

Feb. 11, 2016

Richard Cordray, Director  
Consumer Financial Protection Bureau  
1700 G Street, N.W.  
Washington, DC 20552

Dear Director Cordray:

Thank you for the Bureau's leadership in developing improved mortgage disclosures through Know Before You Owe and in extensively working with stakeholders during implementation. We applaud your letter of December 29, 2015 to the Mortgage Bankers Association, which emphasizes the CFPB's flexible approach to implementation and the clear and limited liability scheme applicable under the rule. This is the type of information that can help restore order to the secondary market and promote access to credit. While the CFPB staff has been working tirelessly to provide ongoing support on how the rule works in practice, the market needs time to adjust to the new rules before any additional rulemaking is considered. Moreover, we urge you to resist calls to provide explicit pronouncements on how remedy provisions operate under the rule (as distinct from creditor obligations and cure opportunities), a role that is, as you know, traditionally played by the courts. In the Federal Reserve Board's long history administering the Truth in Lending Act (TILA), it never issued any regulations or interpretations of the remedy provision found in section 1640.

As your letter noted, the CFPB and other regulators are already conducting compliance oversight with a sensitivity to good-faith efforts on implementation. Government secondary market players have made clear they will not engage in technical file reviews or exercise contractual remedies in cases of good-faith efforts to comply. Further, private litigation under TILA is rare and usually arises only when there are other, broader loan origination problems.

Your letter also addresses the liability schemes for TILA and the Real Estate Settlement Procedures Act (RESPA) including former RESPA requirements that are now part of TILA's Regulation Z. We agree that statutory damages for new disclosure requirements are unavailable for those listed in section 1640(a). And, as your letter also highlights, TILA and Regulation Z already provide robust opportunities to cure and correct errors. The rule, compliance guides, and informal discussion have gone a long way to ensuring that the new scheme does not interfere with access to credit. Ongoing work by the CFPB can assist in the narrow areas where questions remain without warranting substantial changes to the rule.

It is essential that the core principal of TILA remain unchanged: Borrowers have the right to receive accurate information, and creditors should have an incentive to comply with disclosure requirements at the outset.

We hope the Bureau will maintain its support for implementation without immediately undertaking additional rulemaking. If you do undertake rulemaking, it should involve notice and comment, not reliance on an interim final rule. Notice and comment rulemaking maximizes stakeholder input and helps to avoid unintended consequences. It is essential that any refinement of the rule not enable a reemergence of abusive practices such as the “bait and switch” practices that were endemic in the years leading up to the housing crisis. We urge you to ensure that homeowners can continue to rely on the disclosures they receive and that the mortgage market remains as transparent and fair as possible.

Respectfully submitted,

Connecticut Fair Housing Center  
Consumer Action  
Consumers Union  
Corporation for Enterprise Development (CFED)  
Empire Justice Center  
Housing and Economic Rights Advocates  
Legal Aid Society of Southwest Ohio  
Massachusetts Communities Action Network  
MFY Legal Services, Inc.  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low-income clients)  
National Fair Housing Alliance  
National Housing Resource Center  
Ohio Poverty Law Center  
Woodstock Institute