory memo and does not appear to be an official interpretation of the TRID rule. Moreover, his comments do not consider potential liability for actual damages and attorney's fees. As a result, the TRID rule's future enforcement, its impact on the secondary market, and the potential for civil liability remain uncertain.

## Authored By

---



Christopher Smart

## Related Practices

[Consumer Finance](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.