THE TRID RULE: IMPACT AND CONSEQUENCES ON THE RESIDENTIAL MORTGAGE LENDING MARKET

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Introduction and Background

Residential mortgage lenders have long been required to disclose to their borrowers (i) the cost of credit to the consumer and (ii) the cost to the consumer of closing the loan transaction. These regulatory disclosure requirements arise from two statutes – the Real Estate Settlement Procedures Act of 1974 (RESPA) and the Truth In Lending Act (TILA). The regulations were designed to protect consumers by disclosing to them the costs of a mortgage loan (TILA) and the cost of closing a loan transaction (RESPA). These disclosures have in the past been enforced by multiple federal agencies (the Federal Reserve Board, Housing and Urban Development, the Office of Thrift Supervision, the Federal Trade Commission, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration) and provided to consumers on multiple forms with sometimes overlapping information (the Truth in Lending disclosures, the Good Faith Estimate, and the HUD-1 Settlement Statement).

The Dodd Frank Act and CFPB

In 2010, the Dodd Frank Wall Street Reform and Consumer Protection Act (the Dodd Frank Act) created the Consumer Financial Protection Bureau (CFPB), consolidated the consumer protection functions of the above-federal agencies in the CFPB, transferred rulemaking authority under the statutes to the CFPB, and amended section 4(a) of RESPA and section 105(b) of TILA requiring CFPB to issue an integrated disclosure rule, including the disclosure requirements under TILA and sections 4 and 5 of RESPA. The purpose of the integration was to streamline the process and ensure that the disclosures are easy to read and comprehend so that consumers can "understand the costs, benefits, and risks" associated with mortgage loan transactions, in light of the "facts and circumstances." 12 U.S.C. 5532(a).

The TRID Rule

The CFPB issued a propose rule in July, 2012. The final TILA-RESPA integrated disclosure (TRID) rule was published in late 2013, amended in February, 2015, and went into effect on October 3, 2015. More than simply streamlining the existing process, the TRID rule replaced the entire disclosure structure, changing the form, timing, and content of the disclosures.

Scope – The TRID rule applies to most closed-end consumer mortgages, but not to home equity loans, reverse mortgages, or mortgages secured by anything other than real property (dwellings, mobile homes, etc). It does not apply to lenders who make five or less mortgage loans a year. It does, however, apply to most construction loans that are closed-end consumer credit transactions secured by real property, but not to those that are open-end or commercial loans.

Forms – The TRID rule replaced the forms that had been used for closing mortgage loans with two new, mandatory forms. The **Loan Estimate** or H-24 form (attached as Exhibit 1) replaces the former Good Faith Estimate and the early TILA disclosure form. The **Closing Disclosure** or H-25 form (attached as Exhibit 2) replaces the HUD-1 Settlement Statement and the final TILA disclosure form.

Content – Among other information, the three page Loan Estimate must contain (i) the loan terms, (ii) the projected payments, (iii) the itemized loan costs, (iv) any adjustable payments or interest rates, (v) the closing costs, and (vi) the amount of cash to close. If actual amounts are not available, lenders must estimate. Among other information, the Closing Disclosure must contain (i) loan terms, (ii) projected payments, (iii) loan costs, (iv) closing costs, (v) cash to close, and (vi) adjustable payments and adjustable rates as applicable. The required forms are rigid and require the disclosure of this information in a detailed and precise format.

Timing – The TRID rule requires a creditor (or mortgage broker) to deliver (in person, mail or email) a Loan Estimate (together with a copy of the CFPB's Home Loan Toolkit booklet) **within three business days** of receipt of a consumer's loan application and no later than seven business days before consummation of the transaction. A loan application consists of six pieces of information from the consumer: (i) name, (ii) income, (iii) social security number, (iv) property address, (v) estimated value of property, and (vi) amount of mortgage loan sought. 12 C.F.R. §1026.2 (a) (3)(ii). After receiving an application, a creditor may not ask for any additional information or impose any fees (other than a reasonable fee needed to obtain the consumer's credit score) until it has delivered the Loan Estimate.

The TRID rule also requires a creditor (or settlement agent) to deliver (in person, mail or email) a Closing Disclosure to the consumer no later than **three business days** before the consummation of the loan transaction. The Closing Disclosure must contain the actual terms of the loan and actual cost of the transaction. Creditors are required to act in good faith and use due diligence in obtaining this information. Although creditors may rely on third-parties such as settlement agents for the information disclosed on the Loan Estimate and Closing Disclosure, the TRID rule makes creditors ultimately responsible for the accuracy of that information.

