MORTGAGE DISCLOSURES: HOW DO WE CUT RED TAPE FOR CONSUMERS AND SMALL BUSINESSES?

HEARING

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COMMUNITY OPPORTUNITY

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MORTGAGE DISCLOSURES: HOW DO WE CUT RED TAPE FOR CONSUMERS AND SMALL BUSINESSES?

Wednesday, June 20, 2012

U.S. House of Representatives,
Subcommittee on Insurance, Housing
and Community Opportunity,
Committee on Financial Services,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:30 p.m., in room 2128, Rayburn House Office Building, Hon. Judy Biggert [chairwoman of the subcommittee] presiding.

Members present: Representatives Biggert, Capito, McHenry, Dold; Gutierrez, Cleaver, Clay, Watt, and Sherman.

Also present: Representative Green.

Chairwoman Biggert. The Subcommittee on Insurance, Housing and Community Opportunity will come to order.

Without objection, all Members' opening statements will be made a part of the record, and I will begin with my opening statement.

Good afternoon, everyone. Hopefully, the bells won't go off too soon, but we are expecting votes, unfortunately, in a little bit. So we thought we would get started right on time.

I would like to welcome everyone to today's hearing titled, "Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?" I welcome today's witnesses to this important hearing.

As we all know, Congress has been examining complex settlement procedures and confusing mortgage disclosures for several decades. Mortgage disclosures required under the Real Estate Settlement and Procedures Act, our favorite RESPA, and the Truth in Lending Act, or TILA, have been of interest to me since my days as a real estate attorney. Many of my colleagues on the committee share that interest as they, too, were real estate professionals in a former life.

For most homeowners, the biggest financial decision of their lives is made at the closing table as consumers read the mounds of confusing and complicated paperwork. Hence, in States like Illinois, a lawyer is required at closing. For many years, Ruben Hinojosa and I have authored letters to Federal regulators outlining our concerns about these disclosures. At times, these bipartisan letters have garnered the signatures of over 240 Members of the House.

To Federal regulators, we have emphasized that newly proposed mortgage disclosures must: one, be streamlined and simplified; two, be thoroughly tested and vetted; three, allow stakeholders ample time to provide input; and four, provide a regulatory input analysis, with a particular focus on small businesses.

It is important to keep in mind that these new disclosures can radically change the marketplace for both businesses and consumers. That is why as our housing market recovers and as other relevant mortgage rulemakings, such as the Qualified Mortgage, QM, and Qualified Residential Mortgage, QRM, rules are under development, it is critical that any new mortgage disclosures first do no harm to consumers, businesses, and the recovering real estate marketplace.

And that is why we are here today. This hearing is a continuation of the subcommittee's examination of provisions in the Dodd-Frank Act and other regulatory initiatives that will impact the mortgage origination process for both consumers and service providers.

On July 21, 2011, the Dodd-Frank Act transferred general rulemaking authorities on TILA and RESPA to the Consumer Financial Protection Bureau (CFPB). At this hearing, we will examine more closely the efforts of the CFPB to improve and combine RESPA and TILA mortgage disclosures; and we will examine questions raised by consumers and lenders about the new disclosures, hopefully shedding some light on how the CFPB intends to move forward. I anticipate this will not be our last hearing on mortgage disclosures and rules during the 112th Congress.

So, with that, I look forward to hearing from today's witnesses—we are having two panels—and to an informative discussion on this very important subject.

Now, I would like to recognize our ranking member, the gentleman from Illinois, Mr. Gutierrez, for his opening statement.

Mr. GUTIERREZ. Thank you for yielding, Madam Chairwoman, and thank you for holding this hearing.

Complete, accurate, accessible information is critical to ensuring that consumers are prepared when they consider what could be their largest lifetime investment, purchasing a home. Accurate and exhaustive disclosures are also one of the largest deterrents against fraud, and eventually, defaults and foreclosures.

More than 5 million American homeowners are facing the risk of foreclosure, and it is clear that many homeowners were not properly informed about loan terms or the risk of certain types of mortgages. The need to harmonize TILA and RESPA disclosures has been raised repeatedly over the years, and we were happy to include it in the Wall Street reform law.

Today, we will learn about the work done by the Consumer Financial Protection Bureau in addressing this provision and meeting the two twin objectives of: one, providing appropriate consumer information; and two, keeping the costs reasonable and manageable.

I look forward to hearing how the CFPB and the industry are working to ensure that these new disclosure forms and rules prioritize the need of the consumer and how they contribute to a more secure housing market. I also look forward to learning more about how the concerns of the industry and other stakeholders are being addressed by the CFPB as it completes its proposals for integrated disclosures and accompanying rules for mortgage loans by July 21, 2012.

Madam Chairwoman, before I yield back, I request unanimous consent to introduce the written comments submitted to the CFPB on April 18, 2012, by the National Consumer Law Center, the Alliance for a Just Society, Community Consumer Action, the National Association of Consumer Advocates, and the National Community Reinvestment Coalition regarding the "Know Before You Owe" proposed mortgage disclosures.

Chairwoman BIGGERT. Without objection, it is so ordered.

Mr. GUTIERREZ. I thank you very much, and I yield back the balance of my time, Madam Chairwoman.

Chairwoman BIGGERT. Thank you, Mr. Gutierrez.

The gentlelady from West Virginia, Mrs. Capito, is recognized for 2 minutes.

Mrs. CAPITO. Thank you, Madam Chairwoman. Thanks for the time and for holding this hearing on the ongoing effort to improve the mortgage disclosure process.

Many of us in this room have been through this process and we know it is daunting. To sign the forms is daunting; to read the forms, impossible; and it is a very difficult procedure that I think can be improved.

Almost all of us have had these issues, and I know it has been a priority of the CFPB to develop a more transparent and understandable disclosure process. As this is not a new endeavor, I still wonder if this renewed effort under the CFPB will really do anything to reduce the paperwork and information. I have said from this dais here several times, are we just going to have the same stack of papers with two new papers on top of it that we are going to have to sign anyway because of all the legal disclosures?

The CFPB has been given substantial rulemaking authorities in the mortgage area—I think maybe 20 or 29 or so are pending—giving its broad mandate and the importance of regulatory certainty to the mortgage finance industry. We know they are still struggling. I am very interested in the development of many of these rulemakings in the pipeline.

How will the directive being discussed this afternoon impact other rulemakings, such as your QRM and the QM definitions, which I think have been pushed off to the end of the year? And will these rulemakings ultimately really provide the clarity to consumers and small businesses? In promulgating the rules, it is a tough task, and I hope they are mindful of the impact that the rules will have on access to credit.

I want to thank the witnesses for being here today, and I want to thank the chairwoman for having the hearing.

I yield back.

Chairwoman BIGGERT. Thank you.

It is now time to introduce our first witness, Mr. Raj Date, who is the Deputy Director of the Consumer Financial Protection Bureau.

Welcome. We are happy to have you here. Without objection, your written statement will be made a part of the record. You are now recognized for a 5-minute summary of your testimony.

STATEMENT OF RAJ DATE, DEPUTY DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

Mr. DATE. Thank you.

Chairwoman Biggert, Ranking Member Gutierrez, and members of the subcommittee, thank you for this opportunity to testify. As you mentioned, my name is Raj Date, and I serve as the Deputy Director of the Consumer Financial Protection Bureau.

For more than 30 years, Federal law has required lenders to provide two different disclosure forms to consumers shortly after they apply for a mortgage. The law has also generally required two different forms shortly before or at closing. Two different Federal agencies developed these forms under two different statutes: the Truth in Lending Act; and the Real Estate Settlement Procedures Act. The information on these forms is overlapping, and the language is inconsistent. Not surprisingly, consumers often find that the forms are confusing, and lenders and settlement agents often find that the forms are burdensome to provide and to explain.

The American mortgage business was supposed to be the broadest, deepest, most liquid, most sophisticated consumer finance market in the history of the world, but it failed us, and it failed us in part because consumers did not understand the products that they were getting into or the risk profile associated with those obligations.

While Federal agencies tried to address these disclosure problems in the past, they did not arrive at a coordinated conclusion. Dodd-Frank transferred authority for the TILA and RESPA mortgage disclosures to the Bureau last July, July 2011, and directed us to propose rules and forms combining the two disclosures by this July, so next month, July 2012.

The Dodd-Frank Act established two goals for the combined mortgage form: number one, improve customer understanding of mortgage loan transactions; and number two, facilitate industry compliance with TILA and RESPA.

To achieve these goals, the Bureau gathered information in a variety of ways from a variety of sources. We tested draft forms. We used interactive online tools and blog posts. We hosted roundtables. We held conference calls and meetings. These activities included the public, they included consumer advocacy groups, and they included industry stakeholders, as well as other government agencies.

One of those, one such activity, was our signature Know Before You Owe initiative. We used our Web site to share early prototypes of the combined disclosure forms to get the public's feedback on the prototypes. We conducted extensive testing of these prototype forms through interviews with more than 100 consumers, lenders, mortgage brokers, and settlement agents. Those interviews took place in nine cities across the country.

Consumers were asked to assess whether the forms enabled them to understand and compare different mortgage loans and to identify changes during the mortgage loan process. Industry participants were asked to use the prototype forms to explain the loans as they would to a consumer and to identify areas for improvement.

After each round of testing, Bureau staff analyzed the results and designed new and improved prototypes. In fact, almost every month between May 2011, and February 2012, the Bureau posted these prototype forms on our Web site and sought additional feedback. In total, the Bureau posted more than a dozen prototype forms and received more than 27,000 responses.

In February of this year, 2012, the Bureau convened a Small Business Review Panel with officials from the Small Business Administration and the Office of Management and Budget. This panel gathered information from small business representatives about the cost of the proposed disclosures and other potentially less burdensome alternatives. We are using all of that information to develop proposed forms that will make the mortgage process easier for consumers and for industry.

We will meet our statutory deadline. The forms will be issued for public comment by the statutory deadline of July 21, 2012. At that time, we will also be issuing a proposed rule that provides detailed requirements and guidance for filling out the forms. The idea is to reduce unnecessary compliance burden by providing clear guidance for industry while strengthening protections for consumers.

Finally, the proposed rule must reconcile several inconsistencies between TILA and RESPA. TILA and RESPA establish different timing requirements for disclosing final loan terms and costs and require different parties to provide the forms.

During the small business review process, we discussed potential solutions to these inconsistencies. We sought feedback on whether the combined final disclosure should be provided 3 days before closing so that consumers would have time to review the final terms and costs and resolve any questions or concerns and problems. We also asked about whether the lender or the settlement agent would be better equipped to provide the combined final disclosure or whether some sort of shared responsibility was appropriate. We will continue to explore these options in the proposed rule.

We are excited about this opportunity to develop a practical solution to what has been a longstanding challenge for both consumers and industry. Thank you for inviting me to testify today, and I look forward to your questions.

[The prepared statement of Mr. Date can be found on page 186 of the appendix.]

Chairwoman BIGGERT. Thank you.

We have, I think, just been called for a vote, but we have a few minutes. My personal best is 2½ minutes, but I don't want to try to do that again. So we will start with the questions, and as a reminder to each of the Members, there are 5 minutes for questions. I will yield myself 5 minutes.

When you did all of these focus groups or roundtables and everything, what was the timeline that you wanted to get for somebody who was going to have a mortgage? Because as I recall in doing so many of these—the lawyer always got in at closing, which was a little bit late sometimes for knowing what was going on before the mortgage had already been made. So how do you decide what—and now you are talking about 3 days. What happens?

Mr. DATE. The concern that you flag is definitely one that is shared both by industry stakeholders as well as consumers. Consumers, unfortunately, feel like they show up at closing and there is a gigantic pile of paper that most people don't even know how to begin making heads or tails of. It is only through the guidance, for example, of a settlement agent that they even find their way through with some level of comfort.

And, of course, industry stakeholders, be it mortgage brokers or lenders or settlement agents themselves, feel like so much ends up getting rushed at the last moment that there are certain constraints that the timetable creates that otherwise in a perfect world would not exist.

