CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

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Mr. Thomas Devlin
Ms. Kristin McPartland
Senior Counsels
Office of Regulations
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, Docket No. CFPB-2018-0011

Dear Mr. Devlin and Ms. McPartland:

The U.S. Chamber of Commerce ("the Chamber") is the world's largest business federation, representing the interests of more than three million companies of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. Strong and appropriate consumer protections are an important and necessary component of efficient capital markets.

We appreciate the opportunity to respond to the Bureau of Consumer Financial Protection's (the Bureau) Request for Information ("RFI") regarding the Bureau's adopted regulations and new rulemaking authorities. As discussed in prior comments, we believe that the Bureau has used its rulemaking authorities appropriately in some cases, however, we also believe there are opportunities to improve the rules it has issued. In particular, we urge the Bureau to pursue the following three key reforms to its adopted rules and, more generally, as it uses its new rulemaking authorities going forward:

- Eliminate unnecessary regulatory uncertainty;
- Avoid imposing unnecessary regulatory burdens on companies; and
- Ensure rules reflect market realities and current technologies.

We would also respectfully request that the Bureau take the following proactive steps:

- The Bureau should create a meaningful process for issuing no-action letters and advisory opinions to address ongoing regulatory questions;
- Eliminate unnecessary burdens imposed by the Remittance Transfer Rule;
- Simplify the TILA-RESPA Integrated Disclosure ("TRID") Rule;
- Simplify the Ability to Repay/Qualified Mortgage ("ATR/QM") Rule;
- Rules should generally reflect that electronic disclosures can be delivered without E-Sign consent, and should foster flexibility in how electronic disclosures are provided;
- Create an ATR cure mechanism for any threshold breaches of the ATR/QM rules similar to which exist for High-Cost Mortgages; and
- Revise the points and fees cap for QM loans.

Background

Congress granted the Bureau substantial rulemaking authority, including through the imposition of new statutory mandates to create rules in specific areas. The Bureau has used this authority broadly in various issue areas, including:

- *Ability to Repay/Qualified Mortgage*: The Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),[1] established new

[1] Pub.L. 111–203 (2010).

requirements under the Truth in Lending Act ("TILA") for creditors to make reasonable, good faith determinations of a consumer's ability to repay before making a mortgage loan.[2] Congress likewise created a new presumption that a "Qualified Mortgage" would satisfy those requirements.[3] Congress tasked the Bureau with implementing these provisions and the Bureau issued a final rule in January 2013 that became effective on January 10, 2014.[4]

- *Mortgage servicing*: The Dodd-Frank Act made various changes to the Real Estate Settlement Procedures Act ("RESPA") and TILA with respect to mortgage servicing.[5] The Bureau has issued a series of rules to implement those statutory changes and to address mortgage servicing more broadly.[6] More recently, the Bureau issued a final rule amending requirements relating to periodic statements that became effective on April 19, 2018.[7]

- *TILA-RESPA Integrated Disclosure ("TRID")*: Congress mandated that the Bureau publish rules and forms on disclosures for mortgages covered by TILA and RESPA.[8] The Bureau issued a final rule setting forth the disclosure requirements and forms in 2013.[9] It went into effect on October 3, 2015.[10]

- *Prepaid Cards*: The Bureau issued a final rule in November 2016 instituting various new requirements for prepaid accounts under the

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[2] Dodd-Frank Act § 1411.
[3] Dodd-Frank Act § 1412.
[4] *See* Ability-to-Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 Fed. Reg. 6407 (Jan 30, 2013). The Federal Reserve Board proposed the initial version of the rule before authority passed to the Bureau to finalize it. *See* 78 Fed. Reg. at 6408.
[5] *See* Dodd-Frank Act §§ 1461-1465.
[6] The Bureau's small entity compliance guide provides a full history of the rulemaking in this area. *See* Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Rules, Small Entity Compliance Guide (April 19, 2018), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_mortserv_guide_v3.1.pdf.
[7] *See* Mortgage Servicing Rules Under the Truth in Lending Act (Regulation Z), 83 Fed. Reg. 10553 (Mar. 12, 2018).
[8] Dodd-Frank Act §§ 1098, 1100A.
[9] *See* Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act(Regulation Z), 78 Fed. Reg. 79730 (Dec. 31, 2013).
[10] 2013 Integrated Mortgage Disclosures Rule under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of Effective Date, 80 Fed. Reg. 43911 (July 24, 2015).