Tolerance and Redisclosure – If a charge ultimately imposed on the consumer is equal to or less than the amount disclosed on the Loan Estimate, it is generally deemed to be in good faith. If a charge ultimately imposed on the consumer is greater than the amount disclosed on the Loan Estimate, the disclosure is generally deemed not in good faith, subject to certain tolerance limitations. For example, there is zero tolerance for (i) any fee paid to the creditor, broker, or affiliate, and (ii) any fee paid to a third-party if the creditor did not allow the consumer to shop for the service. Creditors may charge more than the amount disclosed on the Loan Estimate for third-party service fees as long as the charge is not paid to an affiliate of the creditor, the consumer had is permitted to shop for the service, and the increase does not exceed 10 percent of the sum of all such third-party fees. Finally, creditors may charge an amount in excess of the amount disclosed on the Loan Estimate, without any limitation, for amounts relating to (i) prepaid interest, (ii) property insurance premiums, (iii) escrow amounts, (iv) third-party service providers selected by the consumer and not on the creditor's list of providers or services not required by the creditor, (iv) and transfer taxes.[1] If the fees and charges imposed on the consumer at closing exceed the fees and charges disclosed on the Loan Estimate, subject to the tolerance levels, the creditor is required to refund the consumer within 60 days of consummation of the loan.

If the information disclosed on the Closing Disclosure changes prior to closing, the creditor is required to provide a corrected Closing Disclosure. An additional three-day waiting period is required with a corrected Closing Disclosure if there is an increase in the interest rate of more than 1/8 of a percent for fixed rate loans or 1/4 of a percent for adjustable rate loans, a change in loan product, or a prepayment penalty is added to the loan. For all other changes, the corrected Closing Disclosure must be provided prior to consummation. If a change to a fee occurs after consummation, then a corrected Closing Disclosure must be delivered to the consumer within 30 calendar days of receiving information of the change. If a clerical error is identified, then a corrected Closing Disclosure must be delivered to the consumer within 60 calendar days of consummation.

Impact on Relationships Between Lenders and Vendors

The TRID rule is detailed and highly technical and the CFPB has published very little official guidance as to the interpretation of the rule. As a result, the various members of the industry are interpreting the rule widely differently and applying it with the according lack of uniformity. An example of the kinds of disagreement arising is the issue of whether the final numbers can be massaged in order to avoid re-disclosure and delivery of a new Closing Disclosure at closing or after. This has led to significant conflicts between creditors and settlement agents as to what the TRID rule requires. Some have described it as a "battle field" with settlement agent's following creditor's varying instructions but documenting "everything."

Impact on Secondary Mortgage Market

The implementation of the TRID rule has also apparently begun to cause delays in closing consumer mortgage loan transactions, with closing times up month over month and year over year since October. Loan originators are also reporting decreases in earnings and attributing some of that decrease to implementation of the TRID rule. Moreover, Moody's has reported that, because some third-party due diligence companies have been strictly applying their own interpretations of the TRID rule in reviewing loan transactions for "technical" violations (i.e., inconsistent spelling conventions and failure to include a hyphen), these firms have found that up to 90% of reviewed loan transactions did not fully comply with the TRID rule requirements. The fact that most of these compliance issues appear to be technical and non- material has not dampened concerns.

MBA Letter

Indeed, these concerns were set forth by President and CEO of the Mortgage Bankers Association David Stevens in a letter to CFPB Director Richard Codray on December 21, 2015 (letter attached as Exhibit 3). In the letter, Stevens identified the problem, proposed a possible interim solution, and asked for ongoing guidance. The problem, according to Stevens, is that certain due diligence companies have adopted an "extremely conservative interpretation" of the TRID rule, resulting in up to a 90% non-compliance rate. This could put loan originators in the position of being unable to move loans to the secondary market or having to sell them at substantial discounts, and could ultimately lead to significant liquidity problems. It is also unknown how the government sponsored entities (GSEs) will interpret the TRID rule, and whether they too will adopt such conservative interpretations and ultimately demand loans be repurchased and seek indemnification for the lack of technical compliance. Stevens proposed written clarification on a lender's ability to correct a variety of these technical errors, but also noted a significant need for ongoing guidance and additional written clarifications.

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[1] There had been disagreement on whether transfer taxes (property taxes, HOA dues, condominium or cooperative fees) were subject to tolerances or not. On February 10, 2016, in a rare instance, the CFPB issued an amendment to the supplementary information to the TRID rule to correct a "typographical error" and clarify this issue, amending a sentence that had read that these charges "are subject to tolerances" to read that such charges "are not subject to tolerances" (emphasis added).

