NATIONAL ASSOCIATION of REALTORS®
REALTOR®

Vince Malta
2020 President

Bob Goldberg
Chief Executive Officer

ADVOCACY GROUP
William E. Malkasian
Chief Advocacy Officer/Senior Vice President

Shannon McGahn
Senior Vice President Government Affairs

500 New Jersey Avenue, NW
Washington, DC 20001-2020
Phone 202-383-1194
WWW.NAR.REALTOR

January 21, 2020

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0055

Submitted electronically via: https://www.regulations.gov/docket?D=CFPB-2019-0055

Dear Director Kraninger:

On behalf the 1.4 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the request for information (RFI) regarding the Consumer Financial Protection Bureau's (CFPB) "TRID" mortgage disclosure rule that harmonizes the *Truth in Lending Act* (TILA, Regulation Z) and the *Real Estate Settlement Procedures Act* (RESPA, Regulation X). As one of the most comprehensive reforms to the closing process in recent years, the TRID assessment should illuminate and aim to alleviate ongoing issues for the real estate industry and consumers to improve the rule's effectiveness and best achieve legislative intent.

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. Working with a REALTOR® gives consumers the advantage to succeed in today's market, which is why NAR advocates for clear, concise, and cost-effective regulations to ensure successful outcomes for consumers.

NAR supports regulations that promote consumers' ability to purchase a home without overly burdening the industry that facilitates these transactions with unnecessary or ineffective processes. When TRID was first implemented, there were many difficulties that complicated closings for both consumers and the real estate industry. Subsequent rulemakings and Bureau clarifications on the rule increased acceptance and compliance with many of the underlying changes, but there is still room for improvement. The following comment outlines feedback from REALTORS® on the benefits of the TRID rule as well as specific outstanding issues that continue to negate the intended benefits of the regulation.

Consumer Impact

TRID was meant to improve consumer understanding of complicated mortgage disclosures, which in turn would influence settlement service shopping behaviors and increase overall satisfaction with the home buying experience. This is the case for many aspects of the TRID rule, where the new disclosures have been lauded as making it easier to compare loans when shopping does occur. As intended, the new disclosures and comparison shopping enhances the ability of consumers to make educated decisions about which products and settlement service providers to use.

EQUAL HOUSING OPPORTUNITY

While TRID has resulted in beneficial changes for consumers and the industry, such as improved accuracy and transparency, the learning curve remains. One real estate practitioner characterized the rule's forms as "so convoluted that they take the buyer around the block when they only need to cross the street." To better understand the impact on consumers and REALTOR® businesses, NAR conducted a survey of members based generally on the RFI, where the typical respondent has worked in real estate for 15 years, representing both buyers and sellers.[1]

When asked how the new TRID forms compared to disclosures of the past (such as the HUD-1), only 24 percent found the new forms more helpful. This is compared to 26 percent who found the forms less helpful and 29 percent citing the forms were about the same. Regarding how the TRID rule changes affected *consumers' understanding of their mortgage disclosures*, 33 percent reported no change, 25 percent reported slight improvement, and 11 percent stated great improvement, compared to 21 percent who claimed the rule has made understanding worse. When asked about *consumers' satisfaction with the mortgage disclosures*, 35 percent of respondents reported no change, 21 percent cited a slight improvement, and 13 percent a great improvement, compared to 20 percent stating worse satisfaction.

When looking at the transaction overall and *consumers' understanding of the closing process*, responses were similar, with 39 percent reporting no change, 21 percent slight improvement, and 9 percent great improvement, compared to 23 percent claiming a worse understanding of the overall closing process. This was also reflected when asked about c*onsumers' satisfaction with the closing process*, with 38 percent responding no change, 17 percent a slight improvement, and 12 percent a great improvement, compared to 25 percent seeing worse satisfaction.

