December 2018

TRID

COMPLIANCE TODAY

special report

Produced by:

RESPA NEWS

OCTOBER RESEARCH LLC

ABOUT US

RESPA News is a production of October Research, LLC and is published 12 times a year.

Contact information:
October Research, LLC
ATTN: RESPA News
3046 Brecksville Road, Suite D
Richfield, OH 44286
Tel: (330) 659-6101
Fax: (330) 659-6102
Email: contactus@octoberresearch.com

CEO & Publisher
Erica Meyer

Editorial & Publishing
Editorial Director
Chris Freeman

Editors
Tracey Read, *RESPA News*
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EDITOR'S NOTE

RESPA NEWS.COM

Don't take TRID 2.0 for granted

Dear Readers,

TRID is a four-letter word that has led to ongoing frustration for the real estate industry and consumers alike. Since its implementation on Oct. 3, 2015, the TILA-RESPA Integrated Disclosure (TRID) rule has been a major transition for settlement agents, lenders and banks.

Delayed closings, unprepared companies, inadequate software, the TRID Black Hole, technology glitches and fear of liability on bad loans were just a few of the problems that popped up in the early days of the complex rule. Three years later, TRID 2.0 was meant to fix the bugs in the first rule. But has it?

Our TRID Compliance Today special report includes information detailing how the first rule helped set up TRID 2.0, how difficult the transition has been and what things will be like going forward.

Unfortunately, despite the new amendments, confusion still remains about how the rule should be interpreted legally to comply with the new requirements. From a compliance standpoint, this could mean a potential for more borrower lawsuits, increasingly-technical exams and greater consequences for restitution and enforcement. On the investor end, will 2.0 potentially lead to another era of loans being rejected due to unclear legal requirements?

Industry experts continue to seek guidance from the Consumer Financial Protection Bureau on issues including the eSign process and sample forms — including construction-to-permanent loans, disclosures on mortgage assumptions and bond program loans.

Meanwhile, TRID has led to several positive changes in the industry — including getting information to consumers faster, more accurate disclosures and greater overall borrower satisfaction. Perhaps the greatest benefit of all is an unintended result: a greater focus on eClosings because of software updates from TRID.

In any event, lenders will need to get up to speed on TRID 2.0 if they haven't already – or they could find themselves at risk with investors or examiners. We hope the experts we've consulted in compiling our TRID special report will help you acquire the knowledge you need to remain efficient and compliant.

Sincerely,

Tracey Read
Editor

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TRID: The New Normal

TRID 1.0 was a huge change for the industry.

The rule accomplished something the government hadn't been able to do before – combining the mortgage disclosures under TILA and RESPA.

But as with any major rule change, there were specific questions, fact patterns and software issues that were unanticipated, which led to the Consumer Financial Protection Bureau's (CFPB) amendment rule, otherwise known as TRID 2.0.

The TILA-RESPA Integrated Disclosure (TRID) rule was implemented Oct. 3, 2015, and the mandatory compliance date for TRID 2.0 was Oct. 1 of this year. Three years later, the transition to TRID 2.0 has largely been seen as a mixed bag by real estate agents, settlement service providers and mortgage originators.

A non-event or a difficult transition?

"The initial transition was quite a shock for a number of companies, because they weren't prepared and the software wasn't ready," **Marx Sterbcow**, managing attorney at Sterbcow Law Group, said. "The companies that were ahead of the game got a heck of a marketplace advantage by preparing themselves and getting their software systems up to speed.

"It was a massive transition for the settlement agents. In a lot of cases, it was a difficult transition for the lenders and banks. But it's gotten a whole lot better," Sterbcow added.

Richard Horn, partner at Garris Horn PLLC and the former CFPB senior official who led the original TRID rule, said there are extremely detailed and specific changes that must be handled in TRID 2.0, mainly by software vendors, as well as big picture changes and a lingering lack of clarity regarding some of the changes in TRID 2.0.

"For example, there is some confusion regarding the CFPB's preamble guidance in the TRID 2.0 rule regarding the level of itemization for shoppable third-party services on the Loan Estimate and service provider list, the new bona fide standard for the 'no tolerance' category, and how to complete construction-to-permanent disclosures," Horn said.

Joe Tyrrell, executive vice president of corporate strategy at Ellie Mae, said the state of TRID today is business as usual.

"We definitely have heard horror stories just in the industry in general, but within our client base, we actually feel it's been a relative non-event," Tyrrell said of the latest changes. "We've been a little bit prepared for this, dating back to first the RESPA changes, then we went through ATR (Ability-to-Repay) and QM (Qualified Mortgage) and really focused on trying to make that a non-event for our customers. So we had a lot of good muscle memory we were able to employ in helping our customers as

it related to TRID.

"The biggest difference is we didn't just add a bunch of fields and forms. We did a lot of pre-calculation in those additional fields we added. So we've moved a lot of the heavy lifting from our customers. We certainly have heard about a couple of things that were challenges just across the industry."

Those challenges, according to Tyrrel, included longer times to purchases loans using the Loan Estimate (LE) and the Closing Disclosure (CD) — mostly because due diligence firms involved in the process were overly restrictive initially as they were trying to interpret the guidelines. The restrictions loosened as they began to get more comfortable.

"Probably the biggest issue was around kind of this black hole of clients' inability to document a changed circumstance after the CDs had been sent out, and then those costs were having to be absorbed by the lender because they couldn't be passed onto the borrower," Tyrrell added. "Luckily, this was addressed by the CFPB separately before TRID 2.0.

"The last big challenge was around construction lending. The rule came out with these generic requirements that were relatively silent on what it meant for construction and so that was really, really challenging for a lot of lenders."

