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CFPB Director Offers Cold Comfort on TRID

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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

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