With room for improvement on consumers' understanding and satisfaction with the disclosures and closing processes, the Bureau should examine how to further simplify the TRID procedures. As another real estate professional explained, "consumers rarely understand the language, but they understand the numbers," so eliminating some of the more confusing "legal jargon" may aid in comprehension and overall consumer satisfaction. As the Bureau conducts the TRID assessment, additional surveys of consumers and the industry would be useful to best identify specific changes to make and could potentially increase comparison shopping as a result. According to the TRID Survey, when asked how the rule has impacted consumers' shopping behaviors for mortgage and settlement services, only 20 percent stated that consumers are often shopping. Fifty-seven percent cited no impact on consumer behavior and 15 percent stated consumers are rarely shopping.

There are also issues related to the accurate disclosure of title insurance premiums and potential available discounts to homeowners, which contradicts the rule's goal of increasing consumer transparency. Without this information included on the disclosures, there may be yet another document explaining these costs provided to consumers, resulting in even more confusion. Allowing for the correct disclosure of all associated costs and estimates would improve consumers' understanding of the full financial picture and improve relationships with their settlement service providers.

REALTORS® are the trusted voice that consumers rely on to explain the complexities of the sales transaction, including the details provided in the TRID disclosures. According to the TRID survey, 30 percent of respondents stated the rule improves their ability to explain the disclosures and closing process to consumers, compared to approximately 21 percent who stated the rule made it worse.[2] Streamlining and improving the accuracy of the forms will protect against unintentional mistakes or delays in the transaction and provide a more positive experience for consumers.

Firm/Business Impact

Like any new regulatory overhaul, there are a range of costs and benefits associated with implementing and ensuring ongoing compliance measures. Since the rule was first issued, the real estate industry has endured significant investments

---

[1] *2019 Consumer Financial Protection Bureau (CFPB) Closing Process Rules Survey,* Nat'l Ass'n of REALTORS® (Jan. 15, 2020), https://narfocus.com/billdatabase/clientfiles/172/21/3490.pdf (hereinafter TRID Survey).

[2] TRID Survey. Approximately 41-45 percent of respondents cited no change in the ability to explain the disclosures and closing process to consumers.

to updating internal and external processes in order to carry out the Bureau's goal of simplifying and supporting consumers' home buying and selling experiences. While wholesale elimination of the rule would upend these investments, essential adjustments to the existing rule could add compliance savings and improve overall consumer satisfaction.

One of the most vocalized issues across the industry and especially by real estate professionals on behalf of the consumers they serve relates to the three business-day waiting period before consummation, when there are certain changes made after an initial closing disclosure has been provided. There should be more flexibility with this provision as oftentimes, the three-day mandated delay becomes problematic without value added, causing delays that increase consumer frustration rather than enhancing understanding. Mandating a three-day waiting period for common circumstantial changes, especially so late into the closing process, takes control away from the consumer and could unduly delay all subsequent settlement steps. Additional guidance regarding the circumstances permitting consumer waivers will protect against unnecessary transactional delays and give the consumer the choice to seek additional understanding when needed.

Another inflexible measure included in the rule that should be reexamined relates to the inclusion of appraisal fees within the zero-tolerance threshold category. With this strict standard, there is no room for unforeseen changes to be reflected in the appraisal fee, severely limiting appraisers' ability to provide and properly charge for services. More specifically, the zero-tolerance policy prohibits appraisal fee adjustments based on the scope of work, where fee estimates are often determined before the appraiser has a chance to evaluate the nature of the assigned property. This limitation exacerbates appraiser shortages across the country by causing professionals to work for less than what the work entails or withdrawing from the project altogether, disincentivizing new entrants into the industry. When it is determined a change in fee is needed, the lender must either absorb this cost, potentially passing it on to other consumers later, or restart the entire appraisal process again, resulting in new disclosures to the homebuyer and adding more delays and frustrations. Reasonable tolerances for appraisal fees should be adopted to promote needed flexibility for determining the scope of work without unnecessarily penalizing consumers, lenders, and the appraisal industry.