CFPB's Response

On December 29, 2015, Director Cordray responded to Stevens's letter, reassuring him that the "first few months" of examinations would be corrective, not punitive, and focused on whether creditors have made "good faith efforts to come into compliance with the rule." Cordray also noted the GSEs have indicated that they do not intend to exercise repurchase or indemnification remedies where good faith efforts to comply are present.[2] Cordray also addressed the ability to issue a corrected closing disclosure in order to correct "certain non- numerical clerical errors" or "as a component of curing any violations of the monetary tolerance limits, if they exist." Interestingly, in this context Cordray raised the issue of liability for statutory and class action damages, noting that "consistent with existing . . . TILA principles, liability for statutory and class action damages would be assessed with reference to the final closing disclosure issued, not to the loan estimate, meaning that a corrected closing disclosure could, in many cases, forestall any such private liability."

Cordray went on to say that, despite the fact that TRID integrates the disclosures in TILA and RESPA, it did not change the "prior, fundamental principles of liability" under either statute and as a result that:

(i) there is no general assignee liability unless the violation is apparent on the face of the disclosure documents and the assignment is voluntary. 15 U.S.C. §1641(e).

(ii) By statute, TILA limits statutory damages for mortgage disclosures, in both individual and class actions to failure to provide a closed-set of disclosures. 15 U.S.C. §1640(a).

(iii) Formatting errors and the like are unlikely to give rise to private liability unless the formatting interferes with the clear and conspicuous disclosure of one of the TILA disclosures listed as giving rise to statutory and class action damages in 15 U.S.C. §1640(a).

(iv) The listed disclosures in 15 U.S.C. §1640(a) that give rise to statutory and class action damages do not include either the RESPA disclosures or the new Dodd-Frank Act disclosures, including the Total Cash to Close and Total Interest Percentage.

Cordray concluded his letter by noting that "the risk of private liability to investors is negligible for good-faith formatting errors and the like" and that "if investors were to reject loans on the basis of formatting and other minor errors . . . they would be rejecting loans for reasons unrelated to potential liability" associated with the disclosures required by the TRID rule.

While the promise of a good faith implementation period and the assurance that TRID does not expand TILA liability to RESPA disclosures offers some comfort to creditors, Cordray's letter is not a compliance bulletin or supervisory memo, was not published in the Federal Register, and does not appear to be an official interpretation of the TRID rule that would bind the CFPB or any court. Moreover, his comments focus primarily on statutory damages and do not take into consideration potential liability for actual damages and, importantly, attorney's fees.

Potential Areas of Liability

Despite these assurances, creditors still must concern themselves with potential liability for TRID violations. The following is list of the main sources of potential liability for TRID violations.

Regulatory (CFPB) – The CFPB has the ability investigate potential violations via its authority to issue civil investigative demands, a form of administrative subpoena. 12 U.C.C. §5562(c). Upon a determination of a violation, the CFPB can issues cease-and-desist orders, require creditors to adopt compliance and governance procedures, and order restitution and civil penalty damages. CFPB may impose penalties ranging from $5,000 per day to $1 million per day for knowing violations.

(A) First tier - For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

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[2] In fact, Fannie Mae and Freddie Mac both issued similar letters on October 6, 2015 advising that "until further notice" they would "not conduct routine post-purchase loan file reviews for technical compliance with TRID," as long as creditors are using the correct forms and exercising good faith efforts to comply with the rule. In these letters, the GSEs further agreed not to "exercise contractual remedies, including repurchase" for non-compliance except where the required form is not used or if a practice impairs enforcement of the loan or creates assignee liability and a court, regulator, or other body determines that the practice violates TRID. Similarly, the Federal Housing Administration issued a letter that "expires" April 16, 2016, agreeing "not to include technical TRID compliance as an element of its routine quality control reviews," but noting that it does expect creditors to use the required forms and use good faith efforts to comply with TRID.

(B) Second tier - Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) Third tier - Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

12 U.S.C. § 5565(c)(2).

Other Governmental Liability – Creditors could also face potential additional claims pursuant to the False Claims Act and the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA).

Consumer Actions – While statutory damages may be limited under TILA to $4,000 in individual suits and the lesser of 1% of company value or $1 million in class actions, that does not account for potential liability for actual damages and attorney's fees.

Contractual Liability – Absent a specific contractual carve out for technical violations of TRID, originating lenders and creditors may also face potential liability for violation of contractual representations that the loans they are selling were originated "in compliance with law."