We are trying to tackle that in at least two broad ways. One is, owing to the complexity—it is after all a relatively complex transaction when all is said and done. With that complexity in mind, still we want to really streamline, clarify, and simplify that which consumers have before them. It is only through maximizing the simplicity of the documents themselves that you can maximize the chance that that timetable doesn't work against you.

Chairwoman BIGGERT. Is it CFPB's plan to move forward the new disclosures and rules? More specifically, what is the timeline for rulemaking and shouldn't the QM and QRM rules be finalized before you really complete the work on mortgage disclosures?

Mr. DATE. Sure. As you know, this is not our only mortgage rulemaking. The CFPB has as many as—I want to say seven different mortgage rulemakings, all of which Congress has appropriately pointed us towards to remediate reasonably clear deficiencies in the mortgage market as it had developed.

Taking the example that you raised, the Qualified Mortgage Rulemaking, the proposal with respect to the ability to repay provision in Dodd-Frank and the Qualified Mortgage definition had been made by the Federal Reserve Board before we inherited authorities from the Board last July. Our plan—and I can assure you that it remains our plan—is to finalize the Qualified Mortgage definition before the statutory deadline of January of next year.

As a practical matter, I certainly understand the argument and the concept behind the argument that a number of these rules ought to be finalized before the disclosure forms are made final. It is in fact an issue that we raised explicitly with the Small Business Review Panel, and so it is entirely possible that timetable you contemplate is the one that will play out.

Chairwoman BIGGERT. Where is the CFPB in the process of its work with the Small Business Review Panel?

Mr. DATE. I am pleased with our work to date. We have conducted three Small Business Review Panels: one with respect to mortgage loan originator compensation; one with respect to mortgage servicing; and the third with respect to the subject of today's hearing, the integration of the TILA and RESPA rules.

We are the first bank agency or financial regulator to conduct Small Business Review Panels, so at some level it was hard to know exactly what to expect. And I am not particularly an especially optimistic person. I have been very pleased with the process as it has played out, the input that we have received, and the utility of that which we have heard as we move forward. So I am really quite pleased.

With respect to this particular rulemaking, we will issue the report coming out of the Small Business Review Panel at the same time as we issue the proposed rule.

Chairwoman BIGGERT. Okay. You are looking at new disclosures for consumers and small businesses that are involved in the mortgage origination process. Are you conducting testing? What is the testing for that?

Mr. DATE. Yes. Our general approach to testing is one that I think is shared by other Federal agencies with which I am familiar, as well as broadly across much of the private sector around consumer finance, and I would describe it in two big pieces.

One up front is a series of what in a prior life I called deep customer insight or deep discovery interviews. In this case, we did more than 100 fairly lengthy interviews with consumers, small business stakeholders, and other industry participants to understand the broad contours and alternatives we might pursue. That goes by lots of different names. The term that we use is called qualitative usability testing. That qualitative usability testing then forms the basis for our proposal and then we would pursue quantitative testing through one of several different means after the proposal is issued and before it is finalized.

Chairwoman BIGGERT. Thank you.

Mr. Gutierrez, would you like to get your questioning in or would you rather wait until we come back?

Okay. We will recess to go vote. There are three votes, so it should take about 25 minutes, I would say. We will be back as soon as we can. Thank you so much.

[recess].

Chairwoman BIGGERT. The committee will reconvene.

Mr. Gutierrez, you are recognized for 5 minutes.

Mr. GUTIERREZ. Thank you.

Mr. Date, you spoke about the consumer testing that the CFPB has done on the prototype mortgage disclosure forms. Often when a buyer is reviewing these disclosures, they are in a high-pressure atmosphere. Many of us have been there when we go to a closing, sign this, sign that, move papers along, time to get the keys and see the house; and this can sometimes lend itself to inadequate review. Has the CFPB's consumer testing simulated the high-pressure situation that borrowers can find themselves in at all?

Mr. DATE. Thank you, Congressman.

It is an excellent question, because some of the criticism that is possible with respect to qualitative usability testing is that, in general, it does not exactly simulate real-life pressures in the moment. I think you are correct. It would be odd to find a borrower at a closing table who says to himself, "I would like to be here all day." Nobody says that.

Usability testing does do some things, but it does not do everything. What it does do is set out the broad contours of what ought to work in terms of basic comprehension and understanding how the pieces of the transaction fit together. In terms of more statistically significant and larger quantitative testing, it is not a substitute for that, which is why we are going to pursue quantitative testing after the proposal and before finalization.

Mr. GUTIERREZ. I have heard of instances where borrowers are the targets of deceptive practices. Let me ask you, has the CFPB tested whether consumers understand the information included in the prototype forms if they are verbally misled about mortgage terms or settlement costs even?

Mr. DATE. A couple of the elements of that which we may be pursuing with respect to this rulemaking are meant to make it much more difficult for bad actors in this space to be able to deceive consumers. So, just a couple of examples with respect to that.

First, HUD in the most recent revisions to RESPA's disclosure forms tightened rules with respect to tolerances associated with changes in closing costs after they are initially disclosed to borrowers. There are areas in which we are evaluating whether or not those tolerances were fully effective or fully appropriate and so we would try to think through those issues.

Part of the purpose for that is that it allows borrowers to be more surefooted as they evaluate a potential transaction and compare it to alternative transactions but at the same time to be able to make it more difficult for so-called bait-and-switch tactics to take hold of the process.

Mr. GUTIERREZ. There have been some concerns expressed that in combining TILA and RESPA disclosures, the CFPB may have inappropriately expanded beyond harmonizing and improving the disclosures to include a reworking of any underlying regulations. How do you respond to the accusation that you may be reworking the underlying regulation?

Mr. DATE. Congress has given us, in my mind, a quite appropriate task, which is to combine, make from several into one, to streamline, to clarify, and to make cheaper, less expensive, and less burdensome to comply with. All of those are entirely appropriate responsibilities for us to undertake, and that is what we are doing. And we are doing it in a way that is hopefully at the end of the day responsive to borrower needs while providing incremental consumer protections as well as making it easier and cheaper to comply with these two disclosure regimens.

Mr. GUTIERREZ. The goal—I know it is your goal. I don't think you are changing it. I think you are doing exactly what the Congress of the United States in the last Congress enabled you to do.

And I do want to say that I have never encountered the problem, but then if America only had to deal with problems that we encounter as a Member of Congress, they probably would not encounter a great deal. We are really legislating for the rest of America.

Because I have to tell you, I go to my bank. I take out a home loan. It is pretty clear. Exactly what they said was going to happen is what happens. The interest rate, I never get a surprise later on.

But, at the same time, there are surprises in so many other financial products, even for Members of Congress, like the famous credit card, get 25,000 miles, get a free ticket. I don't know to where you get a free ticket for 25,000 miles, but they keep advertising.

So there still are bad actors out there, and there are still people who will again try to manipulate and exploit a maybe somewhat unsophisticated public when it comes to having some kind of financial literacy. So I want to thank you and wish you Godspeed in the work you do, and please let us know if we can be a helping hand to getting that work done.

Thank you so much.

Chairwoman BIGGERT. Thank you.

If I could just quickly follow up on the RESPA and TILA and whether there is a conflict, I wasn't quite clear on how you answered that. Does the CFPB have the authority to resolve what is a conflict? Let's say it is a conflict. And you talked about streamlining and getting them to move together. But in law, there is a difference. Can you change that?

Mr. DATE. We believe that we can, both through the explicit instruction to integrate these disclosures as well as the broader authorities granted to the Bureau, which roughly parallel that which the Federal Reserve Board had in Title X and Title XIV.

Chairwoman BIGGERT. Thank you. Okay.

The gentleman from Missouri, Mr. Clay, is recognized for 5 minutes.

Mr. CLAY. Thank you so much, Chairwoman Biggert; and thank you, Mr. Date, for being here.

We hear a lot from community bankers, mortgage bankers, about compliance with regulators gumming up the works and the red tape. Let me ask you about the requirement that consumers receive their final settlement disclosure form 3 days in advance. Give me your thinking behind the 3-day requirement.

Mr. DATE. Certainly. Consumers, in order to make sense and be confident and be surefooted in the transaction they are about to undertake, which, after all, both enables for many people the best part of their financial lives but also in reality is probably the single biggest obligation and single biggest set of financial risk that they will face, in order to do that in a surefooted way they need time to really understand that which they are getting into. And the idea is to the extent that data can be made available in a way that normal human beings would be able to understand, 3 days ahead of time as opposed to 3½ minutes, that is rather an advantage.

Now, obviously, things may change. In routine mortgage transactions, there are some things that do change between 3 days out and the time of closing. For example, recording fees might not be knowable 3 days ahead of time, hypothetically. So what we are going to try to do and what we have been attentive to the feedback from small business representatives through our Small Business Review Panel about is to be attentive to those areas where: number one, there is a real chance that you don't know 3 days ahead of time; and number two, there is not a prejudice to the borrower as a result.

Mr. CLAY. And having been a real estate agent prior to coming here, tell us what the CFPB's rules will do for documentation at closing. Does it simplify it? I know that there are numerous documents that each buyer signs and sometimes seller. Does this help in that process?

Mr. DATE. I believe that it does, and it does so by taking a real step forward in terms of streamlining Federal disclosure forms around the mortgage process. It is not just page count that is reduced, although that will happen, but it is also making it easier for someone to actually understand, which, of course, should be the goal of any disclosure regimen.

Now, there is a lot that happens at the closing table and otherwise in a mortgage transaction that has nothing to do with Federal requirements per se, but we can absolutely put borrowers in a better context with better tools to understand that which they are facing, and everyone benefits as a result.

Mr. CLAY. And in your public comment period, what kind of feedback are you getting from the industry, from the mortgage banker community and the community bankers, too? What are you hearing?

Mr. DATE. We will have a formal comment period that extends after publishing our proposed rule next month. But essentially from the very week that I arrived at the Treasury Department at the end of September 2010, during that entire time period we have been quite actively reaching out to small business representatives and other industry participants across the mortgage landscape. And the basic thread, both in general terms—maybe I will give you the general and then a specific.

In general terms, I think it is fair to say that no one looks at the Federal disclosure regimen as it exists today and says, yes, that is ideal. That is the best of all possible worlds. No one thinks that. There are certainly differences of opinion about pace and exact trajectory, but fundamentally everyone acknowledges that which we have today is not ideal.

Even to date, we have been able to incorporate specific suggestions over time. One that immediately comes to mind is sort of the notion in the loan estimate that we will propose in our rule. Originally, our early prototypes didn't have, for example, principal, interest, taxes, and insurance all separately enumerated; and it was quite clear from the feedback that we received, both from consumer groups and from the industry, that you ought to do that, and later prototypes did.

That is not the only example, but it really speaks to the power of an iterative approach where you actually reach out to people who are affected by these things.

Mr. CLAY. And I guess that is the key to this process. It is striking a fair balance between more disclosure and the mortgage banker industry and how we can expedite the process while we still protect consumers. So thank you for your efforts at CFPB.

Mr. DATE. Thank you, sir.

Mr. CLAY. Madam Chairwoman, I yield back.

Chairwoman BIGGERT. The gentleman from Illinois, Mr. Dold, is recognized for 5 minutes.

Mr. DOLD. Thank you, Madam Chairwoman; and, Mr. Date, thank you so much for taking your time to join us today.

Congress, through the Economic Growth and Regulatory Paperwork Reduction Act of 1996, directed the Department of Housing and Urban Development and the Federal Reserve Board to simplify and improve RESPA and TILA disclosures. My understanding is that there are some notable conflicting provisions in the statutes and the agencies failed to provide a joint disclosure. They concluded that meaningful change should come only through legislation.

How did the Dodd-Frank Wall Street Reform and Consumer Protection Act differ from the 1996 Act to compel regulatory agencies to come up with a joint disclosure document?

Mr. DATE. As I had mentioned briefly before, the advantages I think are threefold post-Dodd-Frank versus obviously what has been a long-standing challenge within the mortgage marketplace. I say threefold, because the first is about having a singular authority with respect to both statute and regulatory schemes. Not to put too fine a point on it, but having a single agency in charge of both statutes on the margin makes everything easier in terms of tradeoffs between them.

Second, there is, of course, a specific mandate within Dodd-Frank to integrate these disclosure regimens so that they are simultaneously better for consumers and that they ensure compliance and make compliance easier for industry participants.

