



January 16, 2020

The Honorable Kathy Kraninger  
Director  
Bureau of Consumer Financial Protection  
1700 G Street, NW  
Washington, DC 20552

Re: Bureau of Consumer Financial Protection 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

Dear Director Kraninger:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the Bureau of Consumer Financial Protection's (Bureau) 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.<sup>1</sup> Advocacy encourages the Bureau to consider less burdensome alternatives for small entities as part of the assessment process. Specifically, Advocacy believes that the Bureau's assessment of the rule would benefit from a comprehensive study to determine the economic impact that the TILA-RESPA Integrated Disclosure (TRID) rule has had on small entities and further outreach to small entities to develop less costly alternatives.

#### Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>2</sup> as amended

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<sup>1</sup> 84 Federal Register 64436, November 22, 2019.

<sup>2</sup> 5 U.S.C. § 601 et seq.

by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup> Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."<sup>6</sup>

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held conference calls on this issue on January 7, 2020. Trade associations in the financial services industry and small businesses in the settlement services industry participated in the calls. Advocacy's comments reflect the feedback that it received from the participants.

## **The Assessment Process**

Section 1022(d) of the Dodd-Frank Act requires the Bureau to review each significant rule or order adopted by the Bureau within five years after they take effect. These formal reviews are called assessments. The Bureau must publish a report of the assessment not later than five years after the effective date of such rule or order.<sup>7</sup>

## **The 2013 TRID Rule**

The Bureau convened the SBREFA Panel on this issue February 21, 2012. The Panel held an outreach meeting/teleconference with small entity representatives on March 6, 2012.<sup>8</sup> The SBREFA Panel Report was issued on April 23, 2012.

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<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

<sup>4</sup> Small Business Jobs Act of 2010 (PL 111-240) § 1601.

<sup>5</sup> Id.

<sup>6</sup> 5 U.S.C. § 601 note 7.

<sup>7</sup> 84 Fed. Reg. 64436.

<sup>8</sup> FINAL REPORT of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements, April 23, 2012, page 14.

In November 2013, the Bureau issued the TRID final rule. The rule took effect on October 3, 2015.<sup>9</sup> The rule was amended two times before it took effect in 2015.<sup>10</sup> Subsequently, the Bureau amended to rule in July 2017 and April 2018.<sup>11</sup> On November 22, 2019, the Bureau of Consumer Financial Protection issued a Request for Information Regarding the Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) Rule Assessment. The RFI is for the assessment of the October 2015 TRID rule, not the subsequent amendments.<sup>12</sup>

The TRID rule contains six major provisions:

- 1) integration of certain mortgage disclosures, which implemented the Dodd-Frank Act's directive to combine certain disclosures that consumers received under TILA and RESPA in connection with applying for and closing a loan;<sup>13</sup>
- 2) disclosure redesign, which required creditors to use standardized forms;<sup>14</sup>
- 3) disclosure provision responsibility, which reallocated to creditors the legal responsibility to provide disclosures (prior to TRID creditors coordinated with settlement agents to provide disclosures) and also reallocated some of the risks of liability for regulatory violations;<sup>15</sup>
- 4) definition of "application," which revised the regulatory definition and provided six specific items;<sup>16</sup>
- 5) timing requirements, which required a creditor to provide a Loan Estimate to the consumer within three days of receiving the application and generally required consumers to receive Closing Disclosures no later than three business days before consummation;<sup>17</sup> and
- 6) tolerances, which subjected a larger category of charges to a "zero tolerance" prohibition on cost increases.<sup>18</sup>

### **The TRID Rule Was Burdensome to Implement and Continues to Be Burdensome for Small Entities.**

In 2012, Advocacy warned that the TRID rule was overly burdensome for small entities. Those small businesses have continued to report difficulties in meeting the requirements of the rule. As noted above, recently Advocacy held a conference call to discuss the TRID rule assessment with groups that represent small entities and some of the small entity representatives from the SBREFA panel. In the RFI, the Bureau poses questions about the costs of the TRID rule. It should be noted that it is difficult to ascertain the economic impact of TRID because a number of

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<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> *See*, 82 FR 37656 (Aug. 11, 2017)(July 2017 Amendments); 83 Fed. Reg. 19159 (May 2, 2018 (April 2018 Amendments)).

<sup>12</sup> 84 Fed. Reg. 64436.

<sup>13</sup> 84 Fed. Reg. at 64437.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> 84 Fed. Reg. 64437-64438.

<sup>18</sup> 84 Fed. Reg. 64438.

mortgage rules (TRID, qualified mortgages,<sup>19</sup> loan origination compensation,<sup>20</sup> e.g.) were implemented during that time.

