**Testimony of**

## Cindy Lowman

*On behalf of the*

## American Bankers Association

*before the*

**Subcommittee on Housing and Insurance**

*of the*

**Committee on Financial Services**

**United States House of Representatives**

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May 14, 2015

Chairman Luetkemeyer, Ranking Member Cleaver, my name is Cindy Lowman. I am President of United Bank Mortgage Corporation, part of United Bank of Michigan, a $468 million asset community bank in Grand Rapids, Michigan. I also serve as the Chairman of the Mortgage Markets Committee of the American Bankers Association. I am pleased to be here today to testify on behalf of the ABA on concerns over the pending implementation of the Truth in Lending and Real Estate Settlement Procedures Act Integrated Disclosures, or TRID as this project has become known.

The ABA is the voice of the nation's $14 trillion banking industry, which is composed of small, mid-size, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans.

The mortgage market comprises a substantial portion of the GDP in our economy and touches the lives of nearly every American household. TRID will impact every mortgage loan made in the United States and, thus, has a great potential impact on the housing-finance market. It is critical that this rule is implemented smoothly so that it does not end up hurting creditworthy Americans that want to own a home.

Although intended to simplify the disclosure process, if not implemented properly, TRID could add significant complications that end up costing consumers. TRID's objective of integrating consumer disclosures is worthwhile and commendable. TILA and RESPA both serve important purposes, but the disclosure regimes developed under each statute have swelled in complexity and volume to the point that borrowers are faced with so many documents to read, sign and initial that the process has become tedious at best and counterproductive at worst. The volume of documentation overwhelms the borrower and true disclosure has become virtually meaningless.

ABA and a wide swath of industry and consumer groups have sought for years to streamline and simplify this process. Combined and simplified disclosures remained out of reach for many years due to the different focus of TILA and RESPA, and the fact that the two statutes were overseen by two different federal agencies: The Federal Reserve Board had jurisdiction over TILA and the Department of Housing and Urban Development had jurisdiction over RESPA.

The Consumer Financial Protection Bureau (Bureau), to its credit, undertook this project in an open and responsive process. The final integration rule, published in November of 2013, reflected many changes urged by the ABA and others in the industry during the comment process.

Nevertheless, we believe that opportunities were missed in the integration process. The new forms remain lengthy and intimidating to average consumers. The rules that lenders must follow are still confusing and difficult to apply. Given the scope and complexity of these new rules, the implementation of this regulation will impose high costs on all lenders and consumers.

These rules are scheduled to go into effect on August 1 this year. There are wide-reaching market implications and a tremendous amount of work banks must undertake to comply with these rules. Between now and then, banks must fully review all of the final rules; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online. We must get this right, for the sake of our customers, our banks' reputations, and to promote the recovery of the housing market.

For some institutions, stopping any mortgage lending is the answer to this deadline because the consequences are too great if the implementation is not done correctly. At my bank, we are still waiting for systems from our third-party providers and do not expect some before the August 1 deadline. This means, that as of the deadline, I will be able to take mortgage applications, but will not be able to close any loans where I do not have systems in place.

In my testimony today I would like to make the following three points:

- A lot of work needs to be done to implement TRID,
- Consumers will be harmed if TRID is not implemented properly, and
- A delay of enforcement would minimize negative impacts on consumers.

The bottom line is that these new rules fail to achieve a simplified disclosure regime, and contain numerous ambiguities that raise compliance concerns for lenders and will lead to confusion and delays for borrowers if the rules are implemented as scheduled.

There are very reasonable solutions that Congress envisioned that enable the Bureau to avoid the negative consequences of an arbitrary August 1 deadline. ABA strongly supports the efforts of Chairmen Luetkemeyer and Neugebauer in asking the Bureau to treat the time period between August 1, 2015, and December 31, 2015, as a hold harmless period for enforcement and liability under the new rules, and to formally announce such period to ensure that the prudential regulators and secondary market stakeholders do the same. ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which provides for a hold harmless period. We urge quick action to avoid the potential harm to our mortgage customers.