From 1.0 to 2.0

Sterbcow said the rule has come a long way since the 2015 implementation.

"When they did the original TRID they had lost a number of people at the bureau who understood the industry and how it worked," Sterbcow said. "And unfortunately, when you have bureaucrats writing a rule and they don't understand how things work, things can get screwed up. And before TRID 2.0, there were a lot of things that were screwed up. Construction loans and the Black Hole. There were a lot of unanswered questions that could have been addressed early on. The people that were in charge of writing the rules just did not really understand the industry and they pushed things without really understanding what the hell they were pushing, and that was unfortunate."

However, now TRID is almost like an afterthought, Sterbcow added.

"The big thing on the state of TRID has been the inability of these technology companies to integrate their systems together," Sterbcow said. "From title to lender and others, that's been the biggest take on TRID. Unfortunately, we had a lot of companies who were leading the charge for collaboration systems who allowed their tech people to design them, and they didn't get input from the people who actually do the work, and they didn't understand how the process flows. And because of that, it made a lot of things clunky and unusable, and people didn't want to use them anymore. That's one of the unfortunate things, at least in this environment. Collaboration has taken a couple of steps back from where it was a few years ago."

Tyrrell said the first rule helped set up 2.0 because the Oct. 1, 2018, mandatory compliance date was inconsequential because everyone essentially had institutionalized TRID already.

"The effective date was Oct. 1, 2018, but in 2017, everyone began adopting it," he said. "That allowed TRID 2.0 to be more of what it was intended to be, which is a clarifying rule — helping the lenders to better understand how to really sharpen their processes and get to a point where they had greater certainty that they were doing it right. Now, they can look at ways to automate and move faster. It's a little difficult to automate when you're not sure if the rules are going to change on you."

Consumers, lenders still confused

Despite the rule amendment, Horn said much confusion remains about TRID.

"The original TRID rule was a wholesale change of disclosure regimes. But the 2.0 rule is more like bug fixes to the original 1.0 version that industry should already be used to generally," Horn said. "In spite of this, there are still legal questions and operational difficulties with the 1.0 version, which are not bugs so were not touched by the 2.0 rule. These issues come up when new facts arise or issues are cited in examinations. For example, lenders are starting to add different products in this rising interest rate market, so new questions come up about how to disclose them.

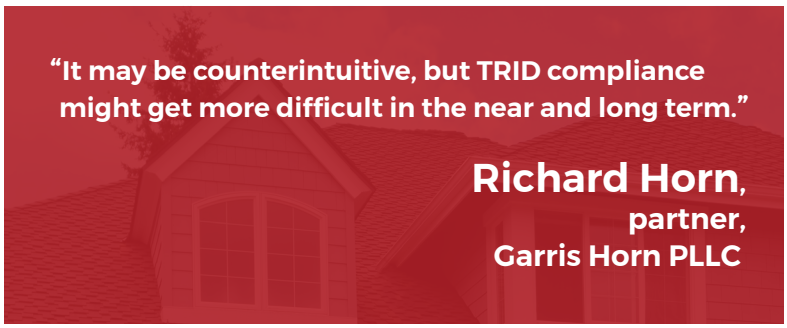
"At the same time, with the good-faith (enforcement) period essentially being

over, examinations are getting tougher and more technical, and are starting to have real consequences in terms of having to pay restitution and potential enforcement. Add to that the confusion on some major issues under TRID 2.0, and the potential for borrower lawsuits increasing if the economy takes a downturn due to trade wars and such. So, it may be counterintuitive, but TRID compliance might get more difficult in the near and long term."

Tyrrell said Ellie Mae's clients are concerned about how TRID will affect the eSign process.

"eSign has its own governing rules, so when TRID came out, a lot of lenders interpreted that to mean that this supercedes anything relative to rules that weren't explicit in the eSign Act," Tyrrell said. "A lot of it has to do with timing. The eSign Act didn't really specify you had to do a specific event in a specific order.

"TRID introduced this concept that consent has to be received before the lender sends their disclosure," Tyrrell added. Historically, consent could have come at any time, as long as the borrower got it before they electronically sign their documents. So the rules are a little bit further complicated when lenders want to use a third party, and they're trying to do the coordination between those sorts of things. That's one of the areas where everybody's looking for a little better clarity."



Sterbcow said TRID loans today have shown vast improvement from three years ago.

"Look, I think it's better," he said. "It's not batting a thousand percent, but it's certainly better than it was. Currently, from what I'm hearing, consumers are still a little confused with TRID. I don't think it's made things easier for consumers. If anything, there's a lot more content and disclosure and things like that — which is fine, but there's also a part when you become too complex. When you make a large document and as thick and thorough as it is, people aren't going to review it as much as you would think. I could see additional tweaks. I could even see maybe a whole 'nother version to the closing process as technology gets more sophisticated."

Among the other TRID trends Sterbow is seeing is that more lenders are getting into the real estate brokerage and property/casualty insurance businesses.

"I'm seeing a lot of lenders becoming their own title agencies, and banks as well," he said. "TRID did have a significant impact on consolidating a lot of the functions in-house, or at least to merge everything into where everything communicated in a much faster way, so if there was a mistake made, you could address it a lot quicker."

Going forward

Although the introduction of TRID loans radically changed the way real estate transactions are conducted, the industry has had three years to find its footing.

"We've been living in the new normal for a while now," Tyrrell said. "So I really think the next big thing that's going to change how tomorrow's going to function is the new Uniform Residential Loan Application (URLA). Quite honestly, from a technology perspective, that's bigger than TRID."

Sterbcow said for all its imperfections, TRID 2.0 has given some clarity on certain issues.

"Is it perfect? No. But it's better than TRID 1.0," he said. "Anything that takes the uncertainty out of the mortgage process certainly makes lending a lot easier."

