



3138 10th Street North  
Arlington, VA 22201-2149  
703.522.4770 | 800.336.4644  
f: 703.524.1082  
nafcu@nafcu.org | nafcu.org

**National Association of Federally-Insured Credit Unions**

January 17, 2020

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

**RE: 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) Assessment (Docket No. CFPB-2019-0055)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) request for information regarding the Truth in Lending Act (TILA), Real Estate Settlement Procedures Act (RESPA) integrated disclosures (TRID) assessment. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 119 million consumers with personal and small business financial service products. NAFCU and its member credit unions appreciate the Bureau's assessment of TRID pursuant to section 1022(d) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank). NAFCU urges the Bureau to carefully look at the impacts of TRID, which include additional compliance costs, the ability to sell mortgages on the secondary market, and the elimination of certain loan products offered to members. More importantly, the Bureau should provide comprehensive guidance on outstanding TRID issues to alleviate regulatory burdens on credit unions.

**General Comments**

One of the specific goals of TRID was to identify and reconcile inconsistencies between TILA and RESPA requirements and to reduce regulatory burdens. Although the rule has been in effect for some time, regulatory burdens persist. Since TRID took effect in 2015, credit unions have been grappling with compliance challenges, as the rule has been amended multiple times since implementation. NAFCU supported the Bureau's amendments to TRID's "black hole" to improve borrowers' understanding of transactions. NAFCU also supported the Bureau's efforts to update the small entity compliance guides and other compliance aids to reflect those statutory changes by the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA). However, regulatory burdens have not been lessened by the rule's implementation and subsequent amendments.

NAFCU continues to see TRID as one of the top compliance issues members face. In 2018, TRID was identified as a top compliance issue based on the total number of questions received from NAFCU members during the year. NAFCU members report that their legal and compliance departments continue to receive numerous TRID-related questions from different business units. Given the complexities of the rule, it is no surprise that compliance continues to be an issue. Overall, TRID is difficult for borrowers to understand, thus hurting the lender-borrower relationship.

This is a significant rulemaking and although NAFCU strongly supports the use of formal rulemaking versus informal guidance, NAFCU recognizes that pursuing a rulemaking is time-consuming and inefficient. In addition, minor regulatory changes to the rule that only marginally improve the process will require substantial resources and costs to update systems, operations, policies and procedures, and train staff on regulatory changes. During the CFPB's assessment of the rule, we implore the agency to provide comprehensive guidance to assist with compliance.

## **Effects of TRID on Credit Unions**

### *Compliance Costs*

The Bureau estimated in its 2013 Final Rule that costs would primarily be attributed to one-time implementation costs. Although this is true – credit unions did incur one-time implementation costs – there are also numerous recurring costs in ensuring compliance and mitigating legal risk. One-time costs included building TRID compliance programs, for those credit unions opting to build proprietary systems. Several NAFCU members report building both their own systems and utilizing third-party servicers or partially utilizing a third-party system. Additionally, NAFCU members report that upon TRID's implementation when searching for a system provider, the costs of such systems had increased and there were fewer options available in the marketplace. One-time implementation costs were likely higher than the Bureau predicted due to the unforeseen lack of competition. Not only did credit unions incur one-time implementation costs but they continue to incur recurring costs associated with TRID.

Recurring costs consist of attorney or consultant fees. NAFCU members report seeking outside legal or consultant services to assist with navigating compliance complexities and legal risks associated with TRID. Those members who have maintained outside attorney contact since implementation report seeking out legal advice on an annual, semi-annual, or quarterly basis. In-house counsel report being sought out on daily basis to assist with TRID compliance and legal risks. Costs associated with these legal services vary depending on the level of attorney contact. NAFCU members have reported spending up to \$100,000 since implementation on attorney and consultant fees. For smaller credit unions, with limited resources, hiring outside assistance may not be a possibility.

In addition, recurring costs include those compliance costs associated with the government-sponsored enterprises (GSEs). After TRID implementation, the GSEs amended their fee structure and fee information that must be disseminated. Although these changes were performed in part to

standardize fees, this was largely due to the implementation of TRID. NAFCU members incurred compliance costs due to the GSEs' changes, which were likely not anticipated by the Bureau during the rulemaking process.

Upon implementation, Fannie Mae and Freddie Mac required increased data sets which meant credit unions had to devote additional resources to coding and programming within their loan operating systems. These changes reflected both implementation and recurring costs associated with the maintenance of loan operating systems and core processing systems. Overall, TRID has not reduced costs for lenders as they must work towards reducing tolerance errors and oversee compliance systems that require significant amounts of time and money. Nor has TRID reduced costs for consumers, as ultimately these costs may be passed on either directly or indirectly through rates.

#### *Effect on Ability to Sell to Secondary Market*

NAFCU supports credit unions' ability to sell mortgages on the secondary market and continues to advocate for greater access to the secondary market. The secondary mortgage market provides a source of liquidity and a tool to manage interest and concentration risks. Although there are various reasons that may impact credit unions' ability to sell mortgages on the secondary market, one of the implications of TRID is a reduction in the aggregate number of mortgages sold. In a recent survey of NAFCU members, 42 percent of respondents reported that TRID specifically has affected their ability to sell mortgages to the secondary market.

Additionally, according to NAFCU's 2019 *Federal Meeting Survey*, respondents reported that on average, 33 percent of their mortgages were sold on the secondary market. Comparatively, respondents to NAFCU's 2015 *Federal Meeting Survey*, reported that 37 percent of mortgages were sold on the secondary market. This decrease in mortgages sold on the secondary market is significant as it affects liquidity for credit unions to provide additional lending to their communities.