Electronic Fund Transfer Act ("EFTA") and TILA.[11] The Bureau subsequently further modified the rule to facilitate implementation and made April 1, 2019 its effective date.[12]

- *Remittance transfers*: The Bureau issued its first final rule imposing new regulatory requirements on remittance transfers in 2012, with an effective date in February 2013.[13] More recently, the Bureau issued a final rule setting forth clerical changes to the rule in 2016.[14]

- *No-Action Letters*: The Bureau finalized a policy statement regarding no-action letters in 2016.[15] The policy allows Bureau staff to issue no-action letters to an applicant in very limited circumstances and does not provide for an advisory opinion process.

It is one of the Bureau's five core statutory objectives to ensure that "outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens."[16] The Bureau thus is right to seek comment on the rules it has adopted to date. We would hope that other agencies follow suit. Highlighted below are some general principles for the Bureau to consider as it approaches this critical streamlining work, as well as specific recommendations as to how to refine particular rules in keeping with those principles.

Discussion

(1) Eliminate Unnecessary Regulatory Uncertainty.

Robust competition on a level playing field ensures that consumers can access the innovative products they want at reasonable prices. Competition thrives when companies can chart a clear path forward, but is stifled when they are faced with uncertain rules of the road. Regulatory uncertainty creates confusion in the marketplace, and consumers ultimately lose out because responsible, compliance-minded companies hesitate to invest in new products and services when they are

[11] Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 83934 (Nov. 22, 2016).
[12] *See* Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 83 Fed. Reg. 6364 (Feb. 13, 2018).
[13] *See* Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6193 (Feb. 7, 2012).
[14] *See* Electronic Fund Transfers (Regulation E), 81 Fed. Reg. 70319 (Oct. 12, 2016).
[15] *See* Policy on No-Action Letters; Information Collection, 81 Fed. Reg. 8686 (Feb. 22, 2016).
[16] 12 U.S.C. § 5511(b)(3).

unsure of the potential legal ramifications. This outcome is as unnecessary as it is unfortunate because the Bureau has many tools to articulate clear policy. We urge the Bureau to continue to revise or otherwise clarify the meaning of its adopted rules in order to eliminate any unnecessary regulatory uncertainty. In particular, we urge the Bureau to create a meaningful process for issuing no-action letters and advisory opinions to address ongoing regulatory questions.

A wide range of federal agencies—including the Consumer Product Safety Commission ("CPSC"), Justice Department, Federal Trade Commission ("FTC"), and the Securities and Exchange Commission ("SEC")—routinely issue written opinions that clarify governing legal requirements. These opinions typically take one of two forms: a "no-action" letter stating that staff would not recommend that an enforcement action be pursued under stipulated facts, and an advisory opinion that interprets a governing legal standard for an entire market. These letters support the foundational principle of transparent and open government. The ability of a business to ask the government whether the law permits a specific practice or activity brings valuable clarity to the law – and fairness to its enforcement. After all, "no" is a much better answer, from a business perspective, than "I'm not sure."

The Bureau has the opportunity to strengthen feedback processes. First, it should create an advisory opinion process that would provide interpretations of current law when there are questions from industry. Second, it should establish a no-action letter policy that is truly helpful to companies trying to innovate. Currently, the process has only been used once[17] because an applicant must satisfy a series of burdensome requirements that are not found within other federal agencies, with no assurance that the company will be protected from liability.[18] The Bureau itself estimated that it would receive no more than three actionable requests for no-action letters each year,[19] which is clearly not a robust process intended to pave the way for innovations.

The Bureau's limited informal processes for answering questions from regulated entities do not compensate for the absence of meaningful no-action and advisory opinion processes. Advisory opinions and no-action letters provide well-considered, prospective guidance to an entire market in a transparent manner. In contrast, providing one-off advice to companies who call the Bureau with questions

[17] Press Release, CFPB Announces First No-Action Letter to Upstart Network (Sept. 14, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-first-no-action-letter-upstart-network/.
[18] *See* Policy on No-Action Letters; Information Collection, 81 Fed. Reg. 8686 (Feb. 22, 2016).
[19] 81 Fed. Reg. at 8691.

or to entities during supervision does nothing to standardize industry behavior. Instead, the effect of those private conversations is the creation of varying standards and an uneven regulatory playing field – some companies know the Bureau's expectations because they called and got some verbal advice, while others do not.