Horn said it remains to be seen how TRID 2.0 will play out, because a lot of the potential issues in the rule may come to light later through disputes between lenders and investors, or in examinations.

"For example, the CFPB put some guidance in the preamble of TRID 2.0 that appears to interpret TRID 1.0 and say lenders should not give an itemized

breakdown of the third-party services for which a consumer can shop for the provider on the LE and written list of providers, because the lender does not 'require' each of the itemized fees," Horn said. "The example in the rule is that the lender should disclose the lender's title insurance premium, but not the associated title costs, like the title search fee. This is different from how many in the industry were interpreting the original rule.

"So, were all those detailed breakdowns disclosed under TRID 1.0 in violation, because the lenders disclosed information they shouldn't have? Also, the CFPB's preamble does not answer the questions that flow from this interpretation, such as whether these associated fees should be disclosed as optional charges, or whether they are subject to the 10 percent tolerance category. Some lenders and investors may change their procedures and guidelines based on this guidance, and some may not, resulting in differences on the very basic question of itemization. This could result in investors rejecting loans, examiners asking for borrowers' cures, and other serious repercussions. And it remains to be seen how courts will interpret these issues as well. So, TRID 2.0 could end up causing some real problems."

Horn added that the CFPB's five-year review of TRID, required under the Dodd-Frank Act, will be coming up next year as the agency looks to gather information for a report in the end of 2020.

"The CFPB has to issue a report five years after the effective date, and so the CFPB should soon start its analysis of how TRID is working," Horn said.

"It will be important for the industry to provide feedback and data to the CFPB to inform this look-back. This report could potentially result in amendments to the rule later on, so the TRID story continues."

A look back at TRID: The first 18 months

It's been three years since the new mortgage disclosure rules went into effect. Although the TILA-RESPA Integrated Disclosure (TRID) rule was implemented Oct. 3, 2015, the process of TRID began years before.

The first model forms were unveiled in May 2011, and although the Consumer Financial Protection Bureau (CFPB) published the TRID rule in July 2012, it would take another year before the disclosure forms were released, in November 2013.

The complex rule meant new forms for consumers but also major changes to the mortgage origination and closing process.

It also led to a whole new set of problems for real estate agents, settlement service providers, mortgage originators and consumers. More than 18 months after the effective date, much confusion and unresolved issues remained.

Stopped before it starts

The industry had been given 20 months to prepare for an Aug. 1, 2015, compliance date for TRID, and then-CFPB Director **Richard Cordray** repeatedly brushed aside calls for a delay to the implementation date, or a hold-harmless enforcement period once it started.

That all changed in June 2015, when the bureau shocked the industry by announcing it would push the implementation date back to Oct. 1. Although the bureau said in a statement that the move would accommodate consumers and providers who would "be busy with the transition to the new school year," in fact, a clerical error had left the rule unreported to Congress. Under Congressional Review Act rules, the bureau had to send the final rule to Congress for review at least 60 days prior to implementation, and a failure to file the bill left the bureau unable to meet the statutory requirement.

"Our clients are relieved," **Loretta Salzano**, partner at Franzen & Salzano, said at the time, "even those who were far along the implementation trail and ready to rip off the Band-Aid."

Delayed closings

Although not as bad as originally predicted, TRID

caused numerous closing delays. Lenders, especially smaller lenders and community banks, struggled to comply with the rule, partially because the systems provided by vendors were incomplete or inaccurate — often caused by ambiguities in the TRID rule.

One survey by the American Bankers Association (ABA) found that more than 75 percent of the 548 respondents reported customer frustration because of delays. On average, those bankers reported a delay of eight days, with responses ranging from one to 20 days. More than 90 percent of responding banks said front-boarding and loan processing times also increased.

Other delays were because consumers selling their homes often were buying a new home in a different transaction — causing ripple effects from one transaction to another.

Credit unions reported even more problems in the months following the rule's implementation.

According to a 2016 survey conducted by Callahan & Associates, the average time to close was 42 days, 11 days higher than the ideal average closing goal of 31 days. Ninety-six percent of 200 credit union executives from 46 states reported mortgage closing delays at the time.

Of those, 51.5 percent of respondents blamed new lender workflows between title companies and their members and changes in procedures for the delays. Twenty-six percent reported compliance problems and for 16.2 percent, the issue was that the loan origination and processing systems were not able to handle the necessary updates. Another 6.1 percent of respondents said delays were due to members who were unable to provide the appropriate documentation and information in a timely manner.

After more than a year of elevated closing times for all loans, Ellie Mae's May 2017 Origination Insight Report found the closing time for loans had begun to hold steady — with time to close all loans at 42 days, refinance time to close at 41 days and purchase time to close at 42 days.

The Black Hole

The TRID Black Hole refers to the period of time after the Closing Disclosure (CD) has been issued, when a creditor may not be able to reset charges subject to the tolerance requirements as needed.

Under TRID as it originally took effect in 2015, an estimated closing cost was considered to have been disclosed in good faith if the charge paid by or imposed on the consumer did not exceed the amount originally disclosed. However, there were exceptions.

For certain types of third-party services and recording fees, estimates were considered to be disclosed in good faith if the total paid by or imposed on the consumer for those types of charges did not exceed the disclosed amount by more than 10 percent. Also, estimates of certain other types of charges were in good faith if the estimate was consistent with the best information reasonably available to the creditor at the time it was disclosed. Lastly, TRID permitted creditors, in certain limited circumstances, to use revised estimates, instead of the estimate originally disclosed to the consumer, to compare to the charges actually paid by or imposed on the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith.

What the industry found out once the rule took effect, though, was that a creditor could not reset charges subject to the tolerance requirements as needed, because the CD already had been issued. Thus, the creditor often was required to absorb the fee increases.