Conclusion

The problem with the TRID rule is that, like the legendary metal bed of the Attic bandit Procrustes, it is a one size fits all regulation and industry participants are going to get stretched or lopped in the process of attempting to fit every transaction into the regulation's apparently inflexible requirements. Time may well bring additional CFPB guidance, either in the form of the CFPB's formal, binding interpretations of the rule or in the form of regulatory decisions. Such guidance may then give industry participants a better understanding of how to make and close mortgage loans and avoid liability in process. In the meantime, we can expect further delays, disagreements, and, ultimately, enforcement and litigation.

EXHIBIT 1

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
SALE PRICE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ ____________
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms

		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest Mortgage Insurance Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*

Costs at Closing

Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED
APPLICANTS

PROPERTY
EST. PROP. VALUE

LOAN TERM
PURPOSE
PRODUCT
LOAN TYPE ☐ Conventional ☐ FHA ☐ VA ☐ ______________
LOAN ID #
RATE LOCK ☐ NO ☐ YES, until

Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time*	**This estimate includes** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: **In escrow?** *See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.*

Costs at Closing

Estimated Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for days @)
Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.
Mortgage Insurance per month for mo.
Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)	
Closing Costs Financed (Paid from your Loan Amount)	
Down Payment/Funds from Borrower	
Deposit	
Funds for Borrower	
Seller Credits	
Adjustments and Other Credits	
Estimated Cash to Close	

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for   days @   )
Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)	
Closing Costs Financed (Paid from your Loan Amount)	
Down Payment/Funds from Borrower	
Deposit	
Funds for Borrower	
Seller Credits	
Adjustments and Other Credits	
Estimated Cash to Close	

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for days @)
Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance	per month for	mo.
Mortgage Insurance	per month for	mo.
Property Taxes	per month for	mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)	
Closing Costs Financed (Paid from your Loan Amount)	
Down Payment/Funds from Borrower	
Deposit	
Funds for Borrower	
Seller Credits	
Adjustments and Other Credits	
Estimated Cash to Close	

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for days @)
Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.
Mortgage Insurance per month for mo.
Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Paid from your Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Additional Information About This Loan

LENDER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years		Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)		Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)		The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Homeowner's Insurance This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment If your payment is more than ___ days late, we will charge a late fee of ________________
____

Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing We intend
☐ to service your loan. If so, you will make your payments to us.
☐ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date

Additional Information About This Loan

LENDER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

Comparisons	**Use these measures to compare this loan with other loans.**
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
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Assumption If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Homeowner's Insurance This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment If your payment is more than ___ days late, we will charge a late fee of ________________
____

Loan Acceptance You do not have to accept this loan because you have received this form or signed a loan application.

Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing We intend
☐ to service your loan. If so, you will make your payments to us.
☐ to transfer servicing of your loan.

Additional Information About This Loan

LENDER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years		Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)		Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)		The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Assumption
If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Late Payment
If your payment is more than ___ days late, we will charge a late fee of ________________
____

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing
We intend
☐ to service your loan. If so, you will make your payments to us.
☐ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature ______________ Date ______

Co-Applicant Signature ______________ Date ______

Additional Information About This Loan

LENDER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/___ LICENSE ID
LOAN OFFICER
NMLS/___ LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Assumption

If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Late Payment

If your payment is more than ___ days late, we will charge a late fee of ________________
____

Loan Acceptance

You do not have to accept this loan because you have received this form or signed a loan application.

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing

We intend
☐ to service your loan. If so, you will make your payments to us.
☐ to transfer servicing of your loan.

EXHIBIT 2

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued	**Borrower**	**Loan Term**
Closing Date		**Purpose**
Disbursement Date		**Product**
Settlement Agent	**Seller**	
File #		**Loan Type** ☐ Conventional ☐ FHA ☐ VA ☐ _____________
Property		
	Lender	**Loan ID #**
Sale Price		**MIC #**

Loan Terms

		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	**This estimate includes** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: **In escrow?** *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing

Closing Costs	Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information	Loan Information	
Date Issued		**Borrower**	**Loan Term**	
Closing Date			**Purpose**	
Disbursement Date			**Product**	
Settlement Agent		**Seller**		
File #			**Loan Type**	☐ Conventional ☐ FHA ☐ VA ☐ _____________
Property				
		Lender	**Loan ID #**	
Appraised Prop. Value			**MIC #**	

Loan Terms

		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	**This estimate includes** / **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

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Closing Date				**Purpose**	
Disbursement Date				**Product**	
Settlement Agent		**Seller**			
File #				**Loan Type**	☐ Conventional ☐ FHA ☐ VA ☐ _____________
Property					
		Lender		**Loan ID #**	
Estimated Prop. Value				**MIC #**	

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*		
		Does the loan have these features?
Prepayment Penalty		
Balloon Payment		