The Bureau should follow the lead of other agencies and provide meaningful regulatory clarity through no-action letters and advisory opinions. In doing so, the Bureau should start from a clean slate and build upon the best practices of agencies such as the SEC, the Commodity Futures Trading Commission, the FTC, and the CPSC. After appropriate notice and opportunity for comment, the Bureau should:

- Create both advisory opinion and no-action letter processes that may be relied upon by the recipient and similarly-situated companies until formally withdrawn by the Bureau;

- Frame advisory opinions and no-action letters as views of Bureau staff, with review by the Bureau chief of staff, that companies can rely on; and

- Use requests for advisory opinions and no-action letters to identify topics that regularly cause regulatory confusion and merit clarification in a subsequent rulemaking.

In the past, it seemed as if the Bureau believed that keeping legal lines concealed would somehow better protect consumers. But, as we have explained, uncertainty about where legal lines lie disrupts competition, causes responsible companies to pull back from offering products that benefit consumers, and favors unscrupulous businesses. The Bureau should use new no-action and advisory opinion processes to avoid these outcomes.

(2) Avoid Imposing Unnecessary Burdens On Companies.

Congress has made clear that the Bureau should regularly identify and eliminate regulatory requirements that impose unnecessary burdens on companies. Thus, for example, the Bureau should eliminate regulatory requirements that have not served their intended purposes, have imposed burdens that outweigh their demonstrated benefit, or are unduly complex. Below we recommend specific steps that the Bureau should take to achieve these goals.

a. Avoid imposing requirements whose costs outweigh their benefits.

i. Eliminate unnecessary burdens imposed by the Prepaid Rule.

In October 2016, the Bureau issued a final rule governing prepaid accounts (the "Prepaid Rule").[20] The Prepaid Rule was intended to provide protections for consumers in the growing prepaid account market, which includes payroll cards, government benefits accounts, prepaid cards, and virtual wallets. The Rule created new disclosure requirements, increased institutions' obligations to investigate and remedy errors or unauthorized transactions, and added other requirements for the provision of these accounts.

However, the effective date of the Prepaid Rule has been repeatedly delayed due to the significant implementation problems caused by unnecessary burdens and compliance challenges imposed on businesses by the Bureau. The Bureau already has taken steps to address some of these unnecessary burdens,[21] but we believe there are other areas of the Rule that the Bureau should amend. We urge you to consider the following three reforms.

1. End unnecessary foreign language disclosure requirements.

As the Bureau noted at the time, numerous comments addressing the Prepaid Rule proposal expressed concern that new requirements to provide lengthy disclosures in foreign languages would discourage financial institutions from servicing their customers in their preferred languages.[22] This was because the Bureau was proposing to require the provision of foreign language long-form disclosures when a business used a foreign language in the onboarding process. Unfortunately, the Bureau failed to make sufficient changes in the final Prepaid Rule to address these problems. As a result, the final Prepaid Rule imposed complex foreign language disclosure requirements that would discourage financial institutions from supporting their customers' choice of foreign language. We urge the Bureau to eliminate this unnecessary regulatory burden that would ultimately confuse consumers.

Generally speaking, we urge the Bureau to limit the imposition of foreign language disclosure requirements to circumstances in which the financial institution principally uses a foreign language to advertise, solicit, or market a prepaid card

[20] *See id.* at 83934.
[21] *See id*.
[22] *See id.* at 84090.

(including through the packaging of a card).[23] In contrast, the Bureau should eliminate the requirement that a financial institution must provide the long form disclosure any time that it provides "a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language."[24] The inclusion of this latter provision discourages financial institutions from attempting to support the language preferences of its customers. The financial institution should not be deterred in this way from attempting to provide better service to customers who speak a foreign language. The Bureau instead should recognize that consumers would be better off if an additional complexity is not attached to helping customers sign up for products in their own language.