## I. A Lot of Work Needs to be Done to Implement TRID

Given the complexity and breadth of the market covered by these new rules, there is much work to be done before banks can be ready to implement them.

This regulation entails more than just two new disclosure forms. The new rules rework the entire disclosure infrastructure for residential mortgage transactions and dispense with 40 years of legal precedent. The complexity of the new rules, and the central role they will play in nearly every residential real estate transaction requires that lenders, their compliance software vendors, and other parties involved in the settlement process be given adequate time to ensure compliance and a smooth transition to the new regulatory regime. New processes will be required for every bank, and these processes must be tailored to each product type and each jurisdiction across every state.

We stress that there is currently no opportunity under these tight timeframes for stakeholders to adequately guarantee accuracy and properly guard against liability. The rule does not provide for a "test period" or other mechanism to ensure that the new rules and the compliance software, employee training and other settlement service providers are prepared for the new regime. As things stand, borrowers whose mortgage application is received by July 31 will be covered by the existing rules, and borrowers whose mortgage application was received on August 1 will be covered under the new rules. In addition to banks and lenders, many other parties are affected by this regulation including realtors, appraisers, title companies, settlement agents, software vendors and, most importantly, the consumer. Should any of these parties not be fully compliant on August 1, all other parties will be suffer from a domino effect—with lenders bearing the brunt of the liability.

Our most urgent concern right now is ensuring we have sufficient time to fully review final rules and other clarifications or policy statements still being issued by the Bureau; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online.

Regulatory implementation is further complicated by the fact that most banks—and particularly smaller community banks—rely on vendors for regulatory compliance needs and the accompanying software updates and system upgrades. For purposes of the current TRID rule, an alarming number of banks report their vendors are not yet ready to provide the necessary updates to individual institutions.

An ABA survey found that an overwhelming 74% of banks are using a vendor or consultants to assist with TRID implementation; however, only 2% of the compliance systems had been delivered by the month of April (when the survey closed), and a startling 79% of our banks could not verify a precise delivery date, or were told that they would not receive systems before June. In fact, 21% of responding banks were explicitly informed by their vendor that their systems will not ready until well into June and even July.

Since 42% of those surveyed state that the compliance systems will be delivered "in stages," it is reasonable to anticipate that the full set of software necessary for "full" implementation will not arrive in time for the deadline. **In fact, I have been informed by my vendor that parts of our third party systems will not be available until *after* the deadline**. Even when we do get these systems, banks must still implement the new processes and forms; train staff; and test these changes for quality assurance before bringing them online.

Additionally, about a quarter of the banks surveyed report that their vendors will not provide the necessary software for all the types of loans that banks plans to offer. This means that these lenders will have to create specialized processes for these loans, integrate another vendor into their platforms, or forego the specialized products altogether. The first two options will further delay compliance, and the third item is surely a loss for all consumers.

Simply put, there is no realistic way that those banks can adequately prepare for the current August 1 implementation. Banks that have not fully implemented by the deadline will have to curtail all mortgage lending until systems are in place, delivering a heavy blow to the mortgage market at a crucial time of the year.

## II. Consumers Will be Harmed if TRID is Not Implemented Properly

It is important to note that while the TRID effort is intended to assist borrowers by making the disclosure regime clearer and more meaningful, those improvements, if they are achieved, still come at a cost to all parties involved in a covered real estate transaction, including consumers. If the rules are not well crafted, and the implementation is not well structured, those costs will increase as changes in rules or processes are required. All parties, but especially the Bureau should seek to avoid unnecessary problems at the outset to minimize these added costs.