The initial proposal by the CFPB looked to correct the situation by eliminating certain timing restrictions. But as the bureau got comments from the industry, it decided that the solution it proposed did not provide the clarity it hoped.

Some argued the Black Hole created the potential for postponing closings because of the inability to redisclose. Others in the industry were concerned the elimination of the four-business-day rule would lead lenders to issue more Closing Disclosures earlier in the process — which potentially could confuse buyers.

So as the rest of the TRID amendments were finalized in July 2017, the bureau re-proposed the Black Hole fix, eliminating the four-business-day limit and permitting creditors to reset tolerances. Those changes eventually would be finalized in the summer of 2018.

Technology glitches

Even after the CFPB extended the rules' effective date from August to October 2015, many worried the technology used in real estate transactions would not be ready for the new forms. Some lenders were forced to run two separate systems because some loans would still be using the old forms, and others would use the new forms.

Other issues included disconnect between LOS systems and doc provider systems, as well as programming errors.

Cordray addressed the technology failures during a speech at the Mortgage Bankers Association conference in San Diego shortly after the rule took effect. In the speech, Cordray blamed the IT problems on vendors who "unfairly put many of you on the spot with changes at the last minute or even past the due date."

To date, however, no public enforcement action has been taken against any technology provider for TRID violations — despite industry fears at the time.

Richard Horn, principal at Richard Horn Legal, PLLC, led the final TRID rule when he was a senior counsel and special advisor at the CFPB. He called technology the most important thing lenders have to deal with when complying with TRID.

"There are some software vendors that have put in the time and resources and have gotten it right," Horn said after the implementation.

"I've seen disclosures that have errors that were caused by technology; either the data didn't make it to the right place in the system or there was a misinterpretation by the LOS on how the disclosures work. There are tricky parts of the disclosure rules that seemed to have tripped up some of the LOS systems."

Legal uncertainty

As closing delays and other post-TRID issues became less frequent, other problems continued to plague the secondary market. Namely, investor push-back due to a lack of clarity in the rules and fear of liability on bad loans.

Confusion about what exactly the rule required in certain circumstances caused investors to become much pickier about the loans they accepted. In addition, minor technical errors spawned a "whole new TRID scratch-and-dent market for purchases of loans on the secondary market," Salzano said at the time.

"Many of our clients are finding they're only getting 90 cents on the dollar for their loans because they have to sell them to someone other than the investor they contemplated because of very minor technical errors or things that investors are requiring," Salzano said.

"I think that comes from the lack of clarity in the rule about the potential liability for TRID errors."

In March 2016, Association of Mortgage Investors (AMI) Executive Director **Chris Katopis** wrote a letter to the CFPB, saying the TRID rule "resulted in a climate of legal uncertainty" and created a "chilling" effect on private investment in the mortgage market.

AMI sought formal guidance clarifying whether the statutory authority for each TRID requirement is under RESPA or TILA, as well as the scope of TRID's cure mechanism.

Katopis said lenders' mistakes in implementing the rule because of human error or misinterpretations of the rule increases liability risks – which means increased costs to the borrower.

That same month, the ABA reported that compliance with TRID was still a relevant problem and continues to impose a heavy compliance burden. A February 2016 ABA survey found that 25 percent of respondents eliminated certain mortgage products — including construction loans, adjustable rate mortgages, home equity loans and payment frequency options — because the rule did not provide enough clarity.

Costs of complying with the rule proved burdensome for many, with 67 percent of ABA members stating their legal/regulatory consulting costs had increased because of TRID.

"Consumers are seeing the greatest impact due to increased loan costs, fewer choices and delayed closings — and that's not what this rule was intended to do," ABA Executive Vice President **Bob Davis** announced after the survey findings.

Fixing the rule

In July 2016, less than a year after the TRID rule took effect, the bureau announced it would change.

The CFPB proposed a 293-page amendment with changes to TRID that highlighted four primary areas, led by privacy and the ability to share information from the Loan Estimate and CD forms during the transaction.

The CFPB stated then that it received "many questions" about sharing the disclosures with third parties to the transaction, including the seller and real estate agents.

"The bureau understands that it is usual, accepted, and appropriate for creditors and settlement agents to provide a Closing Disclosure to consumers, sellers, and their real estate brokers or other agents," the bureau stated. "The bureau is proposing additional commentary to clarify how a creditor may provide separate disclosure forms to the consumer and the seller."

Cordray said at the time that the changes were important because mortgages were important.

"Getting a mortgage is one of the most important financial choices a consumer will ever make," he said. "The bureau's rules are designed to make sure consumers have the information they need, in a form they can easily understand and use, before making the decision. Our proposed updates will clarify parts of our mortgage disclosure rule to make for a smoother implementation process."

Those amendments were finalized a year later, and TRID 2.0 officially took effect Oct. 1.

Closing times back to pre-TRID levels

Among the biggest concerns when TRID went live was how much longer it was going to take to close loans. Some lenders and settlement agents were expecting to tell buyers to prepare for a full week longer than normal, to ensure that compliance was handled properly before forms were signed.

Industry reports show that in the months immediately following TRID, closing times did increase, as much as 25 percent. In early 2016 closing times had reached their longest period in three years.

By mid-2017 though, closing times returned to within a day or two of pre-TRID levels, and seem to be holding steady over the past year since.

"So it seems that TRID is no longer having any material effect on closing times," said **Michael Cremata**, senior counsel and director of compliance at ClosingCorp.

However, Cremata added that time to close is a metric that lenders constantly are trying to shorten.

Joe Tyrrell, executive vice president of corporate strategy at Ellie Mae, said lenders have learned to adapt to TRID.