We urge the Bureau to make a categorical change in this regard. There is one particular problem with how the rule is currently drafted. As you are likely aware, various third-party translation services are freely available online to help individuals who primarily use foreign languages to navigate the internet. The current rule and its official commentary do not address these web-based translation services. We believe that providing access to such services—e.g. by providing a link or application within a sign-up process—is equivalent to the type of "informal or ad hoc" translation service recently highlighted by the Bureau as *not* triggering disclosure requirements.[25] However, this clarification by the Bureau appears to apply only to applications for a payroll card account or government benefit account. The resulting lack of clarity makes it difficult for any financial institution to rely on the use of third-party web-based translation services for fear of being subject to an unfair enforcement action. As a result, we urge the Bureau to amend the Prepaid Rule or its official interpretations as appropriate to encourage the offering of such third-party web-based translation services regardless of the type of prepaid account offered —not to leave any doubt as to whether their use triggers the Prepaid Rule's foreign language disclosure requirements.

2. Reconsider hybrid prepaid-credit card requirements to protect preferred product features.

We urge the Bureau to reconsider the Prepaid Rule's amendments to Regulation Z, which impose a de facto ban on overdraft protections for most prepaid products—and that are likely to affect customers' abilities to use these products in

[23] *See id.* at 84334 (proposed 12 C.F.R. § 1005.18(b)(9)(i)(A)-(B)).
[24] *See id.* (proposed 12 C.F.R. § 1005.18(b)(9)(i)(C)).
[25] *See* 83 Fed. Reg. at 6419 (proposed 12 C.F.R. § 1005.18(b)(9)(i)(C), as amended).

many daily situations. These changes were adopted through a flawed process that did not provide sufficient opportunity to comment, thus depriving the Bureau of the opportunity to consider some fundamental problems with its approach.

When the Bureau announced in May 2012 that it was planning to issue rules regulating general-purpose reloadable prepaid cards, it did not indicate that credit and overdraft features of these products would be a central focus of the rulemaking. Nonetheless, credit and overdraft features offered in connection with prepaid accounts were a major component of the proposed rule released by the Bureau in late 2014.[26] The proposed rule contained extensive amendments to Regulation Z that would require prepaid account issuers to comply with Regulation Z's provisions for credit cards in connection with nearly any overdraft or credit feature that involved any kind of fee or charge. Since the credit card provisions of Regulation Z would be nearly impossible to comply with in connection with many (likely most) prepaid accounts, the practical effect would be to ban any kind of credit feature—and make it hard to use prepaid cards in many routine circumstances. Thus, one of the primary problems with the Bureau's proposal was that it failed to consider the difference between (i) an overdraft that results from a transaction that the issuer authorizes even though there are insufficient funds in the account, and (ii) an overdraft resulting from a force-pay transaction (e.g. when the final purchase amount is higher than the authorized amount, such as when pumping gas). Commenters pointed out this problem, and raised a number of other concerns with the Bureau's rules.

The Bureau apparently recognized that its proposed rule had fundamental problems and that it needed to start from scratch. As a result, the Bureau's final rule included an entirely new set of proposed amendments to Regulation Z that recalibrated the restrictions and introduced concepts like "hybrid prepaid-credit cards" and "covered separate credit features." To address concerns that the Regulation Z amendments would restrict the ability of consumers to add credit cards to certain digital wallets, the Bureau also introduced new distinctions in credit features and products.

These revisions were an improvement in many respects, but they introduced new issues and challenges that the Bureau did not appear to have fully considered. The Bureau should have sought further public comment at that point. Instead, the Bureau tried to fix some of the problems in a subsequent rulemaking but did not seek

[26] *See* Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 79 Fed. Reg. 77101 (Dec. 23, 2014).

further comment on the broader compliance challenges raised by commenters.[27] Unsurprisingly, these further modifications did not address all of the problems that companies have encountered when trying to comply with the Regulation Z amendments in the Prepaid Rule.

For these reasons, we strongly encourage the Bureau to revisit the hybrid prepaid-credit card requirements in the Prepaid Rule, and the Regulation Z amendments more broadly, including considering whether prepaid accounts should be treated any differently than checking accounts under Regulation E with respect to opt-in requirements for overdraft features. We believe that regulations crafted with more transparency and a process that gives the Bureau the full benefit of the public comment process would work better for consumers and the businesses that serve them.

3. Revise unworkable oral disclosures.

The greater the number of overlapping disclosures that a consumer must be provided, the more likely the consumer is to be confused, lose interest, or become frustrated at having their time wasted. Here we highlight one area with unnecessary disclosure requirements – the Prepaid Rule – but urge the Bureau to look more broadly for opportunities to eliminate duplicative or inconsistent regulatory requirements.