### Costs Will Fall on Consumers

With added regulatory complexities come added problems. Since many lenders will not have a chance to test their systems prior to August 1, lenders will be more susceptible to problems which ultimately will fall on the consumer. For example, the rule is explicit about the three day settlement procedure. Should anything go awry, then the settlement will have to be delayed. A delay in settlement could be a huge imposition to a buyer. In more cases than not, the buyer planned a whole schedule around an expected settlement date, which likely involves moving homes and finalizing the sale of their current home. Having to push back the settlement date often has large costs to consumers. It can the lead to rate lock expirations, missed deadlines in back-to-back settlements, or in some cases could even lead to cancellation of entire transactions. If these problems occur on a widespread basis, as some fear, the impact could be felt more broadly in the economy. In a housing market that is still struggling to recover from the financial crisis, this is a mistake that can and should be avoided.

### Consumers are Already Protected

The existing rules, complex and voluminous as they are, do protect borrowers. On the other hand, rushing to implement new rules can and almost certainly will lead to circumstances that will at least inconvenience borrowers, but in actuality could likely be much worse.

If adequately structured, borrowers will not be harmed by a delay in enforcement or even in implementation of the new rules. The new integrated disclosures, imperfect as they are, may improve certain disclosure elements for borrowers, but they are not crucial to providing adequate protections for borrowers who already receive full disclosures and protections under existing rules.

Rushed implementation will not add to these protections and may indeed be harmful to borrowers if the process does not go smoothly.

**August is the Busiest Time of the Year in Housing Markets**

As Congressmen Luetkemeyer and Neugebauer first pointed out, "August is one of the busiest months for home closing as many homebuyers look to move into their new homes before the start of the school year." As outlined in the table to the right, we highlight the top 25 busiest days for existing homes sales closings. As highlighted, 7 of those days fell in the months of August, September and October. Conversely, January – the desired date to start enforcing a penalty for non-compliance – had 11 of the slowest days for home closings. Since August, September and October are the busiest months of year for the residential mortgage industry, it seems unnecessary to add such an arduous compliance change into the mix. We constantly hear complaints about problems arising for lenders due to the increase of regulation and the complex examination process from our members. TRID only adds to that level of concern. Come August, lenders should be ensuring they are providing the best quality care for the consumer during the industry's busiest season. They should not be concerned with the unnecessary burden of properly functioning software systems which is why a delay option seems to be the best solution for all parties involved.

| Rank | Closing Date | Rank | Closing Date |
|---|---|---|---|
| 1 | Monday, June 30, 2014 | 14 | Friday, June 20, 2014 |
| 2 | Friday, May 30, 2014 | 15 | Friday, November 14, 2014 |
| 3 | Friday, August 29, 2014 | 16 | Friday, November 21, 2014 |
| 4 | Wednesday, April 30, 2014 | 17 | Friday, September 26, 2014 |
| 5 | Thursday, July 31, 2014 | 18 | Thursday, October 30, 2014 |
| 6 | Tuesday, September 30, 2014 | 19 | Friday, July 25, 2014 |
| 7 | Friday, February 28, 2014 | 20 | Friday, May 23, 2014 |
| 8 | Friday, June 27, 2014 | 21 | Friday, December 20, 2013 |
| 9 | Friday, October 31, 2014 | 22 | Friday, April 25, 2014 |
| 10 | Friday, August 15, 2014 | 23 | Friday, August 22, 2014 |
| 11 | Monday, March 31, 2014 | 24 | Friday, July 18, 2014 |
| 12 | Friday, March 28, 2014 | 25 | Wednesday, July 30, 2014 |
| 13 | Friday, January 31, 2014 | | |

## III. A Delay of Enforcement Would Minimize Negative Impacts on Consumers

ABA strongly supports the efforts of Chairmen Luetkemeyer and Neugebauer in asking the Bureau to treat the time period between August 1, 2015, and December 31, 2015, as a hold harmless period for enforcement and liability under the new rules, and to formally announce such period to ensure that the prudential regulators and secondary market stakeholders do the same. ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which provides for a hold harmless period.