And third is that both Title X and Title XIV in our view clearly gives us the authority to do just that.

So the right mission with the right structural accountabilities and the right authority to do it.

Mr. DOLD. Correct me if I am wrong, but Dodd-Frank required that by July 21st of this year, the CFPB propose and integrate an accompanying rule for mortgage loans that satisfies the requirements of both RESPA and TILA. Will the CFPB be meeting that deadline?

Mr. DATE. Yes, sir, we will be meeting that deadline.

Mr. DOLD. Fantastic. So we can expect to see it on or before—do you think it is going to be pretty close to July 21st?

Mr. DATE. My hope would be not just before the clock strikes midnight on that date, but it will be proposed next month, yes.

Mr. DOLD. Okay. Fantastic.

With regard to mortgage disclosures and closings, one of the things that I hear oftentimes from my constituents is that they don't read the documents because the stack is so large that they couldn't possibly get through them. When was the last time you talked to a consumer who actually read every one of those documents? Or, more importantly, when was the last time you sent somebody, an average consumer, to a closing without an attorney?

Mr. DATE. I will go one further, Congressman. I bought a house last year. My wife does financial fraud cases for the Department of Justice. Consider what I do for a living. We didn't read the papers at the closing able. It is an unrealistic premise that the disclosure regimen has been based on, which is why we talked with the Small Business Review Panel about the notion of delivering the closing disclosure not just in simpler form but in fact earlier than the closing itself.

Mr. DOLD. Okay. Madam Chairwoman, I have no further questions right now.

Chairwoman BIGGERT. The gentleman yields back.

The gentleman from Texas?

Mr. GREEN. Thank you, Madam Chairwoman; and I thank the witness for appearing.

I must say to my colleague who is about to exit the room that you have preempted me. I think that probably more than anything else when I talk to consumers about mortgages and closing on their homes, they talk about just the inordinate amount of paper and how it is just impossible to peruse it; and, even if they do, they contend that they don't really understand all that is there.

My question is, at the end of the day, when you finish, given that lawyers have opinions about what must be done to properly protect clients, will you be able to remove enough of the language so that the stack of paperwork will be condensed to some extent, and will the process be such that people won't sign papers that have not been completed?

Many times a person simply signs documents, and they are told that, "We will fill that in later. Just go ahead and sign now." So at the end of the day, I believe that is a noble and laudable goal, but will we get there at the end of the day?

Mr. DATE. I am optimistic, and I am optimistic in the following two ways: one is a process point; and another is substantive.

The process point is what we have done to date, this iterative approach of developing prototypes that are informed by outreach, informed by qualitative usability testing, informed by hard work, and the willingness to change what was originally done. Your first prototype ought to improve as you get to your second, that process fundamentally I think is better suited to create disclosure forms or, frankly, a lot of other things that are not just things that are written by lawyers for lawyers, but in fact things that are written to work in the real world with actual human beings in stressful moments doing important things in their financial lives. That is the process point.

The substantive point is I personally am optimistic that the concept that we spoke about with the Small Business Review Panel earlier this year about separating the closing disclosure from the giant stack of paperwork at the closing table, so the first time that a consumer sees these important bits of information is not when they are confronted with, for example, the note itself or all manner of other documents that are first subject to State law and at some level may be irreducible in order to protect the security interest in the underlying, et cetera.

So I think there are both process and substantive reasons to be optimistic, but we absolutely share your objective.

Mr. GREEN. Thank you.

And, of course, I think that you have to have an acid test to ascertain whether or not you have succeeded. So you will develop your new paradigm, the process will be changed to some extent maybe, and you will have your new instruments to be signed, but what will be the acid test to ascertain whether or not you have succeeded?

Mr. DATE. There are two bits of testing that will give us a lens into that.

The first lens happens before we even finalize the rule, as we conduct quantitative testing to make sure that what we have proposed in fact does what we hope that it will. Many of these things you just don't know until you really do test them.

The second is Dodd-Frank, to my mind, appropriately calls on us to take retrospective look-backs at new regulations that we promulgate to ensure that what was intended in fact was the result. And that is something that we, not just in this context but across-the-board in terms of our policy agenda, are quite serious about. Because even if it did work perfectly on day one, markets change. They are dynamic. So we should be attentive to circumstances as they change as well.

Mr. GREEN. Thank you very much. You have a daunting challenge, but I do believe that it is not a Quixotic quest. I think it can be done.

I just hope you won't assume that you will get it done the first time. I think looking back and having an acid test will be very helpful, because there is just so much involved in what you are doing. It really is awesome when you actually go through the process, as you have, I have; and consumers are quick to point out that they just give up and they are just so happy to get the home that they will sign anything and they will walk away.

And my final point would be the signing of documents wherein you indicate, I have read this and I understand it, can you just give me a comment in terms of how you will handle this? Because many people will sign a statement saying, I have read it and I understand it, but they really haven't read it. And even if they did, they didn't understand it, but they want the house, the home. Please.

Mr. DATE. Why don't I just make a general comment with respect to that?

I think your observation points to the self-limiting nature of just piling on disclosure form after disclosure form after disclosure form. If there is a substantive problem in consumer understanding, just generating another mostly meaningless to the average person piece of paper that has to be signed doesn't solve that substantive problem. They are hard problems to solve, but if you take the right approach, again, I am optimistic.

Mr. GREEN. Thank you, Madam Chairwoman.

Chairwoman BIGGERT. Thank you, Mr. Green.

Just one quick question, and then we will excuse you, Mr. Date, and go on to the next panel.

Is the CFPB working to ensure that disclosures ensure transparency in charges that reflect different kinds of business models? For example, we have the independent title insurers, but we also have title insurers and brokers that have an affiliation business arrangement, and we also have independent appraisers as well as banks with in-house appraisal management companies.

Mr. DATE. In general, the approach is to try to give consumers information that is complete enough to understand how it is that the money in the transaction is flowing, as well as the information presented in a way to give them a real sense of the nature of the risks and the nature of the transaction that they are looking at in substantive terms.

We presented to the Small Business Review Panel options around changing, for example, the tolerance associated with changes in costs for affiliates of lenders versus independent providers of those services, and it could well be there are changes on the margin there that would tend to conceivably put those players on a better, more competitive, even playing field with each other. But, again, it is certainly one of the issues—

Chairwoman BIGGERT. And will there be transparency?

Mr. DATE. In general, we have tried to make sure and we will continue to try to make sure as we refine going forward that those elements that really ought to be important to a consumer's understanding of the transaction and of risk are as transparent as we can make them.

Chairwoman BIGGERT. Thank you. Thank you so much for being here today. You are excused. We really appreciate your time.

The Chair notes that Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to this witness and to place his responses in the record.

We will now have the next panel take their seats.

While we are having the second panel take their seats, I will just ask unanimous consent to insert the following materials into the record: a June 20, 2012, letter from the Credit Union National Association; a June 20, 2012, letter from Impact Mortgage Management Advocacy and Advisory Group; a June 20, 2012, letter from the Appraisal Institute; a June 20, 2012, letter from the Housing Policy Council of the Financial Services Roundtable; a June 20, 2012, letter from the National Association of Federal Credit Unions; a June 20, 2012, letter from the Consumer Bankers Association; a June 20, 2012, letter from the National Association of Mortgage Brokers; a June 20, 2012, letter from the American Financial Services Association; and a June 20, 2012, statement from the Independent Community Bankers of America.

Without objection, it is so ordered.

Okay, welcome to this second panel.

I will introduce the panel: Mr. Christopher Abbinante, president, American Land Title Association; Ms. Anne Canfield, executive director, Consumer Mortgage Coalition; Mr. Bill Cosgrove, president and chief executive officer, Union National Mortgage Company, on behalf of the Mortgage Bankers Association; Ms. Chanelle Hardy, senior vice president and executive director, National Urban League Policy Institute; Ms. Brenda Hughes, senior vice president and retail lending administrator, First Federal Savings Bank, on behalf of the American Bankers Association; Mr. Moe Veissi, 2012 president, National Association of REALTORS®; and Mr. Tim Wilson, president, affiliated businesses, Long & Foster Companies, on behalf of the Real Estate Services Providers Council.

Once again, without objection, your written statements will be made a part of the record. You will each be recognized for a 5-minute summary of your testimony, and we will start with you, Mr. Abbinante. You are recognized for 5 minutes.

STATEMENT OF CHRISTOPHER ABBINANTE, PRESIDENT, AMERICAN LAND TITLE ASSOCIATION (ALTA)

Mr. ABBINANTE. Thank you.

Chairwoman Biggert, members of the subcommittee, my name is Christopher Abbinante, and I am the president of the American Land Title Association. I have been in the title industry for over 35 years, most recently serving as the president of eastern operations for Fidelity National Title Group.

ALTA members act as independent third-party settlement agents in real estate transactions. We prepare and provide the HUD-1 settlement statement which provides all parties to the transaction with their final settlement costs.

ALTA supports simplified mortgage disclosures. It is critical that the CFPB get this rule right for consumers and industry. However, industry groups and the Bureau agree that there are a number of statutory conflicts between RESPA and TILA. It is not clear if these conflicts can be resolved by the Bureau or will require an act of Congress.

My testimony will outline five principles that ALTA has identified to help the Bureau avoid unintended consequences for consumers and industry.

Our first principle is to prevent disruptive and costly delays to closings for consumers. We recognize that RESPA and TILA have conflicting timing requirements for when consumers receive their settlement disclosure. To resolve this conflict, the Bureau is expected to adopt the TILA requirement and propose that consumers receive their final disclosure 3 days before closing.

Providing disclosure earlier in the process makes sense in theory, but it is simply not practical and will result in delays, increased costs, and frustrations for businesses and consumers. A lot of costs change within 3 days of closing because of property inspections and walk-throughs. If each change triggers a new 3-day waiting period, the rule will almost certainly delay settlements and add costs.

Our second principle is to provide industry with clear guidance. Today, a lack of clear and definitive guidance causes lenders and settlement agents to unnecessarily lose an estimated 3 million hours of productivity each year. When these forms changed just 2 years ago, HUD issued 400 frequently asked questions after the rule was published. This was very costly for businesses, because each change required new software coding, testing, and training.

Our third principle is that the rule should promote competition. To improve accuracy and prevent bait-and-switch, regulators hold lenders liable for some costs that increase more than a certain amount at closing. This is called tolerance. However, the economics of tolerance inflate estimates and reduce the number of settlement agents that are allowed to compete for business. We urge the Bureau to work with us to improve accuracy for consumers and to protect consumers by ensuring that settlement agents continue to serve as the independent third party at the closing.

Our fourth principle is to avoid unnecessarily high costs for small businesses. These forms will be very costly to implement. Software vendors estimate that they will each spend around $2.5 million to develop and implement compliant software. This is more than twice the amount that was spent when these forms changed in 2010. These costs will likely be passed on to the 21,000 settlement agents across the country, roughly 88 percent of which are small businesses, and ultimately to the consumer. We estimate they will pay $800 per employee for up-front implementation and training and see a 20 percent annual increase in software fees. It is also estimated that their closing staff will be able to close two fewer transactions per day.

In addition, changes that might be perceived as industry friendly can actually be very costly. One example is that we strongly recommend a standard disclosure form as required by RESPA rather than a model disclosure form as required by TILA. Standardization reduces costs and prevents consumer confusion caused by the hundreds of different versions of the same disclosure produced for each mortgage lender.

Our final principle is to encourage consumers to make informed decisions. The choice of words influences consumers' likelihood of making decisions in their financial interests. Some drafts of the form described owner's title insurance as not required. A consumer without an owner's title policy is out of luck if their ownership is challenged. This is tragic and can be prevented. If these forms need to use modifiers to describe a particular settlement service, they should use terms like "recommended" or "advisable" to encourage consumers to make an informed choice.

We appreciate the opportunity to discuss federally-mandated mortgage disclosures. Getting this rule right is critical. ALTA is eager to serve as a resource to this subcommittee as well as to the Bureau.

Thank you.

[The prepared statement of Mr. Abbinante can be found on page 40 of the appendix.]

Chairwoman BIGGERT. Thank you so much.

Ms. Canfield, you are recognized for 5 minutes.

