



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 Cordray
Director