The Prepaid Rule variously imposes oral and written disclosure requirements based on the circumstances in which the card is acquired. In particular, the Bureau requires businesses to provide the short-form and the extensive long-form disclosures orally in some cases.[28] This approach is unworkable. Whatever slight benefits there may be for some consumers are greatly outweighed by the enormous costs that would be imposed on businesses, combined with the frustration that consumers would endure in having to listen to oral disclosures for upwards of seven to ten minutes at a time. We consequently recommend that the Bureau revisit its approach to oral disclosures for prepaid cards and build a new approach around more limited oral disclosures in conjunction with electronic disclosures.

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[27] *See* Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z), 83 Fed. Reg. 6364 (Feb. 13, 2018).
[28] *See generally* 81 Fed. Reg. at 84332 (proposed 12 C.F.R. § 1005.18(b) (6)(i)(C)).

ii. Eliminate unnecessary burdens imposed by the Remittance Transfer Rule.

U.S. consumers send billions of dollars in remittance transfers each year. The Remittance Transfer Rule ("Remittance Rule") regulates these transfers by U.S. consumers to individuals and businesses in foreign countries. The Bureau must ensure that this regulation does not create unnecessary burdens that raise prices, make remittance transfers less convenient for consumers, or reduce the availability of products that play an important role in the lives of countless Americans.

1. Prevent sunsetting of the provision permitting estimated pricing disclosures.

The Dodd-Frank Act generally required consumers to be provided with exact pricing disclosures prior to paying for a remittance transfer.[29] However, Congress also created a temporary provision that allowed insured institutions to provide estimates where exact information was not available.[30] Congress imposed a five-year sunset on this provision, with the option for the Bureau to extend this term by another five years, until July 21, 2020.[31] As the Bureau explained in extending the sunset date, this statutory provision was intended "to provide a transition period to allow credit unions, banks, and thrifts to develop communication mechanisms with foreign financial institutions that may help execute wire transfers and certain other types of remittance transfers."[32]

Because of factors outside of their control, it is not realistic to expect financial institutions to be able to provide exact pricing disclosures by July 2020. Critical information such as downstream costs imposed by third-party, foreign entities remain unavailable to U.S. financial institutions at the time of transfer, making it impossible for financial institutions to precisely disclose the exact price. The sunsetting of this exception in 2020 consequently would force financial institutions to choose between complying with the law or not serving countries where exact fees are unknowable. Sunsetting of this exception would have significant negative effects in the remittance transfer market, and particularly on transfers to countries where volumes already may be low.

[29] *See* 15 U.S.C. § 1693o–1(a)(3).
[30] *See id.* § 1693o-1(a)(4)(A).
[31] *See id.* § 1693o-1(a)(4)(B).
[32] *See* Electronic Fund Transfers (Regulation E), 79 Fed. Reg. 55970, 55970 (Sept. 18, 2014).

We recognize that the exception and its sunset date were imposed by Congress. We nonetheless urge the Bureau to take whatever steps it can to lessen the potential impact of the sunsetting of this exception in 2020.[33] Likewise, we urge the Bureau to work with Congress to develop an appropriate statutory fix, such as by permitting the Bureau to further extend the exception or to make it permanent.

2. Exempt high-dollar transactions from the Remittance Rule.

The Remittance Rule imposes substantial compliance burdens on businesses. These burdens also negatively affect consumers, including with respect to their ability to schedule remittances in advance. While the Bureau certainly intended for the countervailing benefits of the Remittance Rule to outweigh those costs, we urge the Bureau to rethink the application of the rule to high-dollar transactions. The Remittance Rule was not designed to address such transactions, but rather generally is intended to protect consumers who generally transmit lower dollar amounts. Simply put, the compliance burdens imposed by the Remittance Rule are not justified in the context of high-dollar transactions by sophisticated consumers. The Bureau has broad rulemaking authority under the Electronic Funds Transfer Act and we urge it to use that authority here.[34] For example, the Bureau could consider creating an exemption for transactions over $10,000.

3. Provide more flexibility in the disclosure requirements.

The Remittance Rule establishes substantial disclosure requirements. We understand that the purpose of these disclosures is to provide relevant information to consumers. Unfortunately, however, these disclosures have had negative consequences, and their length has even deterred consumers from getting the products they otherwise wanted. For example, we have heard repeated complaints about customers becoming frustrated and even abandoning transactions over the extended disclosures that they have received over the phone.