STATEMENT OF ANNE C. CANFIELD, EXECUTIVE DIRECTOR, CONSUMER MORTGAGE COALITION (CMC)

Ms. CANFIELD. Thank you, Chairwoman Biggert, and members of the subcommittee.

My name is Anne Canfield and I serve as the executive director of the Consumer Mortgage Coalition, a trade association of national mortgage lenders, servicers, and service providers. We appreciate the opportunity to testify and appreciate the subcommittee's attention to this important issue.

I would also like to request that the appendices to my testimony be made a part of the record.

Chairwoman BIGGERT. Without objection, it is so ordered.

Ms. CANFIELD. Thank you.

Along with its industry colleagues, the CMC has been a longtime and strong supporter of efforts to streamline mortgage disclosures. The disclosure should assist consumers in understanding their transaction and help them make informed and prudent decisions. A well-informed consumer will also help prevent abusive mortgage practices from taking hold.

The CFPB does have an historic opportunity, given that the regulatory authority over the two principal government statutes governing mortgage disclosures, RESPA and TILA, now reside in one Bureau.

It would be most unfortunate if the CFPB were to repeat the experience that occurred when the 2008 amendments to Regulation X were implemented. At that time, the confusion surrounding the 2008 rule necessitated 11 rounds of frequently asked questions after the rule was final, but never really did provide the clarity that the industry needed, and required delaying enforcement of the regulation by 4 months. While this was an extremely difficult and expensive experience for the industry, more importantly, the 2008 amendments resulted in a set of mortgage disclosures that are even more confusing to consumers than any of the previous disclosure regimens.

In order to get it right, the CFPB must take a holistic and methodical approach to this project. Otherwise, chaos is likely to ensue.

First, the CFPB should examine the existing TILA, RESPA, and related rules to determine where modifications to those rules might be needed so that any superfluous disclosures that are emanating from the existing rules can be either eliminated or modified.

Second, the Dodd-Frank Act includes a number of provisions that will result in additional mortgage disclosures. All the Dodd-Frank Act rules that will drive additional disclosures need to be finalized, including the QM rule and the QRM rule. The disclosures will only work if they are designed together. Indeed, that was the main purpose for assigning to a single regulator the task of designing the disclosures.

Third, once all the Dodd-Frank mortgage-related rules that will result in additional disclosures are finalized, those rules should be placed on hold until all the new disclosure requirements are ready to be implemented. Both the substantive rule changes and the disclosure changes should be implemented once, at the same time.

Fourth, the new disclosure should then be designed to accommodate all the existing and new disclosure requirements, along with the requirements set by the States, unless the CFPB agrees or decides to preempt the State disclosure requirements.

Fifth, once the new draft disclosures are designed, they need to be tested on actual closed loans, not in focus groups, across all available loan products to ensure that they actually work. Testing the disclosures on closed loans may reveal the changes that will need to be made to the draft forms.

Sixth, once the format of the forms is finalized, a reasonable implementation period needs to be given so that the industry is given the time it needs to change its systems, train its employees, and monitor and audit the changes to ensure that everybody is compliant.

I would like to reemphasize that both the rule changes that are substantive along with the disclosure changes need to be implemented once, and at the same time. Otherwise, the industry will be in a position of having to implement and redo its systems repeatedly, and in this process I can't even imagine what the disclosures will look like to consumers. It will be very, very confusing.

Also, the Dodd-Frank Act, as you heard in the prior testimony by Mr. Date, requires that the CFPB come out with a proposed rulemaking by July 21st. Since the Dodd-Frank rules and the related disclosures are not going to be known at that time, any proposed disclosures they come out with in a proposed rulemaking at that time will not make any sense and will not be usable. So we would recommend that Congress and the CFPB delay that proposed rulemaking date. It only makes sense. It is not unprecedented that Congress sometimes delays those required dates. They did so with the QRM rule. There are many other examples when legislation is passed that is a very large bill and not every piece of it fits together perfectly.

The other thing that we would like to recommend is that the CFPB implement a four-step disclosure regimenn even when it does design its disclosures.

We think that at step one, a loan estimate can be given to the consumer. It is a single disclosure that would be sent to the consumer within 3 days of application.

At step two, using the same form that was provided at step one after the loan has been underwritten, the consumer would receive a second updated disclosure form. That second disclosure form could also serve the purpose of meeting the Regulation B ECOA notice. So the consumer would receive one form at that stage of the transaction versus two.

Chairwoman BIGGERT. If you could wrap up, we will probably come back to this in questions. Thank you.

Ms. CANFIELD. Great. Thank you. I appreciate your time.

Our remaining remarks are we think we can get part of the way there in meeting the CFPB's desire to have a 3-day waiting period before final closing documents are provided to the consumer, but I think that actually requiring 3 days, a 3-day waiting period, before the consumer does get the final closing documents will create chaos. It was tried in 1975, and it did not work, and it would be very harmful to the industry if it were to happen again.

[The prepared statement of Ms. Canfield can be found on page 50 of the appendix.]

Chairwoman BIGGERT. Thank you.

Mr. Cosgrove, you are recognized for 5 minutes.

STATEMENT OF BILL COSGROVE, CMB, PRESIDENT AND CHIEF EXECUTIVE OFFICER, UNION NATIONAL MORTGAGE COMPANY, ON BEHALF OF THE MORTGAGE BANKERS ASSOCIATION (MBA)

Mr. COSGROVE. Thank you, Chairwoman Biggert.

My testimony this afternoon will provide MBA's perspective on the CFPB's Know Before You Owe effort.

I own an independent mortgage banking company headquartered in Ohio. We employ 220 mortgage professionals. I have 26 years of experience in mortgage banking. Last year, my company originated over $750 million of mortgage business, and this year we are on track to close approximately $1 billion in mortgage loans.

RESPA and TILA disclosures directly impact my company and our customers. If done right, these new combined disclosures will help borrowers make better-informed decisions about what they can and cannot afford. These disclosures also make it easier for them to compare the estimated cost of the loan versus the actual cost at closing.

MBA has long supported that RESPA and TILA disclosures work together as a way to provide better information for home buyers. Splitting the authority between HUD and the Federal Reserve never worked. The disclosures diverged over the years. The CFPB Know Before You Owe initiative has the potential to finally sync up the information borrowers receive.

Let me highlight the key points of our testimony.

First and foremost, MBA believes this effort must be done right and not in haste.

Second, while these forms have benefited from multiple rounds of feedback from the public, more work needs to be done to ensure they are as useful as possible to consumers.

Third, the forms and rules resulting from this effort should not be finalized until after other Dodd-Frank rules impacting these forms are finalized and taken into account.

Fourth, the rules accompanying the forms should be developed carefully so that they protect consumers without unwittingly harming the market and the borrowers that they are intended to serve.

And, finally, when the forms and rules are finished, they should be implemented in an orderly manner that is respectful of the considerable commitment of resources small businesses like mine will need to make to ensure compliance.

Let me expand on some of these principles, starting with the importance of getting this right rather than rushing to meet arbitrary deadlines.

Buying and financing a home remains the largest financial transaction in any family's life, yet the mandated disclosures remain confusing and inconsistent. Past efforts to improve the disclosures have been uncoordinated, and ultimately failed to achieve their objectives. Yet, small businesses continue to spend untold sums to implement the most recent RESPA rule, which is about to be eclipsed by the CFPB's latest efforts. In the end, those costs are borne by our borrowers, your constituents, who then pay more for their mortgage loan.

Second, as I noted earlier, we can't develop these new disclosures in a vacuum and ignore the many other mortgage-related rules mandated by Dodd-Frank. The CFPB alone is currently working on: ability to repay and its QM definitions, as well as rules dealing with high-cost loans, originator compensation, and servicing rules. All these rules will impact the disclosure requirements. For example, materials related to the loan originator compensation rule indicate the CFPB is concerned about borrower confusion of discount points and origination charges. These new forms, not new restrictions, are the right way to address those concerns.

MBA also does not agree with the CFPB's suggestion that the application information needed by lenders to issue a loan estimate should be reduced to six items without also allowing the lender to request other information it deems necessary, as permitted under RESPA today. Under the proposed QM rule, lenders face significant liability for failing to determine that a borrower can repay a mortgage. Constraining companies like mine from gaining relevant information could not only result in unreliable estimates for consumers but could actually put us in legal jeopardy later on.

Contradictory rules add uncertainty to the mortgage market. This uncertainty is leading to factors behind today's tight credit environment that is preventing qualified borrowers from getting a loan, and it is holding back the housing recovery. For these reasons, the final RESPA/TILA forms and regulations should not be finalized until issues under the other Dodd-Frank rules have been resolved.

Chairwoman Biggert, we at MBA appreciate your longstanding interest in improving the mortgage process. We stand ready to work with you and the members of the subcommittee on both sides of the aisle to ensure this effort leads to the best and most efficient set of mortgage disclosures for consumers.

Thank you.

[The prepared statement of Mr. Cosgrove can be found on page 175 of the appendix.]

Chairwoman BIGGERT. Thank you so much, Mr. Cosgrove.

Ms. Hardy, you are recognized for 5 minutes.

STATEMENT OF CHANELLE P. HARDY, SENIOR VICE PRESIDENT AND EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE POLICY INSTITUTE

Ms. HARDY. Thank you.

Chairwoman Biggert and members of the subcommittee, thank you for the opportunity to testify today, and for the leadership you have shown on this issue.

I am Chanelle Hardy, senior vice president and executive director of the National Urban League's Policy Institute. On behalf of the League, its president and CEO, Marc Morial, and the 2.6 million Americans served by our 97 affiliates last year, I am pleased to share our views on the CFPB's effort to create combined TILA/RESPA disclosures as mandated by Dodd-Frank.

With the help of HUD Housing Counseling Grants, the National Urban League acts as a direct provider of housing counseling services in 36 cities throughout the country. Last year alone, the National Urban League affiliates offered counseling to more than 10,000 families, with services ranging from prepurchase workshops to mortgage modification and the initiation of forbearance agreements. The goal of our counseling model is to break down barriers and obtain economic equality through education, self-reliance, and a greater understanding of financial tools and services.

Our counselors see firsthand the damage caused by confusion at the point of loan origination when well-intentioned and qualified borrowers are confronted with hopelessly confusing documents and sometimes deliberately abusive and malicious lending agents. Today, we know that substantial evidence indicates that African-American and Latino borrowers, particularly, who were qualified for prime loans were often steered into subprime loans and into loans that were overpriced and unaffordable.

In our view, the CFPB's proposal discussed today, simplifying and consolidating the information required by TILA and RESPA, represents a critical step toward combating and limiting this type of abuse and confusion that contributed in no small part to the current foreclosure crisis.

The broader context for these reforms must not be forgotten. The fact that between 5 million and 6 million American homeowners are currently at risk of foreclosure allows us to accept one of two possibilities: either the American people in droves deliberately entered into loan agreements to secure homes that they knew they could not afford; or, at minimum, hardworking people seeking to achieve the American dream lacked full awareness of the types of risks of certain types of mortgages before agreeing to their terms.

Communities of color, and African-American communities in particular, have borne much of the brunt of this crisis, leading to a loss of family and community wealth that can only be described as devastating. The Federal Reserve has recently pointed to a 40 percent plunge in the wealth of the average American family, from $126,400 before the crisis to $77,300 after. But these numbers are shockingly lower for African-American and Latino families, where numbers began between $11,000 and $13,000 and are now between $4,000 and $6,000.

The heartbreaking stories that the Urban League counselors have heard from our clients reveal that many of them did not fully understand the potential of many mortgage terms to cause problems in the future, and many claimed to have been unaware of those provisions at all. Better consumer education is a significant part of the solution to the recurrence of the current housing crisis, and streamlining these disclosure forms is a critical component to the solution.

Now that the CFPB has authority over RESPA and TILA, we believe the combination of these authorities will make it easier to unify the legal approach. And while some will certainly argue for an approach that reduces the regulatory burden on the mortgage industry, we strongly believe the central challenge of CFPB's focus must be on improving the ability of consumers to understand disclosures.

