CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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Comment Intake—TRID Assessment
Consumer Financial Protection Bureau
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) Rule Assessment

To Whom It May Concern:

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the request for information ("RFI") issued by the Consumer Financial Protection Bureau ("the Bureau") regarding its assessment of the TRID Rule.[1] As the Bureau correctly recognizes, the TRID Rule made significant changes to the disclosures provided to consumers during the mortgage process, combining disclosures required by the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA").

These changes resulted in equally significant updates to compliance systems. Businesses subject to the TRID Rule had to invest enormous sums to adapt their compliance systems to the new regime and to manage the effects of the TRID Rule across the mortgage lifecycle. Compliance with the TRID Rule proved so complex, in fact, that the Bureau delayed its effective date to allow sufficient time to implement its requirements.[2]

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[1] *See* 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, 84 Fed. Reg. 64436 (Nov. 22, 2019).
[2] *See* Delay of Effective Date, 80 Fed. Reg. 43911 (July 24, 2015).

The TRID Rule now has been in place for almost five years. In that time, it has become a well-established feature of the mortgage lending market. At this point, dramatic changes are not needed to improve the TRID Rule—and the costs of any attempts to make such significant changes would outweigh their benefits. This is not to say, however, that the TRID Rule and associated guidance are perfect in their current form. Areas of uncertainty persist in the application of the TRID Rule, creating unnecessary compliance burdens, and some elements of the TRID Rule are having counterproductive effects. These aspects of the TRID Rule should be addressed—and the Bureau can do so without increasing risk for customers or creating undue compliance costs.

We accordingly write to emphasize three points:

- The Bureau is correct to assess the TRID Rule pursuant to Dodd-Frank Act § 1022(d).
- The Bureau should not make significant changes to the TRID Rule that would create compliance costs that outweigh any associated benefits.
- The Bureau should continue to clarify the TRID Rule where the benefits outweigh the associated costs.

Discussion

I. The Bureau is correct to assess the TRID Rule pursuant to Dodd-Frank Act § 1022(d).

Dodd-Frank Act § 1022(d) (12 U.S.C. § 5512(d)) requires the Bureau to perform an assessment "of each significant rule or order adopted by the Bureau under Federal consumer financial law" within five years of its effective date. Such assessments should consider "the effectiveness of the rule or order in meeting the purposes and objectives of" Title X of the Dodd-Frank Act (i.e. the Consumer Financial Protection Act, or "CFPA"), as well as the "specific goals stated by the Bureau." 12 U.S.C. § 5512(d)(1). Moreover, the assessment must "reflect available evidence and any data that the Bureau reasonably may collect." *Id.*

Congress did not define the term "significant rule" in Section 1022(d), but there is no doubt that the TRID Rule would qualify under any reasonable definition of that phrase. As the Bureau recognizes, the TRID Rule brought significant changes to mortgage disclosures and imposed substantial compliance costs on businesses. The

Bureau consequently is correct that the TRID Rule is a "significant rule" under Dodd-Frank Act § 1022(d) and is right to perform a five-year assessment.

The Bureau also correctly describes the purpose of the five-year assessment in its RFI. As it understands, the Bureau should use this assessment to evaluate the effectiveness of the TRID Rule in meeting the "objectives and purposes" of the CFPA, as well as the Bureau's own goals in issuing the TRID Rule. We would particularly urge the Bureau to remain cognizant of the full range of objectives and purposes that Congress established for the Bureau. In particular, the Bureau's goals in this assessment should include reducing "unwarranted regulatory burdens," *see* 12 U.S.C. § 5511(b)(3), and ensuring that the mortgage market operates "transparently and efficiently to facilitate access and innovation," *see* 12 U.S.C. § 5511(b)(5).

II. The Bureau should not make significant changes to the TRID Rule that would create compliance costs that outweigh any associated benefits.

As the Bureau recognizes, the TRID Rule imposed significant costs on companies as they reworked their compliance systems and business relationships to comply with the new regime. While companies continue to have significant ongoing compliance obligations under the TRID Rule, much of the compliance burden was associated with the initial setup of these TRID compliance programs. Significant changes to the TRID Rule, including changes to the contents of disclosures or changes that would require significant reworking of information technology systems, would likewise impose vast compliance burdens upon entities subject to the TRID Rule.

There are no significant inadequacies in the TRID Rule that currently justify making major changes to the TRID disclosures or to other aspects of the TRID Rule. This is particularly the case given the huge costs that would be associated with revisiting TRID Rule compliance setup efforts. We consequently would urge the Bureau not to make significant changes to the TRID Rule. More generally, we would ask the Bureau to keep cost-benefit analysis front of mind as it assesses the TRID Rule.

III. The Bureau should continue to clarify the TRID Rule where the benefits of doing so outweigh the associated costs.

Uncertainty persists in how the TRID Rule applies to certain specific situations. There also continue to be circumstances in which the TRID Rule has counterproductive consequences. The Bureau should use this rule assessment process to identify and address these opportunities for improvement so that it can reduce unwarranted regulatory burdens. In doing so, the Bureau should ensure that the benefits of any changes that it pursues outweigh their associated cost. Below, we identify eight such

areas where the Bureau can facilitate compliance with the TRID Rule and thereby enable covered businesses to serve their customers more efficiently and effectively.