We urge the Bureau to reconsider the disclosure provisions in the Remittance Rule. For example, we would ask the Bureau to consider two particular changes to the Remittance Rule disclosure requirements:

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[33] *See, e.g.*, 12 C.F.R. § 1005.32(b) (granting permanent exceptions for certain transfers).
[34] *See generally* 15 U.S.C. § 1693b.

- We urge the Bureau to amend the Remittance Rule to allow businesses to mail receipt disclosures to consumers who completed the transaction in person.[35] This would be consistent with how receipts are mailed to customers after phone transactions and make it possible for customers to leave the business location without waiting – often a long time given the complexity of the processes – to receive required disclosures.

- We urge the Bureau to remove the long-form error resolution and cancellation notice provisions.[36] We understand that businesses hardly ever receive requests for these notices – if at all – which indicates that other disclosures already provide consumers adequate information. Striking these provisions consequently would help to eliminate unnecessary compliance costs without any negative effect on consumers.

4. Change provisions that have had negative unintended consequences.

The Remittance Rule imposed a substantial number of compliance obligations. Some of these unfortunately resulted in higher costs for consumers or reduced product availability. We urge the Bureau to revise the Remittance Rule and to revise provisions that have such negative consequences. For example:

- The Remittance Rule imposed separate requirements for transfers scheduled in advance.[37] We understand that businesses have found these requirements particularly difficult to implement. As a result, we understand that certain financial institutions no longer offer pre-authorized or recurring payments to customers.

- The Remittance Rule requires a business to allow for cancellations within a thirty minute window.[38] As a result, businesses cannot use a real time current market exchange rate, which may no longer be correct at the end of the thirty minute period, but must use static rates of the day, which would cover any intraday market movement. Consumers consequently pay higher foreign exchange rates than they would but for the rule.

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[35] *See generally* 12 C.F.R. § 1005.31(e)(2).
[36] *See generally* 12 C.F.R. § 1005.31(b)(4).
[37] *See generally* 12 C.F.R. § 1005.36.
[38] *See generally* 12 C.F.R. § 1005.34.

- The Remittance Rule provides an exception to the definition of an error if funds are sent to the wrong account due to the sender providing an incorrect account number. To encourage additional remittance service options, the error exception should also apply if the sender provides an incorrect card account number for the intended recipient.

b. Simplify rules where possible.

Compliance with the Bureau's myriad regulatory requirements is difficult to begin with. The TRID and Qualified Mortgage rules impose particularly stringent compliance requirements. We urge the Bureau to simplify these rules in ways that will facilitate compliance without reducing consumer protections.

i. Simplify the TRID Rule.

The TRID rule imposed a complex new set of compliance obligations relating to disclosures to mortgage borrowers. Companies have made enormous investments to comply with these rules. Still, unnecessary obstacles to compliance remain. Below we recommend three ways that the Bureau should simplify the TRID Rule to eliminate unnecessary compliance burdens that hurt, rather than protect, consumers.

1. Eliminate non-escrow fee disclosure requirements for "no cost" transactions.

"No-cost" transactions are where all closing costs are offset by a credit or rebate provided by the creditor. Where no-cost transactions do not involve pre-payment penalties, the creditor must effectively disclose that credit or rebate as part of the Loan Estimate ("LE") and Closing Disclosure ("CD") forms. Specifically, it must do so by providing specific line-item disclosures of non-escrow fees and expenses on the LE and CD forms.[39]

This information is not beneficial or relevant for borrowers because such fees have already been offset by the creditor. In other words, the borrower is not required to pay these fees, and therefore has no reason to be concerned with them. Providing excessive information may also contribute to information fatigue, as borrowers are more likely to overlook other portions of these disclosures after having to review excessive, irrelevant, and unnecessary information.

[39] *See* 12 C.F.R. §§ 1026.37(g)(6)(ii); 1026.38(d).

Including this unnecessary information in the LE and CD disclosures comes at a substantial cost to creditors. Ensuring the accurate disclosure of non-escrow fee amounts on LE and CD forms imposes considerable operational and compliance expenses on lenders. Further, quality assurance and quality control measures designed to ensure the accuracy of these disclosures necessitate considerable manual review, and often require the re-disclosure of LE and CD forms. We urge the Bureau to eliminate these fee disclosure requirements for "no cost" transactions in order to reduce the burden they impose on lenders.