Although an escrow company stated that software changes were the only costs and those costs were absorbed by the software company, the other conference call participants did not agree. The financial institutions stated that TRID was an extremely costly regulation to implement. For example, some small lenders had significant costs because they had to replace totally the mortgage origination system that they could have continued using if it were not for the TRID rule. Replacing the system required considerable upfront and monthly costs, including the hiring of attorneys to analyze the new compliance requirements and train staff on the new system and procedures. These costs could not be passed on to the customer because small lenders needed to be competitive with their larger counterparts. Advocacy encourages the Bureau to assess burden on small entities due to TRID and whether there are alternatives that may reduce the ongoing costs on small entities. The analysis should include the number of affected small entities by business size and measure the likely compliance costs to those entities as well as analyze costs as a percentage to revenues to assess the economic significance.

### **Tolerances and the Three-Day Disclosure Rules Continue to be Problematic**

Advocacy further encourages the Bureau to assess the impact that the tolerances have had on the mortgage market. As noted above, the TRID rule imposed zero tolerances on a larger category of changes. Rules should be reasonable with workable tolerances that allow for fixes. The current tolerances are so tight that it is difficult to close loans.

Similarly, the three-day disclosure rule makes it difficult to close loans. If something changes the day before closing or needs to be corrected at the closing table and requires a disclosure, it is problematic. Advocacy encourages the Bureau to perform outreach with small entities to discuss ways to ease the tolerance and disclosure requirements so that the requirements will be workable. Advocacy further encourages the Bureau to perform an economic analysis to determine the ongoing costs and work with small entities to develop a means to reduce the costs.

### **TRID Rule May Not Be Meeting the Purposes and Objectives of the Dodd-Frank Act**

An important goal of the Dodd-Frank Act was to increase consumer understanding of the costs involved in the mortgage process. TRID assumes that consumers are interested in reading all of the documents, which are extensive and overwhelming to consumers. According to industry stakeholders, the consumers are not reading them. If consumers are not reading the disclosure documents, it is defeating this important aspect of the Dodd-Frank Act. The time that small entities are spending on preparing the documentation could be used for other aspects of their business.

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<sup>19</sup> 78 Fed. Reg. 6408, January 30, 2013.

<sup>20</sup> 78 Fed. Reg. 11280, February 15, 2013.

## **Recommendations for Modifying, Expanding, or Eliminating the TRID Rule**

While the costs of TRID implementation were and continue to be extremely expensive, stakeholders have been adamant that the Bureau should not go back to square one and design a new system. However, there are issues that need to be addressed. As noted above, the current tolerances and three-day disclosure requirements are problematic. Advocacy encourages the Bureau to review the costly portions of TRID, such as tolerances and required redisclosures as part of the assessment process and determine if there is a less burdensome way to achieve the goals of Dodd-Frank.

In addition, because of the TRID rule certain products are difficult to provide. For example, according to the conference call participants it is difficult to make loans under \$100,000, construction loans and second mortgages. The inability to provide those types of products impacts small entities and consumers.

Advocacy encourages the Bureau to review the impact that TRID had on the ability to make different types of loans and consider whether exemptions that would exclude certain small loans, second mortgages and construction loans from TRID are appropriate. Such exemptions may possibly encourage small entities to enter the market and provide additional mortgage products that help consumers. Moreover, Advocacy encourages the Bureau to consider whether exemptions are possible to reduce the burden on small entities.

In addition, Advocacy also encourages the Bureau to review whether it is equitable for lenders to be liable for all TRID errors. Since the lender is liable, the lender has control over the transaction. As such, the lender may change things that were included in the paperwork that is provided by the title company. There may be last minute changes as a result of a final walk through, but the title company may not know if the changes are incorporated by the lender until closing. Advocacy encourages the Bureau to work with small entities to assess the impact that the TRID rule has had on the relationship between providers and determine the steps that need to be taken to address problems, including whether it is practical for lenders to be liable for cost information provided by others.

## **Conclusion**

The intent of TRID was to provide consumers with financial information before purchasing a home. The reality is that TRID was expensive to implement and continues to be burdensome. Advocacy encourages the Bureau to perform an analysis of the economic impact that the TRID rule has had on the mortgage industry and their customers. The analysis should consider the impact that the rule has had on the availability of mortgages, including those in the interior and rural parts of the country. Advocacy further asserts that outreach to the small business community would result in the stronger assessment, including information about less burdensome alternatives and steps that can be taken to minimize the confusion associated with TRID.

Thank you for the opportunity to comment on this important RFI and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can

be of any assistance, please do not hesitate to contact me or Assistant Chief Counsel Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Major L. Clark, III  
Acting Chief Counsel  
Office of Advocacy  
U.S. Small Business Administration

/s/

Jennifer A. Smith  
Assistant Chief Counsel  
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Cc: The Honorable Paul Ray, Administrator, OIRA