Corrections and Errors: Lenders are permitted to provide consumers corrected, accurate disclosures in the event of inadvertent errors. TILA § 130(b), 15 U.S.C. § 1640(b), sets forth specific criteria that must be satisfied if a creditor or assignee wishes to correct an error that occurred on a disclosure without being subject to civil liability. Uncertainty persists, however, about the interpretation of these criteria for a Section 130(b) correction. In particular, two of these criteria – (1) the adjustment to the account; and (2) the 60-day correction – are proving difficult to interpret and apply in the marketplace. For example, errors in disclosures unrelated to the finance charge (such as in the Loan Officer NMLS, the Estimated Taxes, Insurance and Assessments, and the Projected Payments Table) raise complex issues with respect to adjustment to the account. Likewise, delivery of a correction within 60-days can be very difficult, or impossible, in the event of errors that are the result of systems changes. We accordingly ask the Bureau to further clarify how creditors should undertake corrections in these areas.

Settlement Agent Liability: Creditors depend upon settlement agents in the closing process. To make this relationship succeed, creditors provide settlement agents detailed instructions. These instructions are not always followed, however. For example, settlement agents may not provide a lender's compliant Closing Disclosure as instructed by the lender. Such errors can create significant cost and liability for lenders despite their best efforts to ensure compliance with the TRID Rule. We consequently would ask the Bureau to clarify the responsibility of settlement agents in such circumstances and to take all appropriate steps to encourage all settlement agents to support compliance with the TRID Rule.

End Disclosure of Lender-Paid Items: The current commentary for the Loan Estimate provides a list of fees that need to be disclosed. *See* Official Interpretation 2, 12 C.F.R. § 1026.37(f)(2). This list includes fees that are lender-paid. For example, if a lender orders—and pays for—a $500 appraisal, the Loan Estimate will show a charge of $500 and a separate credit of $500. But this information confuses customers, particularly considering that changes in such amounts can trigger a redisclosure of the Loan Estimate. Moreover, in the event that a fee drops, the Bureau does not permit a reduction in the associated credit. This means that the consumer not only receives a free service (e.g. an appraisal), but also receives the difference in cost as cash from the lender. These are strange consequences of the decision to require disclosure of lender-paid items. We believe they reflect the need to end disclosure of lender-paid items.

Electronic Communications: Under the TRID Rule, disclosures currently are deemed received three business days after they are sent through email or another electronic delivery system. This rule should be eliminated as it causes closing delays that are dissatisfying to consumers. The Bureau instead should amend the Rule to assume receipt of an electronically delivered disclosure not more than one day after it was sent (for consumers who have opted into electronic communication) or immediately upon acknowledgement by the consumer. Similarly, upon acknowledgement of the initial closing disclosure, the Bureau should allow closings to occur as soon as one business day after the acknowledgment, if that is the consumer's preference.

Financial Emergencies: The TRID Rule currently provides a three-day waiting period to review a closing disclosure, *see* 12 C.F.R. § 1026.19(f)(1)(ii)(A), as well as a three-day rescission period for certain transactions, *see* 12 C.F.R. § 1026.23(a)(3)(i). The TRID Rule also permits waiver of these three-day periods in bona fide financial emergencies. *See* 12 C.F.R. § 1026.19(f)(1)(iv); 12 C.F.R. § 1026.23(e). Lenders frequently deny these requests, however, out of concern of regulatory second-guessing of any decision to waive those periods. Uncertainty about when a waiver is permissible thus hurts consumers who do not want to observe these periods because of financial emergencies—such as in the event that a purchaser may lose their earnest money or incur substantial relocation expenses if they cannot close in time. We consequently would urge the Bureau to provide clear examples of when it may be appropriate for a lender to waive the three-day requirements in a bona fide financial emergency in these contexts. To accomplish the goals of these waiver provisions, we would also ask the Bureau to permit such waivers in the context of redisclosed Loan Estimates, not only initial Loan Estimates.

Liability for Assignees Under TILA: The TRID Rule incorporates disclosures required by TILA and RESPA into the Loan Estimate and the Closing Disclosure. However, the Bureau has not provided clear guidance as to which parts of the documents fulfill TILA requirements and which parts fulfill RESPA requirements. It consequently remains unknown what errors will be viewed as TILA violations (that trigger civil liability under TILA for assignees) and which errors will be viewed as RESPA violations (which do not trigger liability for assignees, since RESPA's private right of action does not reach disclosures). We understand that some informal guidance has been provided on these points. However, that informal guidance has no legal effect in litigation under TILA. We accordingly would urge the Bureau to issue formal guidance clarifying the scope of assignee liability.

Consistency in Rounding Rules: The TRID Rule currently has certain rounding rules for fees and credits that are inconsistent across the Loan Estimate and Closing

Disclosure, resulting in small credits (e.g., $1) at closing. This inconsistency creates unnecessary confusion for consumers and should be eliminated. We consequently would urge the Bureau to give lenders more options in how they may round so that they can ensure consistency between the Loan Estimate and the Closing Disclosure.

Adjustment of Instructions: There are opportunities to improve the instructions for completing portions of the TRID disclosures. For example, it would be valuable to amend the instructions for completing the Loan Estimate so that lenders may provide the institution's NMLS ID rather than an individual loan officer's NMLS ID. The current requirement to assign an individual loan officer prior to generating the Loan Estimate impedes innovation in the use of online applications, which typically are not immediately assigned to a loan officer. Likewise, the Bureau should clarify those instructions to make clear that lenders may include aggregate adjustments in the "Initial Escrow Payment at Closing." Lenders are instructed to do so in the Closing Disclosure. The failure to clearly permit such an approach in the Loan Estimate context may lead to overstated amounts that confuse consumers.

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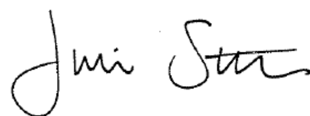
We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,



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