Projected Payments

Payment Calculation	
Principal & Interest	
Mortgage Insurance	
Estimated Escrow *Amount can increase over time*	
Estimated Total Monthly Payment	
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	**This estimate includes** / **In escrow?** ☐ Property Taxes ☐ Homeowner's Insurance ☐ Other: *See Escrow Account on page 4 for details. You must pay for other property costs separately.*

Costs at Closing

Closing Costs		Includes in Loan Costs + in Other Costs – in Lender Credits. *See page 2 for details.*
Cash to Close		Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges					
01 % of Loan Amount (Points)					
02					
03					
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
09					
10					
C. Services Borrower Did Shop For					
01					
02					
03					
04					
05					
06					
07					
08					
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					

Other Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
E. Taxes and Other Government Fees					
01 Recording Fees Deed: Mortgage:					
02					
F. Prepaids					
01 Homeowner's Insurance Premium (mo.)					
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest (per day from to)					
04 Property Taxes (mo.)					
05					
G. Initial Escrow Payment at Closing					
01 Homeowner's Insurance per month for mo.					
02 Mortgage Insurance per month for mo.					
03 Property Taxes per month for mo.					
04					
05					
06					
07					
08 Aggregate Adjustment					
H. Other					
01					
02					
03					
04					
05					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					

J. TOTAL CLOSING COSTS (Borrower-Paid)					
Closing Costs Subtotals (D + I)					
Lender Credits					

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Closing Costs Financed (Paid from your Loan Amount)			
Down Payment/Funds from Borrower			
Deposit			
Funds for Borrower			
Seller Credits			
Adjustments and Other Credits			
Cash to Close			

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing	
01 Sale Price of Property	
02 Sale Price of Any Personal Property Included in Sale	
03 Closing Costs Paid at Closing (J)	
04	
Adjustments	
05	
06	
07	
Adjustments for Items Paid by Seller in Advance	
08 City/Town Taxes to	
09 County Taxes to	
10 Assessments to	
11	
12	
13	
14	
15	
L. Paid Already by or on Behalf of Borrower at Closing	
01 Deposit	
02 Loan Amount	
03 Existing Loan(s) Assumed or Taken Subject to	
04	
05 Seller Credit	
Other Credits	
06	
07	
Adjustments	
08	
09	
10	
11	
Adjustments for Items Unpaid by Seller	
12 City/Town Taxes to	
13 County Taxes to	
14 Assessments to	
15	
16	
17	
CALCULATION	
Total Due from Borrower at Closing (K)	
Total Paid Already by or on Behalf of Borrower at Closing (L)	
Cash to Close ☐ From ☐ To Borrower	

SELLER'S TRANSACTION

M. Due to Seller at Closing	
01 Sale Price of Property	
02 Sale Price of Any Personal Property Included in Sale	
03	
04	
05	
06	
07	
08	
Adjustments for Items Paid by Seller in Advance	
09 City/Town Taxes to	
10 County Taxes to	
11 Assessments to	
12	
13	
14	
15	
16	
N. Due from Seller at Closing	
01 Excess Deposit	
02 Closing Costs Paid at Closing (J)	
03 Existing Loan(s) Assumed or Taken Subject to	
04 Payoff of First Mortgage Loan	
05 Payoff of Second Mortgage Loan	
06	
07	
08 Seller Credit	
09	
10	
11	
12	
13	
Adjustments for Items Unpaid by Seller	
14 City/Town Taxes to	
15 County Taxes to	
16 Assessments to	
17	
18	
19	
CALCULATION	
Total Due to Seller at Closing (M)	
Total Due from Seller at Closing (N)	
Cash ☐ From ☐ To Seller	

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☐ will not allow assumption of this loan on the original terms.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☐ does not have a demand feature.

Late Payment
If your payment is more than ___ days late, your lender will charge a late fee of ____

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
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☐ do not have a negative amortization feature.

Partial Payments
Your lender
☐ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
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If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in ___________________________

____

____

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☐ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:
Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.
Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment		The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

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Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	
Monthly Principal and Interest Payments	
First Change/Amount	
Subsequent Changes	
Maximum Payment	

Adjustable Interest Rate (AIR) Table

Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Additional Information About This Loan

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Index + Margin	
Initial Interest Rate	
Minimum/Maximum Interest Rate	
Change Frequency	
First Change	
Subsequent Changes	
Limits on Interest Rate Changes	
First Change	
Subsequent Changes	

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

?