"Just looking at our data, time to close on our platform was 48, 49 days after TRID rolled out," he said. "In 2016 and 2017, there was a gradual decrease. It's now down to 42 days."

Closing times had reached as low as 40 days in 2014, leaving room for growth as the industry moves to incorporate TRID into historically normal workloads. Lenders' reviews on TRID have been mixed.

"Most lenders would agree the intent of TRID was a good one — to provide more transparency, more easily understood documents to the consumer," Tyrrell said. "But they've had to deal with the changes it introduced."

Donna Clayton, chief compliance officer at Covius Holdings, Inc., said the rule has resulted in a new normal — including the added expense of staff required to support compliant closing under TRID.

"It should be noted that lock periods never changed, so our company had to ensure timely delivery of the Closing Disclosure (CD) based on the process changes brought forth by TRID," Clayton added. "I do believe that our industry sometimes loses sight of the fact that the lender/creditor under TRID is now taking full responsibility for the accuracy of the

CD. This requires the lender/creditor to budget more time to the closing process. As a lender/creditor, we need to ensure that we have all of the right steps in place to confirm accuracy and the expected timelines for CD delivery."

Cremata said the industry as a whole has adjusted well to TRID, but that there were some players who still needed work.

"However, there are still some lenders struggling to get there, particularly smaller ones who may not have the budget or resources to invest in sophisticated compliance systems and technologies," he said.

Although statistics show that lenders are getting close to historically normal closing times, the cost of originating loans has increased dramatically, leaving lenders searching for more efficiencies in the process.

"But to get closing times even shorter, better technology and less human involvement will be essential," Cremata said. "I don't think it's at all far-fetched that, in the relatively near future, it will be possible to close a mortgage loan within a few days, with virtually no human involvement whatsoever. The conceptual framework for that is in place already, but the execution of it is still a bit off."

Cremata cautioned lenders to start thinking about the inherent risk in the increasing digitization of the mortgage process because of the higher potential for tolerance violations.

"Having a process that solicits a minimum of information from the borrower and has little to no input or oversight from lender personnel makes it challenging to provide an accurate estimate of settlement service fees for certain transactions," he added. "While many settlement service providers are helping by adopting simpler, flatter fee structures where possible, lenders still need to be aware that accepting just the minimum required borrower and property information through their point-of-sale systems, without some sort of additional automated logic or review built into their workflow, could cause an increase in tolerance violations."

Tyrrell said he is grateful that TRID has had no lingering negative effects on closings.

"I'm glad it's done. Now, we get to focus on URLA (Uniform Residential Loan Application). TILA and URLA are both four-letter words," Tyrrell said with a laugh.

How did early mistakes prepare us for TRID 2.0?

When TRID 1.0 went into effect, the industry was relying on vendors to utilize the proper technology to streamline a new process for originating and closing mortgage loans. However, many vendors continued to struggle with technology in the months after the rule was implemented.

In some cases, technology caused errors on the new disclosure forms — data not making it to the right place in the system, misinterpretations by the loan origination systems on how the disclosures worked, rounding errors, misinterpretations of the Projected Payments table and the Calculating Cash to Close table — to name a few.

In fact, some lenders reported being forced to backlog mortgage applications because so many technical bugs that needed to be worked out remained.

Lenders who were at risk for compliance problems found themselves having to have either a backup vendor or canceling vendor contracts.

Things were so dire that then-Consumer Financial Protection Bureau (CFPB) Director **Richard Cordray** warned vendors in a speech before the Mortgage Bankers Association's annual conference that regulators may start paying closer attention to those who performed poorly in getting their work done in a timely manner.

"Shortly after TRID was first implemented, Richard Cordray attacked vendors for their implementation efforts related to TRID and threatened them with being placed under bureau supervision and enforcement," said **Joshua Weinberg**, executive vice president of compliance at First Choice Loan Services Inc. in East Brunswick, N.J.

"As time went on, I think the bureau learned that implementing a rule as complex and comprehensive as TRID was not as easy as they might have first thought. In fact, the clarifications and updates provided prior to TRID 2.0, and the fact that we even needed TRID 2.0, is evidence the bureau wasn't perfect, either. That being said, perfection is something to strive toward, not usually obtained."

There were many early mistakes throughout the industry because of TRID.

"The learning curve was steep and constantly changing," Weinberg said. "Differing interpretations among secondary market investors and the diligence firms that rate them, as well as variations in understanding and oversight from regulators, left a vacuum to be filled by lenders and the vendors who support them."

One of the biggest early mistakes of TRID 1.0 was that too many title and settlement agents simply failed to be prepared for the rule change.

"You had so many settlement agents across the United States," said **Marx Sterbcow**, managing attorney at Sterbcow Law Group in New Orleans. "Some may have done one transaction every six months, some may have done 200. It was the folks who didn't do a lot who really had challenges with it. You had a lot of old school people still doing the transactions by pen and paper. You had a lot of behavioral changes that took place as well with vendors."

Over the past three years, consistency in interpretations and the establishment of commonly accepted industry practices have formed, many of which were clarified and codified in TRID 2.0, he added. Vendors were hungry for information, clarifications and guidance from TRID – especially from the bureau.

"Their appetite for accuracy drove them to push the bureau for technical corrections, revisions and consistency between the reg text, official interpretations, sample forms and examples," Weinberg said.

"TRID 2.0 was likely the result of industry pushing to understand and clarify the unresolved problems from the original TRID rule, combined with the bureau's genuine desire to improve the rule and its industry impacts," Weinberg added. "To be fair, the willingness of the bureau to be reasonable and recognize industry's good — faith efforts to comply — as well as their public and published statements that examination would be diagnostic and not punitive — allowed vendors to implement without certainty, something they are hesitant to do."