Timely, consistent, and clearer disclosures have the potential to reduce the frequency of poor financial decisions by consumers, many of whom lack the sophistication to read between the lines. Consumers will benefit from clarity and reinforcement regarding elements of mortgage obligations that could create future risks.

We commend the CFPB staff for its diligent work in crafting this proposal and recognize that the home mortgage process is unique and complex and that developing a fair and reasonable method of ensuring early and accurate price disclosure is challenging.

Unfortunately, whatever decisions are made with respect to the disclosures in this proposed rule, it will not prevent future predatory loans from being made. They will not fix the misaligned market incentives that created this current situation. But what they will do is empower consumers with the information they need to evaluate all cost factors together so that they can make the most informed choices possible.

I will close today by offering three recommendations to the proposals: one, we believe that requiring all settlement and financing terms to be communicated well in advance of settlement with clear and consistent language is critical; two, require that client disclosure and acknowledgment forms be completed by the lender, not unlike the know-your-client protection provisions mandated in the securities investment marketplace; and three, the Qualified Residential Mortgage rules should require all securitized residential loans, qualified and other, to feature complete and valid know-your-borrower documentation in addition to other prescribed forms of risk retention.

Thank you for your time today, and I look forward to your questions.

[The prepared statement of Ms. Hardy can be found on page 189 of the appendix.]

Chairwoman BIGGERT. Thank you so much.

Ms. Hughes, you are recognized for 5 minutes.

STATEMENT OF BRENDA K. HUGHES, SENIOR VICE PRESIDENT AND RETAIL LENDING ADMINISTRATOR, FIRST FEDERAL SAVINGS BANK, ON BEHALF OF THE AMERICAN BANKERS ASSOCIATION (ABA)

Ms. HUGHES. Thank you, Chairwoman Biggert, Ranking Member Gutierrez, and members of the subcommittee.

My name is Brenda Hughes, and I am senior vice president and retail lending administrator at First Federal Savings Bank, a 96-year-old community bank in Twin Falls, Idaho. We are a $482 million institution serving the southern Idaho region. We do both portfolio lending as well as selling actively into the secondary market. We are also the largest lender in our region.

I am also co-vice chair of the ABA's Mortgage Markets Committee, and I am pleased today to testify on behalf of the American Bankers Association.

Thank you for holding this hearing on the reform of mortgage disclosures. We commend the Consumer Financial Protection Bureau's ongoing efforts to merge the RESPA and TILA disclosures as mandated by Dodd-Frank. Those efforts have been diligently undertaken with a commitment to openness and communication with all stakeholders.

ABA fully supports the reformation of the existing mortgage disclosure system. We believe the RESPA and TILA forms are convoluted and complex and must be fixed. It is common knowledge that consumers either ignore these disclosures or don't fully grasp the information contained in them. Simpler, clearer forms have long been a priority for all stakeholders.

Notwithstanding our support, we do have critical concerns to share. In reforming the RESPA and TILA disclosure requirements, the Bureau is effectively rewriting the rules that control the timing of the loan origination process, the disclosures to consumers, and the legal liabilities that result.

This is a massive and important undertaking. It determines how we communicate with our customers. We must get this right. The goal must to be achieve a workable and lasting framework of clear mortgage disclosures. Rigid timeframes should not trump quality.

The Bureau has thus far demonstrated an excellent capacity to analyze the issues. However, they still need to carefully consider a great number of elements that affect the RESPA/TILA disclosure system.

The Bureau should be allowed to satisfy the July 21st statutory deadline for completing a proposed rule by issuing an advance notice of proposed rulemaking. This would allow the Bureau to continue considering options regarding the structure of the rule and allow flexibility to incorporate changes without having to repropose additional rules. It also allows Congress to assess the Bureau's progress.

This flexibility is important because any other approach will lead to a difficult sequence of expensive regulatory revisions. The comprehensive forms in Dodd-Frank impose many other regulatory changes to the mortgage loan origination process and will significantly affect the disclosures being considered under the RESPA/TILA reform. It would be cumbersome, expensive, inefficient, and confusing to finalize a merger rule without considering these other rules that must be implemented. It would result in erratic and never-ending amendments to our compliance system. Such a result is unwarranted and avoidable.

As a second consideration, we encourage disciplined and efficient rule writing, and we therefore offer four important principles to guide this process.

First, the RESPA/TILA merger must result in simplified disclosures that are clearer for consumers. This is not an easy task, given the new requirements imposed in Dodd-Frank as well as current Federal, State, and local requirements.

Second, the merger rule must incorporate all changes that emanate from the Dodd-Frank Act. If this rule misses a new requirement, then it does not achieve the goal of integration.

Third, the Bureau should not overstep the boundaries of the RESPA and TILA laws, which have explicit legal boundaries that must be respected as the disclosures are merged.

Fourth, and finally, adequate timeframes should provide for guidance and implementation of the final rule. Once finalized, the Bureau should commit to timely guidance and adequate time for implementation and interpretations.

Thank you. I look forward to your questions.

[The prepared statement of Ms. Hughes can be found on page 194 of the appendix.]

Chairwoman BIGGERT. Thank you so much, Ms. Hughes.

Mr. Veissi, you are recognized for 5 minutes.

STATEMENT OF MOE VEISSI, 2012 PRESIDENT, NATIONAL ASSOCIATION OF REALTORS® (NAR)

Mr. VEISSI. Chairwoman Biggert and members of the subcommittee, I am honored to testify today on behalf of the over 1 million members of the National Association of REALTORS® who practice in all the areas of residential and commercial real estate. My name is Moe Veissi. I am the broker-owner of Veissi and Associates in Miami, Florida, and I have been a REALTOR® for over 43 years.

Before I begin, I would like to thank the Chair and the members of the Financial Services Committee for all of their hard work on extending the National Flood Insurance Program. We strongly support your efforts for a long-term resolution to this vital program.

The housing industry is experiencing a fragile recovery after the financial crisis in 2008. To prevent another financial disaster, many well-meaning regulations are adopted. The past several years have shown us that tight credit is slowing the recovery of the housing market. It is time for Congress and the Administration to seriously reexamine the breadth of some of the laws and the regulations that have come out of the financial and mortgage crisis, and that includes the Real Estate Settlement Procedures Act and Truth in Lending harmonization efforts.

NAR has participated in the effort by the Consumer Financial Protection Bureau to continue the Truth in Lending Act disclosures with RESPA and good-faith estimates. NAR strongly supports reducing the duplicative paperwork and combining those two forms, providing the combined document is useful and effective. The Consumer Financial Protection Bureau has done an adequate job harmonizing the good-faith estimate and the truth-in-lending disclosure. But more testing and work needs to be done, including testing on actual loans and final fine-tuning for products that are not plain vanilla.

Lining up the good-faith estimates in truth-in-lending disclosure is the most essential part of the rulemaking and truly represents what Congress, industry, and most consumer groups originally intended in pushing for RESPA/TILA harmonization. The effort to harmonize the HUD-1 settlement statement and the final truth-in-lending disclosure could be very disruptive to industry and consumers.

Unlike the good-faith estimate and truth-in-lending disclosure, the two documents have very different purposes. The TILA is a mortgage disclosure and settlement statement, and it is a memorization of the entire transaction. Trying to tie the two together to apply truth-in-lending rules and RESPA rules to both could create severe complications. For example, at present we do not even know who will fill out the combined statements. And, currently, lenders provide truth-in-lending disclosure, and the settlement agent does the HUD-1. These are people with two definite and determined skill sets and roles in a transaction, and neither is totally equipped or positioned to do the other's job or bear their liability.

Other problems include requiring the HUD-1, 3 days before closing. And, for reference, that was tried in 1970, and Congress had to remove that provision because it created disasters in the closing process.

Tightening RESPA tolerances is also a mistake. The HUD tolerances have failed to save consumers money, and since their implementation in 2010, closing costs have increased over 17 percent, according to several studies. The tolerances should not be expanded. They should be rolled back to include any lender charges.

The solution that the National Association of REALTORS® recommends is for the Consumer Financial Protection Bureau to focus on fixing the initial disclosures. That would mean merging the good-faith estimate and truth in lending and either drop the more comprehensive and unnecessary effort to transform RESPA and TILA into a single entity or seriously curtail the effort. Currently, it is possibly unworkable and will make the expensive, time-consuming, and frustrating HUD RESPA form of 2009 look like a minor inconvenience in comparison.

Thank you for providing the National Association of REALTORS® this opportunity to testify about the critical issues contained here. And we stand ready to work with you and the committee and your staff to find a productive solution. Thank you.

[The prepared statement of Mr. Veissi can be found on page 206 of the appendix.]

Chairwoman BIGGERT. Thank you so much.

Mr. Wilson, you are recognized for 5 minutes.

STATEMENT OF TIM WILSON, PRESIDENT, AFFILIATED BUSINESSES, LONG AND FOSTER COMPANIES, ON BEHALF OF THE REAL ESTATE SERVICES PROVIDERS COUNCIL, INC. (RESPRO®)

Mr. WILSON. Thank you.

Good afternoon, Chairwoman Biggert, and members of the subcommittee. My name is Tim Wilson, and I am president of affiliated businesses for Long and Foster Companies and immediate past chairman of RESPRO®.

Long and Foster is the third-largest independent residential real estate brokerage firm in the Nation, with 185 real estate offices and 12,000 sales associates in the mid-Atlantic region. We also offer a full array of mortgage, title, and insurance services through affiliated businesses that are regulated at the Federal level under RESPA.

Affiliated businesses are not new in the industry. In 2011, the Nation's 500 largest residential real estate brokerage firms closed almost 120,000 mortgage loans and conducted over 325,000 closings through affiliated companies. Economic studies and consumer surveys have shown that affiliated services are competitive in cost and that consumers who use them have a more satisfactory home-buying experience.

My testimony today focuses on three issues in the Bureau's RESPA/TILA rulemaking that are particularly relevant for affiliated businesses.

First, the Bureau says it is considering imposing a zero tolerance on fees offered by a lender's affiliated companies, meaning that these charges at closing could not exceed those disclosed in the loan estimate. Fees charged by unaffiliated companies would continue to be subject to the current 10 percent tolerance.

The Bureau's reasoning behind this proposed zero tolerance is that lenders should be better able to estimate the cost of services provided by their affiliated companies. This reasoning, however, is faulty because the cost of many third-party services are subject to variables unknown to both affiliated and unaffiliated lenders at the time the loan estimate would be provided.

In addition, the Bureau says it also may propose to trigger the lender's delivery of the loan estimate after only receiving limited information. Imposing a zero tolerance on affiliated services, in addition to limiting the information the lender can collect upon application, would create a difficult compliance burden on affiliated lenders that would place them at an unfair competitive advantage.

Second, RESPRO® believes that the Bureau needs to integrate its RESPA/TILA rulemaking with the points and fees definition that is being separately developed in its QM rulemaking. A mortgage loan cannot be a QM if the total points and fees paid by the consumer exceed 3 percent of the loan amount. Affiliated businesses are particularly affected because the fees that a consumer pays to a lender's affiliated company count toward the 3 percent cap but not fees paid to an unaffiliated company.

As a result, loans in which a lender's affiliated company is used would most likely not qualify as QMs, even if the affiliated company's fees are equal to or even lower than an unaffiliated company's fees. Affiliated companies like Long and Foster would need to discontinue offering either mortgage or title services in conjunction with those loans in which the caps would be exceeded, which would decrease competition and increase the cost of mortgage credit, particularly for low- and middle-income borrowers.

Moreover, the Bureau has announced that it is considering including additional fees in the finance charge, many of which also would count toward the points and fees threshold. This would significantly increase the percentage of affiliated loans that would exceed the points and fees cap, which would further limit competition.

RESPRO® has two recommendations to minimize this potentially harmful impact. First, we urge Congress to pass the Consumer Mortgage Choice Act, which excludes from the definition of points and fees charges for title services regardless of affiliation. Second, it is essential that the Bureau research the potential impact of including these additional fees in the points and fees caps and disclose it to the public for comment in its proposed rule.

Finally, I would like to comment on the Bureau's proposal to require that the settlement disclosure be provided to the consumer 3 days before closing.