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature   Date   Co-Applicant Signature   Date

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
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Loan Acceptance
You do not have to accept this loan because you have received this form or signed a loan application.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
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Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
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Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature   Date   Co-Applicant Signature   Date

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	
Finance Charge. The dollar amount the loan will cost you.	
Amount Financed. The loan amount available after paying your upfront finance charge.	
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	

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Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Loan Acceptance
You do not have to accept this loan because you have received this form or signed a loan application.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name					
Address					
NMLS ID					
___ License ID					
Contact					
Contact NMLS ID					
Contact ___ License ID					
Email					
Phone					

EXHIBIT 3

December 21, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Director Cordray:

We appreciate the tremendous work the CFPB has undertaken developing, implementing and clarifying the KBYO/TRID regulations. However, lingering misperceptions and technical ambiguities in the regulations have resulted in significant market disruptions in certain channels over the last month. We fear this disruption could develop into significant liquidity issues in the mortgage market without additional clarity conveyed to market participants by the Bureau as soon as possible, ideally this week. In addition we seek a commitment from CFPB to substantively re-engage with industry after the holidays to provide a process for ongoing written regulatory clarifications during the "diagnostic period" to address a range of KBYO interpretation questions that persist amongst lenders. Below, we establish the rationale for why we believe these steps are needed, with a focus on our proposed interim solution we ask you to implement as quickly as possible.

The Problem Today

Many MBA members are reporting that some investors have put in place strict KBYO compliance standards that are resulting in very high fail rates on closed loans delivered for sale. Moody's recently reported that approximately 90 percent of one sample of loans did not fully comply with KBYO requirements. MBA is currently surveying our members to get a better sense of the number of errors and the standards being used by private investors and correspondent aggregators and the overall extent to which they are refusing to purchase, or demanding repurchase, of closed loans.

Today, the jumbo loan secondary market appears to be experiencing the most acute disruption, specifically for whole-loan trading[1] (WLT) and private-label securitizations (PLS). The reason is simple. Third party due diligence firms that are assigned by either ratings agencies or the investors themselves to perform quality assurance reviews on loans delivered into WLT, PLS and credit risk transfer (CRT) pools are failing loan deliveries in large quantities. These firms have taken an extremely conservative interpretation of several aspects of the KBYO rule and the physical disclosure display requirements. In addition, because a growing percentage of GSE loans sales are involved in CRTs[2] that require third party

[1] Whole loan trading is the bulk purchase of a pool of closed loans by an investor from a large aggregator of loans, in this case Jumbo loans.

[2] Credit risk transfers are a key strategic goals for FHFA that involves having private investors take expected losses on Agency MBS while the GSEs retain catastrophic, unexpected losses on the pool.

due diligence reviews, the impact of high TRID fail rates is also being felt in the conforming (non-jumbo) market.

Many of the errors being identified are minor or technical in nature – issues with the alignment or shading of forms, rounding errors, time stamps with the wrong time zone, or check boxes that are improperly completed on the LE. Compounding these minor errors is investor uncertainty regarding whether, and under what conditions, a Closing Disclosure (CD) can cure or correct the Loan Estimate (LE) for those data fields that are not subject to either tolerances or re-disclosures enumerated under the TRID rules.

Implications for the Market

The potential impact on the markets and consumers is troubling. Problems are most acute in the correspondent lending channel where several hundred smaller lenders sell loans to larger aggregators and investors. The correspondent channel currently accounts for about 35% of the single-family mortgage market. Each time a loan is rejected for purchase, an independent mortgage banker has a loan it cannot sell or must sell at a deep discount in a "scratch and dent" market for "TRID-failed" loans that has not yet developed. Similarly, community banks and credit unions that rely on secondary market sales for their mortgage operations have only limited balance sheet capacity for long-term fixed-rate loans that their aggregators have rejected.

If these conditions persist, many lenders will experience liquidity issues as unsold or repurchased loans clog warehouse lines and balance sheets. Importantly, IMBs, community banks and credit unions together account for more than 50% of loans used for home purchases. Although some lenders may have multiple investor options, these investors often have different standards in place for KBYO compliance. As a result, originators will not always be able to deliver loans to the investor with the best price (and hence the best rate for the consumer), and instead must deliver based on investors' KBYO interpretations. For consumers, these dynamics will increase both the costs of origination and the interest rates they pay.

It is not clear that the impact will be limited to the jumbo market, or to the correspondent channel alone. The risk of broader disruptions cannot be discounted. Rising inventories of unsold loans on IMB warehouse lines and bank balance sheets could impact in fairly short order the entire mortgage operations, not just the lenders' jumbo or correspondent channels. Some lenders could see their warehouse credit lines reduced because of concerns over rising inventories of unsold loans. Skittish warehouse credit line providers could initiate a general pullback from the market out of fear that the sector has become too uncertain and too risky. Further tightening of liquidity would further raise the cost of the mortgage credit in an already rising rate environment.