2. Simplify unduly burdensome and unnecessary TRID disclosures.

The TRID Rule contemplates the provision of certain disclosures in some, but not all, cases, such as appraisal and foreclosure liability disclosures.[40] These dynamic disclosures create heightened quality assurance and quality control burdens for companies. Due to the variable nature of these disclosures, lenders must determine whether they are appropriate in each particular origination. This burden could be easily avoided if these variable disclosures were simply replaced by standard, non-dynamic disclosures.

Certain new TRID comparison disclosures (e.g., Total Interest Percentage ("TIP")[41] and "In Five Years"[42] disclosures) also create substantial operational, compliance, and liability burdens upon lenders without benefitting consumers. Even if these comparison disclosures were eliminated, consumers would be able to compare transactions against each other based on other required disclosures, such as the annual percentage rate ("APR").

The comparative disclosures required by the Bureau often improperly make shorter term mortgages appear more appealing than longer-term options. On longer-term products, consumers can often voluntarily elect to make monthly payments that surpass required minimum monthly payments. In such cases, they are able to pay down their loan in an efficient manner while simultaneously avoiding the higher minimum monthly payments often associated with shorter-term products. As a result, there are many instances where longer-term products are appropriate for consumers who wish to avoid risk. In such cases, TRID's required comparative disclosures may

[40] *See* 12 C.F.R. §§ 1026.37(m)(1); 1026.38(p)(1).
[41] 12 C.F.R. § 1026.37(l)(3).
[42] 12 C.F.R. § 1026.37(l)(1).

be detrimental to ensuring that consumers have the product best designed to meet their needs.

Furthermore, Regulation Z requires creditors to provide any non-borrowing spouse the closing disclosure three business days before closing. However, a non-borrowing spouse would generally not have provided e-consent or have access to the electronic originations platform. Thus, the disclosure must be mailed to a non-borrowing spouse. We recommend the Bureau should change Regulation Z back to the prior longstanding requirement that any non-borrowing spouse receive relevant disclosures, in this instance, the closing disclosure, at closing rather than three business days prior to closing. Overall, we urge the Bureau to undertake a review of the disclosures required by TRID and eliminate those that are unduly complicated, unnecessary, and/or harmful.

3. Allow for a more flexible and streamlined manner of waiver for the mandatory TRID waiting periods.

Creditors are generally required to furnish TRID disclosures at least three business days prior to consummation of high-cost mortgage loans or reverse mortgages, as those terms are defined in Regulation Z.[43] In effect, this creates a three business day mandatory waiting period prior to the consummation of a covered transaction. Such mandatory waiting periods often unnecessarily delay well-documented, streamlined mortgage applications that could otherwise be consummated instantly.

Consumers generally cannot waive these waiting periods absent a bona fide personal financial emergency.[44] Because consumers are generally unable to make this showing, they may suffer financial disadvantage as a result of delays in loan consummation caused by TRID. We request that the Bureau review and remove the mandatory waiting periods from TRID or alternatively create an exemption for prudent consumers who wish to waive the waiting period requirements imposed by TRID.

[43] 12 C.F.R. § 1026.31(c).
[44] *See* 12 C.F.R. § 1026.31(c)(1)(iii).

ii. Simplify the Ability to Repay/Qualified Mortgage Rule.

1. Fix the "QM Patch"

Under the Ability-to-Repay ("ATR") rule, certain loans called qualified mortgages ("QM") are presumptively compliant with the rule.[45] To qualify as a QM, the mortgage must not contain certain "risky" features and meet certain underwriting standards, or alternatively, be eligible for Fannie Mae and Freddie Mac ("the GSEs"), the Federal Housing Administration ("FHA"), or other government programs.[46] The exemption from the ATR rule for the GSEs is referred to as the "QM Patch." It is critical that the Bureau find a proper replacement for the "GSE Patch" before the deadline of January 10, 2021.

2. Simplify Appendix Q to the ATR/QM rule.

Appendix Q to the ATR/QM rule addresses standards for determining monthly debt and income.[47] We urge the Bureau to allow institutions to use alternatives to Appendix Q, such as the other guidelines from Freddie Mac, Fannie Mae, or Veterans Administration. Since there have been issues with Appendix Q, we hope the Bureau will allow these alternatives to be used for underwriting for loans that qualify for QM status.