Sterbcow said in the early days of TRID, recording fees were an absolute nightmare — and are still a major problem in many states.

"One of the other early mistakes was the banks and lenders didn't come through with a uniform vendor requirement list that showed the different tiers of title agents, and that was in some respects disappointing," Sterbcow said.

"The lenders and banks didn't particularly trust the ALTA settlement, our best practices, for their vendor lessons and they wanted higher standards. Even today, a number of them still want higher standards, so you have kind of a mishmash of confusion throughout the industry."

Weinberg said that compliance in today's mortgage market is not possible without technology.

"The role of vendors is critical, so much so that I think we need to shift our thinking and perspective away from vendors and toward business partners," he said. "Lenders are reliant on our vendors for our daily operations and to meet compliance, and our successes or failures are often woven together."

Sterbcow said the most important takeaway from TRID — from the bureau's perspective — has been the lack of title production system reports.

"That's been one of the biggest disappointments," he said. "The bureau found fault with all the title production systems. None of them really addressed the compliance requirements they needed to be implemented for companies to operate.

"From business compliance, employee compliance to consumer compliance, the systems for the most part had very rudimentary or limited reportings. And that's why these title production overlay software systems are now becoming so important in the industry — because they do business productions, they do compliance, and they do it so much better than the underwriters or the title production software that companies have implemented."

Sterbcow said title production systems slowly are improving, but are still behind what he believes is necessary.

So did the early mistakes with TRID 1.0 help us prepare to make 2.0 go as smoothly as possible? Not according to Sterbcow.

"No. People always wait until the last minute with any change in the system," he said. "You're being overwhelmed. We have, what, 200,000 settlement agencies across the U.S.? That's a lot of integration for software systems. It's very difficult to get done quickly. And you also have to worry about the lenders and what they're doing. There's a lot.

"You saw it with the HMDA (Home Mortgage Disclosure Act); that HMDA report software was really a mess. Heck, you had some LOS systems that took over a year to become TRID compliant."

Is TRID trouble in secondary markets over?

During the first six months of TRID, investors had gotten much pickier about the loans they would accept because of ongoing confusion about what exactly the rule required in certain circumstances.

Troubles in the secondary market caused by the rule change led to many loan originators getting only 90 cents on the dollar for their loans after being forced to sell them to someone other than a proposed investor who had become scared off from minor technical errors or additional requirements.

Investors also increasingly were concerned about consumers' privacy and the non-public personal information on the Closing Disclosure.

Three years post-TRID, the secondary market still is shooting down loans, albeit at a slower rate, said **Jeffrey Bode**, president and CEO of Mid America Mortgage, Inc. in Addison, Texas. One remaining obstacle Bode sees is that fees are not being corrected fast enough.

Michael Lima, managing director of whole loan trading for Mid America Mortgage, added that most of the issues they see now are related to incurable TRID items such as missing the three-day window and under-disclosure of credit enhancement — i.e. Federal Housing Administration (FHA) fees and mortgage insurance premiums (MIP).

"Correspondent buyers seem to be more comfortable with post-closing cures related to fees," Lima said.

John Levonick, special counsel at Pepper Hamilton LLP in New York City, said it is important to understand that RESPA never has imposed liability onto assignees of loans.

"The assignee liability provisions that are the basis for an investor's determination to purchase or not purchase an asset exist within the Truth-in-Lending Act (TILA)," Levonick said. "RESPA merely imposes obligations upon the originator as to disclosure requirements that must be made."

That being said, it is vital to understand that the RESPA disclosures were key to verifying that certain TILA disclosure obligations (including Regulation Z) were met. For instance, a HUD-1 form was required; otherwise the final points and fees could not be determined for the Home Ownership and Equity Protection Act (HOEPA) high-cost loan threshold validation, he added.

Historically, the disparity between the RESPA obligations and the TILA requirements were the basis for the reform that started with migrating certain obligations of RESPA into TILA requirements, with its assignee liability. This RESPA to TILA migration started with the Mortgage Disclosure Improvement Act (MDIA) in 2009, and then following the Dodd-Frank Act and the advent of the Consumer Financial Protection Bureau (CFPB), their rewrite of the mortgage disclosure process and forms under TRID, Levonick said.

"The CFPB merged many requirements that existed prior to TRID in RESPA, and while the CFPB under their rulemaking authority have valiantly attempted to clarify gaps in the very comprehensive TRID rule following the initial promulgation of the rule, there remain certain requirements under the TRID rule where the underlying requirement that was derived from RESPA has not clearly been mapped to the existing liability provisions of TILA, as this was done through the Act's narrative referred to as 'the

preamble,' " he said.

Levonick noted that this mapping of the prior RESPA requirements to the existing TILA liability provisions are the basis for determining whether or not, when there is a TRID error, the investor who purchases the asset may be subject to civil liability, including actual and/or statutory damages, as a result of the error that occurred in the origination process.

Meanwhile, investors' concerns stemming from TRID have helped change the rule along the way, with regulators beginning to understand the need to adjust to industry concerns.

"The Trump administration is perceived to be a little looser on TRID violations," Bode said.

The CFPB sought information in its fact-gathering process from investors, specifically around post-promulgation TRID issues.

"Great informal guidance was issued by the CFPB," Levonick said. "A particularly astute compliance and RMBS (residential mortgage-backed security) ops professional from Wall Street recommended a field-by-field reference to the provisions of TILA that each section was intended to attach to, from a liability perspective. That helped considerably, but unfortunately did not answer all outstanding concerns."

In May 2016, the bureau posted on its website annotated Loan Estimate and Closing Disclosure forms, as suggested.