Finally, it is unknown how the GSEs and HUD will view KBYO compliance. For now the GSEs and HUD are honoring the grace periods but soon they will begin applying their own interpretations of KBYO to their own post-close quality control, repurchase (GSE), and claims review (HUD) processes. Moreover, compliance with TRID appears to be a "life of loan" warranty for the GSEs. Should the GSEs and HUD choose to make interpretations as conservative as the third party due diligence firms and demand repurchase or indemnification, a very significant market "event" cannot be ruled out.

Proposed Interim Solution

While the problem we are facing is potentially serious, we do believe there is an interim solution that would mitigate the specific events described above. This solution would give investors enhanced certainty, buy time to continue accumulating data on KBYO problems, and serve as a bridge until we can have a more robust dialog on additional clarifications after the holidays.

As an interim solution, we've attached for your consideration a draft written clarification (compliance bulletin, supervisory memo, or blog post) issued by the CFPB that would educate investors, due diligence companies and lenders on critical methods lenders can undertake to cure KBYO errors during the diagnostic period. The draft is in keeping with your statement that enforcement of the Know Before You Owe ("KBYO") rule enforcement will be "diagnostic and corrective, and not punitive" during the good faith implementation period. The document would emphasize the following:

- Errors on the LE may be corrected by providing a Closing Disclosure that conforms in good faith to the KBYO rule's requirements. For example, if a creditor failed to display the Total Interest Paid ("TIP") percentage due to a rounding error on the LE, but properly displayed the value on the CD, the CD would correct the error from the LE and the creditor is not required to take any further action to correct the error. This does not relieve the lender of the obligation to provide refunds to borrowers whenever there are tolerance violations.
- Lenders may correct numeric errors in the final CD by providing a corrected CD and, if there is an error that affects the APR, finance charge or total closing costs, ensure that the consumer does not pay more than as disclosed.
- Lenders may also continue to use their authority under the KBYO rule to correct non numeric clerical errors and must make post-consummation corrections to charges.
- Lenders may also continue to correct errors and unintentional violations as permitted by the Truth-in-Lending Act.

Simply put, we feel this interim solution would provide investors and due diligence firms the clarity they require in the near term to cure KBYO errors on both existing loans and newly originated ones. It would help get the Jumbo WLT, PLS and upfront CRT markets back on their feet, and stave off any spread to the broader market for now.

Need for Ongoing Guidance

We commit to vigorously continuing to accumulate data regarding where we see other risks emerging in the system resulting from KBYO implementation. We would ask the Bureau, in turn, commit to having your team engage with us in a robust dialogue about where additional written clarifications may be needed during the break-in compliance period to ensure more consistent interpretations of the rule by all market participants. We will assist in any way we can to disseminate interpretations to the industry.

Conclusion

It is our sincere hope that you will consider the interim solution we've proposed to be a modest, reasonable request, addressing a genuine market problem, which would have significant market benefits that vastly outweigh any risk of harm to consumers. We appreciate our ongoing tradition of an open and collaborative dialog. We look forward to following up immediately on this pressing matter so that we may all enjoy the holidays knowing that our mortgage markets are operating in a safe and sound fashion for consumers.

Sincerely,

David Stevens, CMB
President and Chief Executive Officer

CC: Patricia McClung, Assistant Director, Mortgage Markets

EXHIBIT 4

cfpb Consumer Financial Protection Bureau

1700 G Street, N.W., Washington, DC 20552

December 29, 2015

David Stevens
President and Chief Executive Officer
Mortgage Bankers Association
1919 M Street, N.W., 5th Floor
Washington, D.C. 20036

Dear Mr. Stevens:

Thank you for your letter of December 21, 2015, regarding implementation of the Bureau's Know Before You Owe mortgage disclosure rule. The Bureau greatly appreciates the MBA's continuing constructive engagement in this area and shares the MBA's interest in ensuring a smooth and effective implementation of the rule for all parties.

As you know, the Bureau has been working closely with you and other market participants to monitor the industry's progress toward full implementation since issuance of the rule in November 2013. We have continued to work closely with you and others since the effective date of October 3, 2015. We appreciate the information you have brought to us over the many meetings between our staffs, including multiple discussions with the MBA and its members in the last month, and are committed to continuing to engage with you and your members in robust dialogue, as you suggest. We are also continuing to dedicate significant resources in support of industry's implementation in this area, including provision of guidance to all market participants. We will continue to assess how we can best provide guidance to market participants and acknowledge your ongoing assistance in identifying areas of opportunity for us.