Long and Foster's affiliated mortgage company, Prosperity Mortgage, has some experience with the issues involved in providing the current HUD-1 in advance of the closing. Under its Target Date program, Prosperity Mortgage pays an incentive bonus to its operation team members when the HUD-1 is delivered to the consumer 2 days in advance of their closing date. So far in 2012, we have achieved that goal in 56 percent of our transactions. Consumers who receive their HUD-1, 2 days in advance of their closing date have had a higher documented customer satisfaction score, based on independent third-party evaluations.

RESPRO® supports the concept of a 3-day requirement in principle, and we believe that affiliated businesses could be more capable of complying with this requirement because of the efficiencies associated with many of the services needed to close the loan under one corporate entity. However, the ultimate viability of such a concept and its ultimate value to the consumer lies in the specifics of the proposal. In our written testimony, we have identified many issues that will need to be addressed in any proposed and final 3-day requirement.

Thank you for the opportunity to testify before you today, and I will be glad to answer any questions.

[The prepared statement of Mr. Wilson can be found on page 212 of the appendix.]

Chairwoman BIGGERT. Thank you, Mr. Wilson.

We will now proceed to Member questions. And I will give myself 5 minutes to ask questions. Let me start with Mr. Abbinante.

I asked a question of Mr. Date about whether the CFPB has the authority to resolve conflicts between RESPA and TILA, and he said he thought that they did.

Do you think Congress needs to fix any RESPA/TILA conflicts?

Mr. ABBINANTE. I think it is a tough question, and I heard Mr. Date's response, as well, where he said he thought he had the authority. I am certainly not a legislative expert, but I think there is certainly room to argue that they may not have that authority, and, in fact, it may require action by Congress to address some of these issues.

Chairwoman BIGGERT. We certainly had a hard time in the last few years trying to get the two of them together to resolve—the two bodies to resolve that, so I think that there is a problem there.

But what are the conflicts?

Mr. ABBINANTE. Certainly, from my perspective, I think we look at a couple of things: the timing of disclosure. TILA requires a 3-day provision. RESPA doesn't have a 3-day rule. Forms, who will complete them? Today, TILA is completed by the lender, as is the GFE, and what we call today the HUD-1 is completed by the settlement community.

And then we have the issue of standardized forms versus model forms. Under RESPA, it is a standardized form. Under TILA, it is a model form. We believe that using a model form will only cause more confusion and increase costs tremendously throughout the closing process. We would be certainly much more in favor of standardized forms. I think it gives the industry and ultimately the consumer a better position in terms of understanding what they are looking at, because the information they are receiving should be consistent no matter who they are using.

Chairwoman BIGGERT. Okay. Thank you.

Then, for anyone, the CFPB has indicated that it may require all and final settlement charges to be disclosed 3 days before closing. And you have all been talking about this. I think that we had a bill which did pass to make the 3 days, but I am not convinced yet.

As I said, in my former life I was a real estate attorney, and I know that, so many times, standing by a fax machine—we didn't do as much with email then—by a fax machine, waiting for the final decisions to come over so that I could tell the buyer how much money they had to bring to closing and whether they had enough or they had to run back to the bank before it closed.

And so many times there were things that were not settled and came up very late—for example, fences, where was the fence? Was it on the other person's property? Was it on that property? And were we going to have to work that out? And a couple of times where sellers had not cleared everything out of the garage, or something like that that caused a lot of angst at the very end, very close to the closing.

So I wonder, would that all happen 3 days before so that it would be resolved? It really seems to me that when you get there, there are still some problems. Now, having to have an attorney in Illinois made a big difference, but would anybody like to address that?

Should the CFPB maybe consider a multistep disclosure process?

Ms. CANFIELD. Chairwoman Biggert, maybe I can address this. In the appendix to our testimony, we wrote a short White Paper on the history of this actual experience.

When RESPA was enacted in the mid-1970s, Chairman Proxmire put in a 12-day waiting period. And after it was implemented, the regulations and everything were implemented, the Congress ended up repealing it 6 months later because there was such dislocation around the country. What happened is that people were moving out of their homes, and because of the artificial waiting requirement, they had to stay in hotels, other temporary lodgings—they had all their belongings in moving vans—until the 12-day requirement was met. So there was an uproar. It was enormous—

Chairwoman BIGGERT. I remember that.

Ms. CANFIELD. Okay. So I don't think it would be a good idea to repeat that experience.

But I do think that what we are recommending gets you part of the way there. I understand the goal, but if you look at the four-step disclosure regimen we were talking about, what we are saying is that within 3 days of closing, you would get a final loan estimate. And because the lenders currently have a zero percent tolerance on their costs from the time the initial good-faith estimate is sent to the consumer all the way through closing, the differences between the costs of the final loan estimate and closing really wouldn't be allowed to change for the lender's costs.

There would be some settlement charges that could change, but, again, those are subject to a 10 percent tolerance from the beginning of the initial good-faith estimate to the closing document. So there is some limitation as to how much those—

Chairwoman BIGGERT. Would that be true of what the CFPB is proposing? Because if it is zero tolerance, than whenever it is finished—

Ms. CANFIELD. There currently is a zero tolerance for lender's costs, but then there is a 10 percent tolerance for settlement-related costs. They are suggesting that maybe there be a zero tolerance applied for settlement costs, as well. I think that would be quite problematic because the lenders don't control—Regulation 10 prohibits them from controlling those costs. So I think it might actually increase settlement charges if that were to be done.

But if you do have a final loan estimate 3 days before closing and there are the existing tolerances that are kept in place, the only costs that could change between the final loan estimate and the closing document would be changes related to the property, such as those you were describing, or if the person changed the closing date, the odd-days interest and transaction taxes would change. But they would be relatively minor changes.

Chairwoman BIGGERT. Thank you. And my time has expired.

Mr. Cleaver from Missouri, you are recognized for 5 minutes.

Mr. CLEAVER. Thank you, Madam Chairwoman. And thank you for holding this hearing, because I think this is extremely important. We did a lot of work to try to create an opportunity for consumers to be protected.

And, Mr. Abbinante, on the 3-day requirement, you have said that the 3-day requirement might cause things to change over that 3-day period. Give me an example of some of the things that could change that would impact the consumer.

Mr. ABBINANTE. Sure. In my experience of 35 years, both as an attorney and then as a member of the title industry, it is not unusual for a walk-through to occur just prior to the closing, sometimes literally hours before the closing. So the closing is scheduled at 1:00, the buyer wants to see the property and make sure there was no damage, that everything that was supposed to be left, in fact, was left or if something was taken and something else substituted. It happens all the time. They show up at the closing, haven't had a chance to talk to each other about it, so the first time the issue is raised is at the closing.

And then you get into, is this going to require an adjustment in price? Is this going to require a holdback? Is this going to require damage to be repaired? And do any of these things then prevent the closing from occurring? Does it affect the loan-to-value ratio? Does it affect the ability to close that day? Because a change may, under the CFPB rule, require a new 3-day waiting period because something has changed, something substantial. If it requires a new 3-day waiting period, will the borrower now lose the lock on that loan? Or can they waive that?

So I think the situation in theory makes a lot of sense. Look, I think our goal, everyone's goal is to protect the consumer. And I don't think anyone on this panel or anyone else that is involved in the real estate industry would argue with that. We want the consumer to be protected, we want them to have the information. But there are just some practicalities that occur all the time in the process, and frequently occur the day of closing.

Mr. CLEAVER. I am going to stay on that subject, but, Ms. Hardy, and you, too, Mr. Abbinante, do we need 10 days? Do we need 15 days? Do we need 20 days? Do we need 30 days? What happens if the consumer is subjected to bait-and-switch? People buy a home, and they are—and I can say this in front of everybody here because everybody here has bought a home, and most people in here are guilty. There is probably not a person in here who owns a home who read every line in the contract. If you did, you are rare, and somebody needs to give you some apples or something. The chances are not high.

So everybody wants to sign; I want to get into my new home. So aren't they more subject to bait-and-switch, Ms. Hardy, that things can actually—some new stuff ends up in the contract?

Ms. HARDY. With a longer time period?

Mr. CLEAVER. Yes.

Ms. HARDY. I think that we think that the 3-day period sounds reasonable. It provides enough time, in terms of the loan disclosure documents, for them to get additional insight from those who have expertise. We are flexible around the settlement disclosures because we recognize that there is a need for some flexibility toward the end of the process.

Mr. CLEAVER. Do you agree with that, Mr. Abbinante?

Mr. ABBINANTE. I agree that there has to be some rethinking in terms of flexibility, absolutely. Otherwise, you are stuck with the problem of, it is a change; does it require a new 3-day waiting period? And if it does, what happens to the borrower's lock on the loan or the ability to complete the transaction? Because, frequently, the furniture is sitting on the truck, parked out in front, waiting to move into the new property. Who picks up that cost? Or how does the seller go close on their transaction, because they needed the cash from the transaction that they are involved in so they can walk next-door and buy their house?

Mr. CLEAVER. Now, during this 3-day period, we are automatically assuming that the interest rate doesn't change.

Mr. COSGROVE. Congressman, if I may add, as well, in 2010, RESPA put in a provision for the tolerances that cannot go over 10 percent—that were talked about earlier. And I think that also goes a long way toward eliminating any possibility of bait-and-switch, because the lender is locked into the lender fees at application.

And, also, another thing that we are talking about, the goal here is—everybody mentioned that there has been just a pancake of mortgage disclosures, that six disclosures say the same thing, and the borrower checks out. And everybody has acknowledged that the borrower doesn't read all those disclosures. I think the goal here is, if we truly get simplification from the CFPB, that would go a long way—if the borrowers see that the disclosures have been reduced and they truly read all the documents, both at application and closing, that would go a long way to eliminate any bait-and-switch that is in the marketplace today, which I think is very little.

Mr. CLEAVER. Thank you, Madam Chairwoman.

Chairwoman BIGGERT. Thank you. And I might note, Mr. Cleaver, I don't want to be a "Goody Two-Shoes," but I did read every line to my clients. And they were dying by the end, but it was my job.

Mr. CLEAVER. She is an attorney.

Chairwoman BIGGERT. Mr. McHenry from North Carolina is recognized for 5 minutes.

Mr. MCHENRY. Thank you, Madam Chairwoman. And I am glad I have finally met someone who has.

I am still licensed as a REALTOR® in the State of North Carolina, but I want to concur with my colleague across the aisle that the stack of information—we have mandated so much disclosure, that there is no disclosure now. I want to be gentle about how I say that, and I am grateful that there are great legal minds who actually will go through those documents, and I am glad I trust my attorney—in the State of North Carolina, we have attorneys do closings, rather than settlement companies—but I am very grateful for that, and I put a lot of trust in him.

So, I would say to my colleague, I was going to begin by asking the panel if they have actually read all the disclosure documents—not to impair any reputations with the business you are in.

But I want to just understand this because, in the first panel, Mr. Date, I think he has a very sharp mind, and is a very talented individual, but last week he apparently referenced the fact that he didn't go through all the documents. And so we have a very high-ranking government official who is in charge of refining this process, and when he has his closing, he doesn't go through it. It is clear we have a problem here.

So the question here is, what is the appropriate amount of information a consumer should have before they go to the closing table, before all their stuff is in the truck outside the settlement company or outside the attorney's office, they come in and they find out there is a mistake. That means hotel rooms, that means kids displaced—big troubles. Not that this doesn't happen now, but how can we make sure that consumer has the appropriate amount of information ahead of time? What is that balance?

What are the essential ingredients? Is it the HUD-1? We say you are supposed to get certain disclosures beforehand. But what are the essential ingredients a consumer needs to know before he goes in? Can we figure that out, and can the consumer get that 3 days in advance? Could that work?

So I just want to sort of offer that as a broad question. Start with Mr. Wilson, and we could just go down the list here and you all could make your comments on that.

Mr. WILSON. I believe the HUD-1 is the one of the few forms they do, in fact, focus on, because that is, in fact, where the seller's proceeds come from and where the buyer's check is written from, that is where the number comes from. So having that what I would consider very important document to them 3 days ahead of time, I would be a fan of that.

There would be a lot of rules around that. I think you would have to build in some flexibility for a garbage disposal or some small item that could be adjusted at close based on the final walk-through, as one of the witnesses said.