NAFCU members report that more of their loan portfolios do not qualify to be sold on the secondary market. Respondents to the 2019 survey reported that on average 60 percent of their outstanding first mortgage loans qualified to be sold on the secondary market. Whereas, respondents to the 2015 survey reported that on average 64 percent of their outstanding first mortgage loans qualified to be sold on the secondary market. Access to the secondary market continues to be a future, critical issue to credit unions. According to the 2019 *Federal Meeting Survey*, 34 percent of respondents reported access to the secondary mortgage market a critical issue to their credit union's continued growth and success. This represented a 4 percent increase from 2018. The Bureau should ensure that TRID does not impede credit unions' access to the sell mortgages on the secondary market. This can best be achieved by additional guidance on curing errors or amending the language to allow for curing of numeric clerical errors.

Lastly, NAFCU members report receiving varied interpretations of TRID requirements from the secondary market. NAFCU members report that the Federal Home Loan Banks have told them they will not purchase their loans to aggregate for sale on the secondary market if certain closing disclosure practices were not followed. This occurred despite the credit union's current practice of issuing disclosures according to the statutory language of TRID.

### *Effect on Products Offered*

One of the unforeseen implications of TRID is that credit unions stopped offering certain types of loans due to the compliance burdens outweighing the benefits of offering a product. Credit unions provide vital lending products to their communities. If credit unions are unable to offer such lending products due to regulatory compliance burdens, ultimately members are harmed by restricted access to capital as they may end up taking out higher-priced loans or seek out riskier alternative lending channels. NAFCU members report that after TRID implementation they specifically stopped offering bridge loans, construction loans, and closed-end home equity loans. Not offering lending products such as these can have detrimental effects on local communities. Smaller credit unions that have limited compliance resources are not able to compete with larger institutions that have greater economies of scale.

### **Additional Guidance is Necessary**

NAFCU members appreciate the additional FAQs provided by the Bureau since implementation; however, additional guidance is necessary. In a recent survey, 75 percent of respondents reported that TRID guidance provided to date has not been helpful. Thus, NAFCU members are left seeking out additional compliance assistance incurring additional costs. TRID is a large, complex rule and technical guidance that provides examples would greatly assist credit unions. NAFCU reiterates its recommendation for additional guidance that was previously provided to the Bureau on February 6, 2019. NAFCU thanks the Bureau for following up with its previous request for additional guidance and meeting with NAFCU to discuss important outstanding issues that credit unions continue to face. The Bureau should provide additional guidance, preferably through FAQs or sample forms with specific fact patterns, in the areas outlined below.

### *Cure Provisions and Error Corrections*

Currently, only "non-numeric clerical errors" may be corrected post-consummation and any numerical clerical error, regardless of whether substantive or affecting the transaction, cannot be cured. Due to the inability to cure under TRID's regulations and the potential liability it is very difficult for credit unions to manage risks for non-substantive, clerical errors. NAFCU encourages the Bureau to allow for curing of numerical errors.

### *Negative Owner's Title Premium*

The Bureau has taken the position that the full cost of title insurance should be disclosed, rather than any discounted price that is paid. TRID provides a specific formula for calculating the premium disclosures which, in some cases, yields a negative number. This formula does not always represent the actual cost and creates confusion and frustrates the consumer's experience. Certain states have their own title insurance disclosures that may differ from the TRID disclosure, further leading to consumer confusion and frustration. The Bureau has not publicly provided guidance as to whether a negative number in the disclosure is permitted, and, if, so, how this should impact other disclosures like the Calculating Cash to Close table.

### *Calculating Cash to Close*

The Calculating Cash to Close table continues to be an issue for credit unions, as the guidance does not contemplate particular transactions. The calculations rely on assumptions that are the basis for the Calculating Cash to Close disclosure, therefore credit unions may be forced to violate TRID in order to make an accurate disclosure. Although the Bureau has offered unofficial, verbal guidance on how to disclose cash to close, the guidance has not addressed the difficult questions of what to do when the loan simply does not fit the form or its requirements.

### *Second Lien Loans*

There is limited guidance on preparing the TRID disclosures when a second lien is involved in the transaction. Existing guidance is limited to sample page 3 of the Closing Disclosure. With only a single page of the form as guidance, credit unions are unable to see how the relationship between the Loan Estimate and the Closing Disclosure operate within the transaction, or how additional parts of the form might work. Although the Bureau has produced a webinar on this topic, there is no written, searchable guidance on this issue.

### *Pre-Approvals/Pre-Qualifications*

The Bureau has informally indicated that borrowers may still obtain pre-approvals before applying for a loan if all six items of information which constitute an "application" are not provided and any documentation provided is submitted voluntarily. Nevertheless, confusion remains regarding how to collect pre-approval/pre-qualification information without triggering disclosure requirements.

### *Payoff on a Purchase Money Loan*

In the 2017 amendments, the Bureau issued clarification about how payoffs in a purchase money loan could be disclosed; however, there is no guidance or sample form addressing this situation. As a result, TRID places credit unions in the position of choosing between two or more violations to make disclosure.

*Waiver of Waiting Period Before Consummation*

Currently, consumers may waive their right to receive a closing disclosure only if there is a bona fide personal financial emergency. The CFPB has provided only one example of what constitutes a bona fide personal financial emergency. Additional guidance or options for a consumer to waive the mandatory waiting period before consummation would be beneficial for both consumers and lenders.

**Conclusion**

NAFCU appreciates the opportunity to share its members' views on this matter. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or [kschafer@nafcu.org](mailto:kschafer@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Kaley Schafer', written in a cursive style.

Kaley Schafer  
Regulatory Affairs Counsel