We recognize that the mortgage industry needed to make significant systems and operational changes to adjust to the new requirements and that implementation requires extensive coordination with third parties. We appreciate that the mortgage industry has dedicated substantial resources to understand the rules, adapt systems, and train personnel in a serious effort to get it right. As with any change of this scale, despite the best of efforts, there inevitably will be inadvertent errors in the early days. That is why the Bureau and the other regulators have made clear that our initial examinations for compliance with the rule will be sensitive to the progress industry has made. In particular, our examiners will be squarely focused on whether companies have made good faith efforts to come into compliance with the rule. All of the regulators have indicated that their examinations for compliance in the first few months of implementing the new rule will be corrective and diagnostic, rather than punitive. This position is consistent with our approach to supervision and enforcement of the rules implementing title XIV of the Dodd-Frank Act.

To facilitate smooth implementation of the rule, we have worked and continue to work with the Federal Housing Finance Agency (FHFA), the government-sponsored entities (GSEs), and the Federal Housing Administration (FHA) in an effort to ensure that implementation of the rule will not disrupt the secondary market. They have made clear that they will not conduct routine post-purchase loan file reviews for technical compliance and do not intend to exercise contractual remedies, including repurchase, for non-compliance with the Know Before You Owe mortgage disclosure rule where a lender is making good faith efforts to comply.

Your letter asks about cure provisions for violations of the rule. The Know Before You Owe mortgage disclosure rule provides for the issuance of a corrected closing disclosure, even after closing. This can be used, for example, to correct non-numerical clerical errors or as a component of curing any violations of the monetary tolerance limits, if they exist. As a general matter, consistent with existing Truth in Lending Act (TILA) principles, liability for statutory and class action damages would be assessed with reference to the final closing disclosure issued, not to the loan estimate, meaning that a corrected closing disclosure could, in many cases, forestall any such private liability.

In addition to the cure provisions contained in the rule, the Truth in Lending Act itself contains provisions for the correction of errors. These provisions continue to apply to the integrated disclosures. For example, TILA has long permitted creditors to cure violations, provided the creditor notifies the borrower of the error and makes appropriate adjustments to the account before the creditor receives notice of the violation from the borrower. 15 U.S.C. 1640(b). Similarly, TILA provides an exception from liability for unintentional errors, subject to certain conditions. 15 U.S.C. 1640(c).

Furthermore, while the Know Before You Owe mortgage disclosure rule does integrate the TILA disclosures with the disclosures required under the Real Estate Settlement Procedures Act (RESPA), it did not change the prior, fundamental principles of liability under either TILA or RESPA. Therefore, for non-high-cost mortgages:

- There is no general TILA assignee liability unless the violation is apparent on the face of the disclosure documents and the assignment is voluntary. 15 U.S.C. 1641(e).
- By statute, TILA limits statutory damages for mortgage disclosures, in both individual and class actions to failure to provide a closed-set of disclosures. 15 U.S.C. 1640(a).
- Formatting errors and the like are unlikely to give rise to private liability unless the formatting interferes with the clear and conspicuous disclosure of one of the TILA disclosures listed as giving rise to statutory and class action damages in 15 U.S.C. 1640(a).
- The listed disclosures in 15 U.S.C. §1640(a) that give rise to statutory and class action damages do not include either the RESPA disclosures or the new Dodd-Frank Act disclosures, including the Total Cash to Close and Total Interest Percentage.

While complete and accurate use of the Regulation Z forms is the ultimate compliance goal, we recognize that a certain level of minor errors in the early days of implementation is to be expected. As noted above, we, other regulators, and the GSEs have publicly stated that we are looking, in these early days, for good faith efforts to come into compliance. Moreover, in light of the points made above about the existing provisions for cure under TILA, the specific cure mechanisms in the Know Before You Owe mortgage disclosure rule, and the limits of private liability under TILA, we believe that the risk of private liability to investors is negligible for good-faith formatting errors and the like.

Accordingly, the Bureau believes that if investors were to reject loans on the basis of formatting and other minor errors, as you indicate has been occurring, they would be rejecting loans for reasons unrelated to potential liability associated with the Know Before You Owe mortgage disclosures. Such decisions may be an overreaction to the initial implementation of the new rule, and our assessment is that these concerns will dissipate as the industry gains experience with closings, loan purchases, and examinations.

The Bureau will continue to work closely with the industry to monitor implementation, answer questions, and address developments in the secondary market that may arise. We look forward to our continued engagement with the MBA and its member organizations to address these and other issues of mutual interest and concern.

Sincerely,

Richard

Richard Cordray
Director

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