

LENDERS UPDATE™

ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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CFPB'S CORDRAY REASSURES INDUSTRY?

As a result of meetings and conversations between the staff of the Mortgage Bankers Association and the Consumer Financial Protection Bureau's staff and also the MBA President David Stevens' December 21, 2015 letter to the CFPB, Director Richard Cordray, in a letter dated December 29th has addressed the MBA's concerns relative to the implementation of TRID. His letter to Stevens can be found on the MBA's website at:

http://static.ow.ly/docs/Director%20Cordray%20to%20David%20Stevens%20MBA%202015.12.29%20copy_49CV.pdf.

Cordray's letter makes a number of accurate points about CFPB's stated initial tolerant regulatory enforcement of TRID and also of the somewhat limited civil liability resulting from some violations of this regulation. The letter however does little to address the concerns of the mortgage banking industry.

Cordray acknowledges the significant systems and operational changes that have been required to implement TRID, as well as the extensive coordination with 3rd parties. He further acknowledges the “substantial resources” required by this effort. It is because of this, he says, that the Bureau has previously indicated that their examinations for the first few months will focus on good faith efforts to comply and not on punitive actions. (How will this play out? We would guess, to use a phrase often associated with the CFPB, “we will know it when we see it”.)

The director points out that the FHA and GSE’s have agreed not to conduct closing reviews for technical compliance or exercise post-closing remedies such as repurchase, where good faith efforts to comply have been taken.

In response to the MBA’s concerns about the lack of adequate cure provisions for defective disclosures, Cordray responds that there are post disclosure remedies to correct an errant CD in some circumstances and that the general rules of the TILA allow for other corrective actions. He also points out other statutory limits on regulatory and civil liability found in other provisions of TILA and RESPA. These claims are generally accurate.

However, Cordray states that he believes “the risk of private liability to investors is negligible for good-faith formatting errors and the like”. He further claims that the rejection by investors of loans based on formatting and other minor errors must be based on reasons unrelated to TRID disclosures. (What those reasons may be, remain unstated.) Cordray also says that these investor concerns may “be an overreaction!”

It seems clear that what the industry wants is some certainty to govern their actions; some clear road map to follow to ensure that there are not unknown risks lurking with millions or more of damages to follow for the companies and officers involved. Cordray has only provided a response that any knowledgeable attorney could have prepared as to existing limitations on liability and the empty reassurance that “these concerns will dissipate as the industry gains experience with closings, loan purchases, and examinations.”

Wow!

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