But, I am looking for more than just doing what is right for the consumer; I am looking for a good customer experience. And I think for last-minute changes at closing that happen in the last hour, nobody feels good about that. And it happens too often in our industry, from my perspective. This will force everybody in our industry to be better at what we do. The real estate contracts that are written in 30 days needs to be written in 45 days. And everybody should—if you need it there 3 days ahead of time, then you get it there 3 days ahead of time. We pay a bonus to do that today, 2 days ahead of time. We do it for a reason: Because we want a great customer experience, and that gives us good referrals.

So, I think it can be done, but I think we have to be careful and protect not just the buyer's side of the transaction but also the seller's side. And done right, it can be done.

Mr. MCHENRY. Mr. Veissi? Or down the line, if you all would like to comment?

Mr. VEISSI. There is little disagreement in the fact that when there are minor instances that impact the closing, that would create the kind of experience at the end that just doesn't occur.

I am reminded of the time when I went to Disneyworld and the folks kept telling me where I parked, where I parked, where I parked. And they did that because they knew I was going to have 8 hours' worth of wonderful experiences, but they also knew that if I had a lousy time trying to find my car in 95-degree weather with humidity, it would be horrible. And that is what happens at the closing statement when we don't get advance information.

So advance information with the respect of telling our customers and our clients exactly what is going to happen—not necessarily changing it or not necessarily concerned about giving it a 3-day or a 5-day or a 10-day, but making sure that they understand upfront what the situation is so that their experience at the end is exactly what they had been wanting to do, and that is to close on that home.

Ms. HUGHES. I would agree that we just need clarity in the disclosures that we have presently. I am not sure more disclosures are going to solve the issue. RESPA, as it is currently written, allows for a provision for consumers to receive their settlement statement 24 hours at a minimum in advance of closing if they desire. And that settlement statement, I agree, is the key to telling them what they need, and if initial disclosures are done appropriately, that should be all that is required.

I don't have an issue with an additional disclosure required 3 days before closing. I believe that my buyers and my REALTORS® in my community will have a huge issue with it, because it is just an additional 3-day delay in a process that is already too cumbersome.

Ms. HARDY. I think our concern is making sure that the egregious and abusive activities don't happen. And so, to the extent that simplification increases the likelihood that consumers will actually read the documents that are set before them and that an additional time period provides them with opportunities to verify their understanding of the documents with independent experts, we think that that is useful.

Mr. COSGROVE. I would say that we all have a passion for customer service. Referrals is how we make a living. At my company, we have over a 99 percent referral rate, and we are very proud of that.

I find it somewhat ironic that after 26 years in the business—and we talk about fixing what is broke. The process that we have tried over the 26 years is to add disclosure after disclosure, and we have pancaked disclosures for 26 years, thinking more is the answer. And I find it ironic that I am sitting here contemplating another disclosure, 3 days before closing. And though I understand what we are trying to accomplish—

Mr. MCHENRY. No, that is not my question. I am just asking what the consumer needs to know ahead of time.

My time has expired, so if we could just keep this brief and wrap up. I want to know what the consumer needs to know, because that gets to the root of the whole disclosure process.

Mr. COSGROVE. I think the consumer needs to know the pertinent lending information is payment, downpayment, all the settlement charges, and the lender fees. And although I do believe that at closing a 3-day disclosure potentially could be problematic because, as we are talking about here, things happen within 3 days of the closing that a lot of times can't be foreseen.

Mr. MCHENRY. Sure.

Ms. CANFIELD. Thank you. Very quickly, I think it is important to design the disclosures so that the consumers receive a disclosure relevant to the particular loan product of their choice. That would also help prevent a bait-and-switch situation. So if a consumer has chosen a fixed-rate product, they should get the same disclosure form from the beginning of the transaction through to the end, through closing, so that they are seeing the same document all the way through the transaction.

And at the end they get a HUD-1 that would be a revised document that is similar in style to what they received at the beginning at the transaction, accompanied by a detailed document that would detail where all the costs and where all the fees are going. But that is what I think is important.

Mr. ABBINANTE. Congressman, I would suggest that they certainly would need to know their downpayment. You could certainly tell them that 3 days before closing. They would need to know their interest rate. You could tell them that before closing.

It becomes a little bit more questionable, if there is a change that occurs, whether you can actually give them the cash they need to bring to closing. Because if that walkthrough occurs on the day of closing, the cash they may need may change. It could also affect the itemized disbursement that both consumers at the closing require and should have, not just the buyer but the seller as well.

Chairwoman BIGGERT. Thank you.

Mr. Sherman from California, you are recognized for 5 minutes.

Mr. SHERMAN. Thank you.

Mr. Veissi, I want to commend you for bringing to our attention the importance of passing the bill to extend the Flood Insurance Program. This is critically important in so many parts of the country. Even I know it is critically important. I have been working on it, and I represent a desert where we built a city.

Now, on page 3 of your testimony, you talk about the interconnection of the rules we are dealing with now with rules that are probably not going to be available anytime soon. The Consumer Financial Protection Bureau plans to issue rules that we are discussing by July 21st, but it will be long after that that we find out what is a Qualified Mortgage and what is a Qualified Residential Mortgage, when we define what mortgages you have to have a risk retention—and I think it is going to be very few banks are going to want to make those mortgages—and what is the definition of an ability to pay.

Should we delay the RESPA and TILA rule finalization until we can make sure it is coordinated with QM and QRM?

Mr. VEISSI. There is no question in my mind that you don't want to do anything right now that would otherwise hurt a fledgling recovery of the real estate marketplace in this country. And if you were to impose rules and regulations without total comprehension of what those rules and regulations would be, I think you would do that.

So I would want to get it right the first time out of the box. That would be my simple answer to your question.

Mr. SHERMAN. Thank you. Let's hope they do that, because the last thing my area needs is another precipitous decline in home values.

Mr. Abbinante, what do you think is the most important one or two things that the CFPB could do to protect consumers during the closing process?

Mr. ABBINANTE. It would seem to me the thing that is most critical to the consumer is information that is useful and easily understood in a format that they can read and not need a special technical degree to figure out how forms interrelate one to the other. So simplification, easily understood, easy to use—the kind of basic premise of prudent business.

Mr. SHERMAN. I am going to turn to Mr. Cosgrove, but I am going to add one more concept, and that is shorter. Because I know what is politically correct. Politically correct is to take anything that anybody could argue needs to be disclosed to the consumer and require it to be in 20-point type on red paper. The result to the consumer is 400 pages of red paper with everything in 20-point type. And just putting it in 20-point type isn't going to get me to read it, as a consumer, if it goes on for hundreds of pages.

Mr. Cosgrove, what can we do to prevent a layering of disclosure requirements in increasingly large type on increasingly brighter shades of red paper?

Mr. COSGROVE. I think the CFPB has truly an opportunity that has not been in front of us for 35 years, since RESPA, and the TILA document, the good-faith estimate and the closing document, was in different regulatory bodies. So we have an opportunity and the CFPB has an opportunity that we have not had as an industry in this country for 35 years.

And if they would work with the industry and all the stakeholders, consumer groups, everyone, and truly work with the States—because you have municipalities, you have State disclosures, you have Federal disclosures, FHA disclosures, VA disclosures—again, the pancaking of 26 years of, the answer has been more disclosures—

Mr. SHERMAN. Let me just try to squeeze one more thing in. And I hope that Mr. Abbinante, but other witnesses as well, would respond for our record, but, more importantly, bring to the CFPB's attention: What are the situations where you can make a change in the last 3 days? The last thing I want to do is lose my 3 percent mortgage because we have to delay closing 3 days because of a garbage disposal. And, at the same time, what are the changes that would require restarting that 3-day period?

I know my time has elapsed, but I have been through a few of these closings, and the last thing I want to do is have to choose between getting a $100 reduction in the purchase price because the garbage disposal doesn't work on the one hand and having to come back to the closing 3 days later, endangering my loan, endangering the sale price, et cetera, and, as some of the witnesses pointed out, endangering the seller's ability to close on his or her property because I can't give up my check until you give me the hundred bucks for the garbage disposal or something that minor.

So I look forward to reading your comments.

And I yield back to the chairwoman.

Chairwoman BIGGERT. Thank you, Mr. Sherman.

The gentleman from North Carolina, Mr. Watt, whom I believe is also a former real estate attorney, is recognized for 5 minutes.

Mr. WATT. I don't know why you malign me that way, gratuitously. But you are correct. I did a lot of real estate work, which is why I came. I actually just wanted to hear the questions. I couldn't get here for the testimony, but I will review it.

This is a subject that is very difficult, and I won't belabor that point. So I don't think I have any questions because I am afraid I would repeat something that somebody has already asked. So I will review the record, and if I have any questions, I will submit them in writing.

Chairwoman BIGGERT. All right. Thank you.

That gives me an opportunity to—I would like to ask just a couple of questions, and I recognize myself.

Ms. Hughes, on page 8 of your testimony, you state that one complication of the merger of RESPA and TILA disclosures is the question of whether the merged document will be prepared by the settlement agent or the lender, creditor. Who should prepare the document, and why? And I think, particularly, I am concerned about who would bear the liability if the merged document form isn't correct?

Ms. HUGHES. Presently—and Idaho is a settlement agent State, so we do not have attorneys who do our closing documents for us. But we need to define within the regulations who is responsible for completion of those documents. If they are combined into one document and we utilize a settlement agent to prepare that closing, who is going to prepare that document? Are they going to do it? Are we going to do it? Are we responsible for their data? Are they responsible for our data? Are they responsible for the regulatory disclosures that go into that? There just needs to be some very clear clarification as to how that breaks out.

Chairwoman BIGGERT. I think that is something that we probably should have asked earlier, but I think it is a very good question and something that we really have to look at. So I thank you for that.

Then, for the witnesses, we haven't talked much about costs. So what are the potential costs of new mortgage disclosures to businesses, particularly lenders and other real estate service providers that are small businesses? What is going to happen with them?

Mr. Veissi?

Mr. VEISSI. Some of the documentation that we have seen with reference to that would add additional cost in the form of labor at the time of closing, extending the closing itself, having more people involved in the process, that cost being either absorbed by small business—and that is not a great thing to have happen right now—or absorbed by the folks who are trying to make the purchase of the property or the seller in those terms.

So more paperwork means more people. More people means more money, more time. It is not an efficient and economical way to process a closing.

Chairwoman BIGGERT. Thank you.

Would anybody else care to address this?

Ms. CANFIELD. Yes, I would like to make a comment.

That is why it is so important—this is going to be a very costly endeavor, to change all of the systems, do all the training, do the audit, et cetera. So that is why it is so important that all the rule changes, the substantive rule changes and the related disclosures changes, be done once. Because if you do it on a piecemeal basis, the costs are just going to be astronomical. In addition, the disclosures resulting from that piecemeal disclosure process will be even more confusing to consumers than they are today.

Mr. COSGROVE. And that, as a business owner—

Chairwoman BIGGERT. Mr. Cosgrove?

Mr. COSGROVE. Thank you, Madam Chairwoman. As a business owner, there is no doubt the last few years, as piecemeal regulations have come, we continually are working on our systems. And even a company like ours, a small business, is spending hundreds of thousands of dollars on systems and people. And all that does is increase the cost to our customers.

Chairwoman BIGGERT. Thank you.

Mr. ABBINANTE. Chairwoman Biggert?

Chairwoman BIGGERT. Yes?

Mr. ABBINANTE. I would like to, if I may, just add to both questions you have asked, the previous question about who.

I think today the system—and when we talk about this, we want to focus on what is not working. Today, I don't think it is a question of what is not working. Lenders today adequately, accurately fill out the forms that have to do with the GFE and with the TILA requirements. And the settlement agents across the country, regardless of the State, whether it is an attorney, a settlement agent, a title company, they fill out the forms relative to the HUD-1. We have expertise that exists, and it would seem to me this current proposal is confusing or creating a murky situation that we don't need to create.

In terms of costs, I can only reiterate what everyone else has said, and that is: It is the cost of software, it is the cost of training, it is the cost of implementation. And we have a pretty good handle on this because, just 2 years ago, we did this with the last changes to HUD in 2010. And it wasn't an easy set-to at that time, especially when you had to deal with over 400 FAQs. And as responses came in, things were constantly changing. It just seems that there is a better way to do this.