The reaction from the secondary market also helped change TRID. For instance, third-party review firms (TPR), or due diligence (DD) firms, were able to drive the liability analysis that the market currently relies upon for its risk assessment. That was vital, Levonick said, because the TPR/DD firms reported to the Nationally Recognized Statistical Ratings Organizations (NRSROs).

"The secondary market needs to look to either TPR/DD firms or the NRSROs to determine where the liability for certain TRID errors exists," Levonick said. "For the marketplace to get 100 percent comfortable, to where private label RMBS return to a sound footing, the industry needs sound risk advice, particularly in centralizing knowledge, due to the fact that there are so many competing perspectives currently on risk. The NRSROs are in the best position to determine what the risk is, how it is quantified and how to be able to translate that to potential bond investors."

Early in 2016, Mid America Mortgage was one of the first investors to announce it would purchase "scratch-and-dent" TRID loans, loans which had minor infractions that either would not be bought by other investors or had been rejected. Such loans were prevalent in the weeks and months following TRID implementation, but Bode said TRID's negative effects have slowed down greatly in the investor realm.

"I think the primary reason for the decline of TRID defective loans is that lenders have more experience and are not making the same mistakes," Bode said.

The neverending story of TRID compliance

When the original TRID rule took effect, thousands of lenders, financial institutions, agents, Realtors and vendors without large compliance staffs were left reeling — wondering what enforcement standards they would be held to after Oct. 3, 2015.

Then-Consumer Financial Protection Bureau (CFPB) Director **Richard Cordray** made assurances the bureau would be "sensitive" to lenders who make a "good-faith effort" in compliance and would "not be punitive" to enforcing the rules.

Today, there continues to be new questions coming up with TRID relating to compliance.

"This rule has so much detail that it is easy to trip up without realizing it. And just when you think you're done with TRID, new information or facts can cause you to look at a part of the rule differently," said **Richard Horn**, partner at Garris

Horn PLLC and the former CFPB senior counsel and special advisor who led the final TRID rule. "So, in spite of people saying, 'Oh, TRID's old news. I have it down,' there's always something that surprises people about TRID.

"With TRID 2.0, a lot of people have been viewing it as a couple quick fixes that their software will handle, but that's not really the case. There are some major issues where the rule is less than clear. That requires lenders to obtain some legal analysis and make some risk decisions about how they're going to approach it. There are also potentially new compliance burdens under the rules, like with respect to the no-tolerance category. So if lenders haven't put their homework into TRID 2.0, they could find themselves behind the 8-ball on it when investors or examiners start asking questions that relate to 2.0."

Compliance tricky spots

There are multiple big-picture issues under TRID that give many lenders trouble.

One of those is timing of the forms, among the initial concerns when TRID became final in 2015 that is still an issue for some today.

"Sometimes, the Loan Estimate (LE) doesn't go out within those three days after getting those six items, and that can be for a number of reasons. Sometimes it has to do with whether the lender is actually logging when those six items that make up the definition of an application are received by the consumer," Horn said.

"There are also issues with respect to when and where fees are disclosed, which can cause costly cures to consumers.

"There are very basic issues about how you calculate the APR, which aren't necessarily TRID issues, but are really Regulation Z issues, that are becoming more apparent because of the way TRID requires specific seller or lender credits to be itemized on page 2. After TRID, examiners have raised issues regarding how a lender credit or seller credit is applied to the finance charge."

Construction-to-permanent loans have been a sore spot since the TRID rules took effect. Horn said those issues remain, and despite efforts to cure them with the new amendments, they may not have gone away yet.

"Issues with respect to construction-to-permanent lending are very, very tricky under TRID. And it is actually made trickier under 2.0 because of guidance about how you might have to disclose a fixed rate permanent phase as an adjustable rate loan," he said. "That triggers all sorts of questions, like how you disclose the bullets in Loan Terms, and how you disclose the key TILA disclosures as well.

"Right now, people might have the misconception that TRID is old news, but it's a never-ending story."

Richard Andreano, practice leader of Ballard Spahr's Mortgage Banking Group, said the Consumer Financial Protection Bureau (CFPB) should provide more guidance regarding sample forms to alleviate common compliance problems — especially related to construction-to-permanent loans, disclosures on mortgage assumptions and bond program loans.

"With bond program loans, even if you qualify for the partial exemption for the loan, you still have to provide the old form of Truth in Lending disclosures, and a lot of people don't have the software to produce such disclosures anymore," Andreano said. "Either way, whether you're talking Truth in Lending or TRID, there are a lot of questions on how to disclose those loans based on their terms. The loans basically are grants written as loans. Typically no payments are required while the consumer resides in the home as their principal residence, often the loan is forgiven. So a lot of people ask, 'How do I disclose the loan if there are no scheduled payments, but the borrower would have to repay the loan if certain conditions of the program aren't satisfied?'"

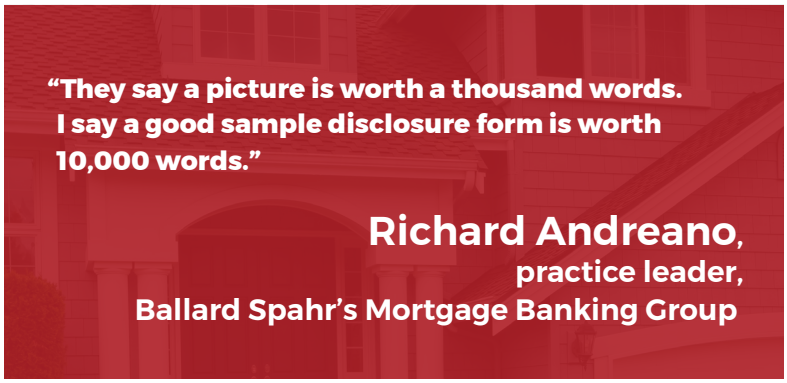
Andreano credited the Department of Housing and Urban Development (HUD), which oversaw RESPA compliance before the creation of the CFPB, for working to find answers to some of the forms issues in prior versions of the disclosures.