We stress the importance of keeping all the prudential regulators including the Federal Reserve, FDIC and OCC fully informed of this change to ensure no repercussions for banks undergoing their examination process by their primary regulator. We would also urge the Bureau to coordinate with the state Attorneys General on any restrained enforcement, as the TRID rules do allow for private rights of action.

**Congress Did Not Set This Deadline, and Intended a Trial Program**

Congress anticipated the challenges associated with new implementations and provided solutions in the Dodd-Frank Act. While the TRID effort was mandated by Congress to improve the settlement process for consumers, it was notably not intended to correct deficiencies or consumer protection gaps in the existing rules. It is also notable that Congress did not mandate a deadline for implementation of new rules, clearly demonstrating that there was no urgency to action. In fact, Section 1032(e) of the Dodd-Frank legislation specifically allows for a disclosure "trial program", for the express purpose of providing test disclosures to consumers that are designed to improve upon any model mortgage form proposed under these provisions. Congress wisely identified that the Bureau ought to protect lenders by creating safe harbor standards and procedures that should be designed to encourage covered persons to conduct trial disclosure programs. The clear message from Congress in this regard is that it is better for the Bureau to adequately test new forms and take the time to get the new rules right, rather than to rush to an imperfect or flawed new regime. The Congressionally-sanctioned trial program would be a sensible approach to resolve the critical compliance quandary that lenders are now facing.

**We Need to Get This Right the First Time**

Changes to rules are not cost-free for any parties involved in a covered transaction. Some have argued that if the new rules are not sufficient or need clarification, then the Bureau can simply engage in further rulemaking. We appreciate the Bureau's efforts to clarify these rules to date, but it must be recognized that each change to a rule imposes high costs on lenders and other settlement service providers. These new rules impose sequential steps that lenders must follow for purposes of compliance, so rule changes require alterations to software and additional training that amount to significant expenditures of money and resources. Those costs, unavoidably, are passed on to the

borrower. If the Bureau does not get this complex rule right the first time, borrowers will suffer in the long term.

**There is Precedent for Delayed Enforcement**

We note that there is precedent for a restrained enforcement period. In November 2009, the Department of Housing and Urban Development (HUD) announced a period of “restraint” in enforcing the RESPA rule. Similar to that of 2009, this restraint will be in the best interest of the consumer. The consumer purchasing or refinancing a home should not be burdened by complex rules and forms that have not been tested under real-life conditions while the industry navigates through these difficult regulations.

## Conclusion

These new rules affect the entire mortgage-lending industry, including lenders, service providers, appraisers, escrow agents, and virtually anyone with a relationship to the mortgage lending process. The new rules will significantly reshape the housing-finance market, which comprises a substantial proportion of our country’s gross domestic product and touches the lives of nearly every American household. If we do not get this right it will have a negative impact on consumers, banks, and the recovery of the housing market.

Given the potential for problems—which can easily be avoided—the ABA strongly encourages the Bureau to institute an enforcement and liability delay for those who demonstrate best efforts to come into compliance with the new rules. Some parties have referred to it as a “hold harmless” period and others are calling it a “grace period.” The terminology is unimportant; what is important is to move forward with all due haste to implement some specific and clear delay of enforcement.

ABA thanks Representatives Pearce and Sherman for introducing H.R. 2213, which would provides for just such a hold harmless period. The voices of Congress, including Chairmen Luetkemeyer and Neugebauer and others, are critical to supporting a reasonable and thoughtful change to help homebuyers in our country.

Since this August 1 implementation date was not Congressionally mandated, ABA sees no reason why the Bureau cannot enact a delay of enforcement and liability for entities that can engage in best efforts at compliance, or, if that becomes too complex, a full delay in implementation to

January 1, 2016. The “trial program” authorized by Congress would be a well-tailored approach to ensure that compliance efforts continue under safe legal conditions that do not impose unfair liability on banks.

Thank you for considering the views of the ABA. We look forward to working with the Committee on this important issue and to answering any questions you may have.