(3) Ensure Rules Reflect Market Realities And Current Technologies.

Regulations are of little use if they sound good in theory but do not work in the practical realities of the marketplace. The Bureau should constantly strive to understand market realities and refine its regulations over time to accommodate shifting practices and technologies. Below we identify three areas in which the Bureau can accomplish that goal.

a. Rules should generally reflect that electronic disclosures can be delivered without E-Sign consent, and should provide flexibility in how electronic disclosures are provided.

Electronic delivery of disclosures is becoming increasingly common and preferred by consumers. The Bureau's rules, however, have not kept up with this trend. For instance, the TRID rules assume that disclosures delivered via U.S. mail or

[45] 12 C.F.R. § 1026.43.
[46] 12 C.F.R. § 1026.43(e)(4)(ii).
[47] *See generally* 12 C.F.R. pt. 1026, App. Q.

electrically are received three days after being sent.[48] While applying a three-day rule to U.S. mail delivery is reasonable given potential delays and inconsistent delivery times, electronic delivery is near instantaneous. Electronic delivery should be assumed to occur on the same day the disclosures are sent as is done for disclosures delivered by courier.

The TRID disclosures delivery rule is one example of rules that should be updated to reflect current technologies. Many of the Bureau's rules require e-sign consent pursuant to the e-SIGN ACT before the company can use electronic disclosures. To make any written disclosures required by Regulation Z, the company must obtain e-sign consent from the consumer.[49] Regulation E also requires e-sign consent before certain disclosures required to be in writing can be provided electronically.[50] The Bureau should reexamine its adopted rules, consistent with governing statutes, to determine whether the benefits of obtaining consent compliant with the e-SIGN ACT outweighs the burdens placed on companies. Going forward, it should amend rules as appropriate to remove the requirement when it does not serve consumers and should avoid imposing such unnecessary requirements as it uses its new rulemaking authorities.

b. Create an ATR cure mechanism for any threshold breaches of the ATR/QM rules similar to which exist for High-Cost Mortgages.

The Dodd-Frank Act includes a cure provision that provides Home Ownership and Equity Protection Act ("HOEPA") relief for mortgage loan originators that have accidentally made "high-cost mortgages," as that term is defined in Regulation Z.[51] More specifically, creditors and assignees are not liable for HOEPA violations made in good faith if (i) they notify the consumer of the error or the consumer notifies the creditor of the error and has yet to file a lawsuit, (ii) the creditor or assignee makes "appropriate restitution," and (iii) the creditor or assignee makes any needed adjustments to the loan at the choice of the consumer within thirty (30) days.[52]

No such cure provision exists for inadvertent breaches of the ATR/QM standards under Regulation Z. Industry participants have expressed concern about the lack of such an exemption, which may make it difficult for them to rectify bona

[48] 12 C.F.R. § 1026.19(e)(1)(iv).
[49] *See, e.g.*, 12 C.F.R. § 1026.5(a)(1)(iii); 12 C.F.R. § 1026.17(a).
[50] 12 C.F.R. § 1005.4(a).
[51] *See* 12 C.F.R. § 1026.32(a).
[52] 12 C.F.R. § 1026.31(h).

fide good faith errors. We urge the Bureau to create a cure provision similar to the one available for high-cost mortgages for these types of threshold breaches of the ATR/QM standards.

c. Revise the points and fees cap for QM loans.

In its report to the President on strengthening the banking system, the Treasury Department recommended:

> The CFPB should increase the $103,000 dollar loan amount threshold for application of the 3% points and fees cap. This would encourage additional lending in the form of smaller balance loans. The CFPB should scale points and fees caps in both dollar and percentage terms for loans that fall below the adjusted loan amount threshold for application of the 3% points and fees cap.[53]

We agree. The Bureau should increase the loan amount threshold for application of the 3% points and fees cap.[54]

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We thank you for the opportunity to submit these comments and would be happy to discuss these issues further.

Sincerely,

Tom Quaadman

[53] U.S. Dept. of the Treasury, A Financial System That Creates Economic Opportunities Banks and Credit Unions 100 (June 2017).
[54] *See generally* 12 C.F.R. § 1026.43(e)(3).