"Both the Federal Reserve Board, and now the bureau, never really provided guidance for how to disclose those types of loans under the Truth in Lending Act, and it's been sort of a headscratcher. What HUD did is it looked at these issues and realized it was very tough to make disclosures, so it created an exemption from the RESPA disclosures," he said. "There was never a similar exemption

created from the Truth in Lending side of the calculations, so those remain an issue where you simply ask 'What do I do? Do I assume the borrower will satisfy the program conditions and never have to repay the loan because it's basically a grant and not a loan, or do I have to disclose the loan being repaid and, if so, how?' There really is no guidance there, and that's why a lot of people would like to see some sample forms for these types of loans. Sometimes when the regulator has to actually create a sample form, it forces them to realize maybe we need to add some more instructions in the rule."

Among the ideas floated to the CFPB for its recently announced regulatory sandbox is the possibility for trial disclosure forms. Those moves could be a sign that the bureau would be open to creating or releasing sample TRID forms to help solve confusion.

"There appears to be some willingness in the bureau to allocate some resources in this area to satisfy the intentions of Congress that the bureau provide guidance regarding sample forms. The sample forms are helpful because you might reach different conclusions on how something should be done, but in the end if the bureau provides guidance through sample forms and if they give the industry time to make whatever modifications are needed to incorporate that guidance into their systems, that would be helpful," Andreano said.



The problem now is that reasonable people can differ on how disclosures should be made, he added, so it's difficult to know which investor accepts what different way of creating a disclosure.

"If we get further guidance, then everybody can get on the same page, and a lot of these issues over time will go away," Andreano said.

"We're at the point now where it was a very complex rule and, unfortunately, the bureau had not devoted enough resources to provide the necessary clarifications to get the industry the guidance it needed. Right now, just having some samples, explanations and further guidance would be a large step the industry would welcome.

"They say a picture is worth a thousand words. I say a good sample disclosure form is worth 10,000 words. I can't say how helpful that is both for attorneys and those who write the code for software."

The 'Black Hole' fix: More harm than good?

The Black Hole is fixed. But the Black Hole fix itself has created another compliance question from many lenders:

How early can you send out the Closing Disclosure (CD)?

"A lot of lenders viewed the Black Hole as a disincentive to provide the CD very early because they didn't want to create their own Black Hole by sending out the CD too early and then not be able to use the CD for changed circumstances that came up until the brief allowable window before closing," Horn said. "But now without that Black Hole period, they can send out the CD technically as early as the day after sending the Loan Estimate out. They wouldn't technically have a Black Hole problem anymore, but the CFPB put out guidance in the preamble of its Black Hole rule warning lenders against sending the CD too early, and so some lenders are asking how early is too early?"

Other potential risk areas include the change in the CFPB's guidance on the 2.0 preamble about the level of itemization that's required for shoppable charges on the LE and the written list of service providers.

"That guidance is confusing. The way they wrote it up is an interpretation of the rule for the LE and the service provider list, and it looks like it could be saying that lenders could itemize and disclose too much information about shoppable charges in violation of TRID," Horn said. "But the guidance

is brief and does not address all of the potential questions that arise, so it's unclear what the CFPB's actual expectations are for lenders to aggregate shoppable charges. So this is going to require lenders to really make a decision about how they're going to approach that guidance. And unfortunately, the way the CFPB wrote it up it also is an interpretation of TRID 1.0, so it could result in potential citations in exams, because the CFPB's guidance is different from what most lenders were doing under the original rule, which is really unfortunate. Because this implicates the tolerances and could carry significant liability, I think the preamble guidance about the level of itemization could create some significant problems at a risk level."

Horn added that the new bona fide standard for fees that fall into that no tolerance category is another issue lenders have to figure out. Another issue that Horn sees is differences in interpretation of when a fee paid for by the seller or a third party is subject to the tolerance requirements.

"Whether fees that are covered by a specific seller credit are subject to the tolerance requirements, that's been a question that's come up with some frequency, and is difficult to answer as a general question with the existing CFPB guidance out there," he said.

A better overall process?

Despite a rocky beginning, TRID has led to several positive results in the industry. Among the benefits for consumers and the industry has been the mandating of providing information earlier in the process, before parties are gathered at the closing table.

"They've gotten better at getting the information sooner," Andreano said. "So the initial disclosures need less revision. What I'm finding in general in cases where the lender has not disclosed something correctly, where they probably knew or should have known the right information, so they can't charge the borrower, those have decreased. And then the fix to the Black Hole issue helped with the last-minute changes. The overall process has gotten better."

Another plus is that TRID has caused the industry to focus on technology and technology solutions to get disclosures out to consumers with more accuracy.

Lenders and their software providers are focusing more on data integrations with third-party providers, especially on the title side. Focusing on collaborative closing software has proven successful for some lenders, Horn said.

"They've also focused on eClosings, because I think once you've cracked the hood on the software it gives you the opportunity to think about other changes to make the process more efficient and the disclosures more accurate," he added. "The industry's focus on eClosings at this time is in part due to the need to crack the hood on the software because of TRID."

TRID also has helped lenders and brokers think more about how information is understood by borrowers.

"Some industry surveys have shown there have been positive benefits to TRID in terms of consumer understanding, shopping and satisfaction with the transaction," Horn said. "I hope the CFPB does its research on this as well so they can validate these results or find whether there are potential flaws in the process the industry is using under TRID that are hindering these benefits to consumers."