When TRID was first implemented, an initial hurdle for real estate professionals involved the sharing of the Closing Disclosure (CD), which is critical to facilitating the sales transaction. NAR greatly appreciates the clarity provided on this by the Bureau in 2017, which explained an existing exception within the *Gramm-Leach-Bliley Act* (GLBA) and implementing Regulation P that allows lenders to share the CD with third parties (sections 502(e)(1) and 509(7)(A)). The CFPB recognizes the CD as a "record of the transaction," which is "informative to real estate agents and others representing both the consumer credit and real estate portions of residential real estate sales transactions." The CFPB notes that CD sharing is permissible to the extent it is consistent with GLBA and Regulation P and is not barred by applicable State law.

Despite this explanation, there is still confusion, with a number of settlement service providers unwilling to share the CD with real estate professionals. According to the TRID survey, 64 percent of respondents *sometimes* received the CD during a transaction and only 41 percent *always* received the CD. Without all the pertinent information contained in the CD, it is more difficult for real estate professionals to provide the best services to consumers. For example, if the disclosure is not shared with the real estate professional, consumers may be disadvantaged during negotiations because of the lack of awareness or understanding of closing costs and the ability to ask for assistance for these expenses.[3] Such negotiations may then be unnecessarily drawn-out due to the lack of information, which may delay the entire closing timeline to the detriment of consumers. While some lenders provide notice to all parties when there is an update in the transaction, such as a new document being issued, this is not always the case and consumers are then disadvantaged when left to decipher these complicated disclosures alone.

[3] In the TRID Survey, when asked whether consumers would benefit from having the CD earlier, even if it might be re-issued with changed information, 54 percent stated yes, to better prepare consumers for closing.

Additionally, sharing of the disclosures improves accuracy and may prevent revisions to the CD. When asked how often CDs were being revised and re-issued, survey respondents stated this occurred every transaction (5 percent) to almost every (16 percent) or about half (13 percent), compared to less than half of transactions (19 percent) to rarely being revised (38 percent). Only 5 percent claimed CDs were never revised and reissued. When CDs were reissued, transactions were delayed 39 percent of the time, compared to 53 percent that closed on time. Reasons for why CDs were reissued were primarily due to minor errors (73 percent) or major errors (18 percent), which included for example, changes in fees, tax adjustments, missing information, and incorrect closing costs, payoffs, or closing dates.

When complex regulations remain ambiguous, it hurts the smallest businesses who lack compliance personnel the most, which can lead to consolidation and fewer options for consumers. Such regulatory complexities also deter new entrants into the industry that also reduces consumer choice. The Bureau's thorough assessment of how to simplify the TRID rule and addressing these outstanding issues will support consumer transparency to promote comparison shopping and improve industry compliance.

Conclusion

NAR's most recent Housing Opportunities and Market Experience (HOME) survey, which tracks consumer sentiment about the housing market, revealed that 63 percent of people believe now is a good time to buy a home and 74 percent believe now is a good time to sell a home.[4] As consumers remain largely optimistic about participating in the housing market, the CFPB must focus on ensuring the regulatory process that dictates these transactions functions in the best interests of all impacted parties.

TRID has successfully increased consumer protections and financial transparency, but the full scope of potential benefits will not be achieved without meaningful modifications as described above. NAR is encouraged by the Bureau's continued interest in fixing these problematic provisions and is willing to assist with any additional feedback or resources to support the assessment. If you have any questions or concerns, please do not hesitate to contact me or Christie DeSanctis, Director of Business and Conventional Finance Policy at (202) 383-1102 or CDeSanctis@nar.realtor.

Sincerely,

Vince Malta
2020 President, National Association of REALTORS®

[4] *HOME Survey; Housing Opportunities and Market Experience*, Nat'l Ass'n of REALTORS® (Jan. 9, 2020), https://www.nar.realtor/homeownership-opportunities-and-market-experience-survey/2019-q4-homeownership-opportunities-and-market-experience-home-survey.