Mr. COSGROVE. I would agree, the system is working much better today than it has in the past.

Chairwoman BIGGERT. Thank you so much.

Mr. Cleaver, do you have another question?

Mr. CLEAVER. I just have one question, Madam Chairwoman.

Chairwoman BIGGERT. You are recognized for 5 minutes.

Mr. CLEAVER. And this is related to the earlier discussion we had. And maybe, Mr. Cosgrove, this would be directed to you.

How often at a closing have you ever experienced a consumer contesting the cost? How often, if ever?

Mr. COSGROVE. I can't remember a scenario in which a consumer of ours has come in and contested the cost in the last 5 years.

Mr. CLEAVER. Anybody else have any—yes, Ms. Hughes?

Ms. HUGHES. I have been in real estate lending for 22 years, and I can never recall a borrower coming in and saying, "I don't understand what these fees are." I believe if you explain what the process is upfront and you get to the end and it is the same, it is all about the education along the way. And I can never recall one instance.

Mr. CLEAVER. Could it also be that, as somebody said, the moving van is outside?

Mr. COSGROVE. No.

Ms. CANFIELD. Actually, I think there have been changes that have been implemented in—one of the things that happened in 2010—a change that was made in 2010 was that there was a zero percent tolerance on the lender's costs from the beginning of the transaction to the end, and there is a 10 percent tolerance on third-party costs. So what can change has been limited.

The changes that could occur between the final documents that you get 3 days before closing today and the actual closing documents are related to if the closing date changes, the odd-days interest and taxes might change the calculations, or changes related to the property itself, such as was described by Mr. Abbinante and Chairwoman Biggert.

Mr. CLEAVER. Hypothetically, if there is a change—and you answered the question exactly how I thought you would answer it—isn't it also possible because of that, someone would ignore, move over, not recognize cost changes?

Ms. CANFIELD. I think you might be concerned about the bait-and-switch situation. Is that what you are most concerned about?

Mr. CLEAVER. Yes.

Ms. CANFIELD. I think, first of all, there are currently laws in place that prohibit that. So that would be mortgage fraud. It would be a fraudulent loan.

Second, with the tolerances that are currently in place, your ability to do that is very limited.

Third, I think with even clearer disclosures, which is what we have been talking about, the consumer would be able to see that they are not getting the loan product that they had signed up for when they chose the loan product at the beginning of the process.

Mr. CLEAVER. Thank you.

Let me yield to Mr. Watt from North Carolina, because the time is running out.

Mr. WATT. Actually, they say we have to get out of the room.

I had an unrelated question that occurred to me. It has come to my attention that, because of the meltdown, there seems to be a lot more conservatism in appraisals now. Mr. Cosgrove and Mr. Abbinante in particular, have you all experienced that and is there any recourse if both the seller and the buyer believe that the appraisal is too conservative, too low?

Mr. COSGROVE. I would believe that today the system is fixed. And what I mean by that, the loan officer, no one involved in the lending process, the real estate agent, the borrowers are allowed to have contact or influence the appraiser. So the appraiser is truly independent. And we believe—

Mr. WATT. But that assumes that appraising is a science that is so precise that nobody ever makes a mistake. What does one do if they disagree with the appraisal?

Mr. COSGROVE. If we have a consumer who disagrees with the appraisal, most times we will make a business decision to get a second opinion, pay for a second opinion, which we pay for as a company, and then we analyze both of the appraisals and make an underwriting decision.

Mr. WATT. Okay. That is not related to this hearing. I appreciate the chairwoman—

Chairwoman BIGGERT. Thank you, Mr. Watt, and thank you, Mr. Cleaver. I might note that we are having a hearing on the appraisals on June 28th, next week. So we will see you there.

I would like to thank you all. You have been a great panel with a lot of information that you have given us on a topic that seems to go on and on and on, but it hasn't been fixed yet, and I think you have been very helpful.

The Chair notes that some Members may have additional questions for this panel, that they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for Members to submit written questions to these witnesses and to place their responses in the record.

With that, this hearing is adjourned.

[Whereupon, at 4:10 p.m., the hearing was adjourned.]

A P P E N D I X

June 20, 2012

Mortgage Disclosures:

How Do We Cut Red Tape for Consumers and Small Businesses?

House Financial Services Committee
Subcommittee on Insurance, Housing and Community Opportunity

Wednesday, June 20, 2012

1:30 p.m.

Testimony of Christopher Abbinante, President

AMERICAN
LAND TITLE
ASSOCIATION

TM

Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee, my name is Christopher Abbinante, and I am the President of the American Land Title Association. I have been in the title insurance industry for over 35 years, most recently serving as the President of Eastern Operations for Fidelity National Title Group, the nation's largest title insurance company through its title insurance underwriters - Fidelity National Title, Chicago Title, Commonwealth Land Title and Alamo Title.

ALTA, founded in 1907, is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. ALTA's 4,000 member companies operate in every county in the country, where we search, review and insure land titles to protect consumers and mortgage lenders who invest in real estate. ALTA members serve as independent, third-party facilitators of real estate transactions. ALTA members include title insurers, title agents, independent abstracters, title searchers, settlement agents and attorneys, ranging from small, one-county operations, to large, national title insurers.

On behalf of ALTA, I appreciate the opportunity to appear before you today to discuss the Consumer Financial Protection Bureau's RESPA-TILA Integration Rulemaking. We firmly believe that getting this rule right is more important than getting it done fast. To that end, my testimony will focus on what we believe getting this rule right means by laying out our principles for success.

The Federal Mortgage Disclosure Regime

In 1968, Congress passed the Truth in Lending Act (TILA) to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.[1]" Six years later, Congress enacted the Real Estate Settlement Procedures Act (RESPA) with a similar purpose, "to insure that consumers throughout the Nation are provided with *greater and more timely information on the nature and costs of the settlement process* and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country[2]" (emphasis added).

For more than 35 years, RESPA and TILA have required lenders and settlement agents to provide consumers with similar but substantively different disclosures at the beginning and end of their mortgage and real estate transactions. While the disclosures provide some overlapping information, at their core, they are documenting two separate transactions: the mortgage loan and the real estate purchase.

[1] 15 U.S.C. §1601.
[2] 12 U.S.C. §2601.

Within three days of applying for a mortgage, consumers receive two disclosures: 1) a two-page estimate of their mortgage loan terms as required by TILA (called a Truth in Lending Disclosure or "TIL") and 2) a three-page estimate of the closing costs as required by RESPA (called the Good Faith Estimate or "GFE"). These documents are designed to give consumers estimates of their mortgage and closing costs that they can then use to shop for mortgage and settlement service providers. To attempt to facilitate shopping, on the current Good Faith Estimate, HUD included a "shopping chart" to help assist consumers in comparing mortgage offers.

After the consumer picks a lender and loan product, is approved by the lender and completes their negotiations with the seller of the real estate, all the parties come to the closing table. Closing – or settlement as it is known in some parts of the country — is a term used to designate the point in time at which the contemplated transaction is concluded. It is also the point in time when the consumer receives: 1) a two-page final disclosure of their actual loan terms as required by TILA (called the final TIL) and 2) a three-page accounting of their final closing costs as required by RESPA (called the Uniform Settlement Statement or HUD-1). While these are the main disclosures given to consumers, other federal, state and local laws require that consumers be provided a myriad of additional disclosures at closing.

Over the years, industry, consumers and regulators have recognized this duplication as inefficient for industry and confusing for consumers. To that end, numerous attempts have been made to harmonize and streamline the required disclosures. These attempts have repeatedly failed because the Federal Reserve Board and Department of Housing and Urban Development (the agencies charged with implementing TILA and RESPA respectively) determined that because of the statutory conflicts between the acts, "meaningful change could come only through legislation."

Dodd-Frank's Mandate

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), created the Consumer Financial Protection Bureau as an independent agency with regulatory authority over RESPA, TILA and other consumer financial statutes. Within one year of beginning operations (July 21, 2011), the CFPB is required under Dodd-Frank to:

> propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board

of Governors and the Secretary of Housing and Urban Development carries out the same purpose[3].

Notably, Dodd-Frank was silent on those areas where TILA and RESPA statutes conflict. Examples of these statutory conflicts include: 1) whether the disclosures are standard or model forms, 2) whether the final disclosure is provided at closing or three-days before closing, and 3) whether the final disclosure is provided to consumers by the person conducting the settlement or the creditor.

The 'Know Before You Owe" Project

In May 2011, the CFPB began developing new combined mortgage disclosures through its "Know Before You Owe" mortgage disclosures project. Using a nine round iterative process, the CFPB has developed two new disclosures:

1) A Loan Estimate which would be provided three business days after the consumer submits a loan application and would replace the initial TIL and the GFE; and
2) A Settlement Disclosure which would be provided at or before closing and would replace the final TIL and HUD-1.

Throughout this process, the CFPB has invited industry and consumer comments on each draft of the new disclosure forms and conducted limited consumer testing in various cities across the country. ALTA submitted comments to the CFPB during each round of the iterative process.

In February 2012, the CFPB provided the industry with its first and only glimpse of the rules and instructions that will accompany the disclosure forms by publishing an Outline of Proposals in advance of a Small Business Panel meeting (held March 6, 2012) required under the Small Business Regulatory Enforcement Fairness Act (SBREFA). Unlike the forms, the CFPB did not offer the same opportunities for public feedback on the rules.

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[3] 12 USC § 5532. See also Dodd-Frank Act, Sec. 1098 and 1100A amending Section 4 of RESPA and Section 105(b) of TILA to read, "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 2604 of this title, in conjunction with the disclosure requirements of the Truth in Lending Act [15 U.S.C. 1601 et seq.] that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this chapter and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."

Principles for Successful Mortgage Disclosures

We appreciate the difficulties the CFPB faces in achieving Congress' mandate to integrate the disclosure without clear direction on how statutory conflicts should be resolved. If done carefully, this project can meet the CFPB's dual goals of helping improve consumers understanding of their mortgage transaction and facilitating industry compliance with TILA and RESPA.

However, as I stated above, getting the rule right is more important than getting it done fast. To assist CFPB, Congress and other policymakers in this rulemaking process, ALTA has devised six principles that outline what it means to get this rule right. Following these principles will ensure that the CFPB avoids unintended consequences for consumers, industry and the entire real estate market.

Prevent disruptive and costly delays to closing for consumer

The CFPB's proposed requirement that the consumer receive their final settlement disclosure form three days in advance of closing will result in delays and added costs for industry and consumers.

In many cases, the buyer and seller renegotiate their contract up until the last minute before closing. These changes can impact a variety of costs that are disclosed on the settlement statement, including bills for repairs, payoffs for the borrower's other debts and prorations for charges like taxes and home heating oil. As these changes occur in each transaction, the form will constantly need to be updated and will need to go back to the lender for "final approval". If in addition, these changes also trigger a three-day waiting period, this will most certainly add costs to the consumer and cause delays to the settlement/closing. Consequences will likely include lost rate locks and disruption to the transaction.

The three day rule will also increase costs for settlement agents. Providing the final settlement disclosure form to the consumer three days in advance of closing will require the settlement agent to spend valuable time reviewing the disclosure with the consumer three days before closing and then again at closing. This duplication of effort will impact small businesses' productivity and profitability.

Provide Industry with Clear Guidance

To achieve its goal of facilitating industry compliance with RESPA and TILA, CFPB must provide industry clear and definitive guidance. Bright line guidance is essential for the industry, both from a technical and operational standpoint. Clear guidance alsohelps ensure that consumers get consistent answers to their questions.

Without clear and definitive guidance, it is very difficult and costly for industry to comply with the regulation.

For this project, the most important thing is that we know exactly what cost items will be required to go in which location on the forms. This is the only way that the settlement industry can ensure we are developing compliant software that ensures settlement agents can be compliant. Something as simple as where a title insurance premium needs to show on the form can cause a huge issue if it falls into a "gray" area in the final rule.

During the 2010 RESPA changes, HUD issued over 400 FAQ's throughout the process. This caused issues for a number of different reasons.

First, once an FAQ was issued, software coding would be completed based on the latest guidelines. This product would be tested, sent as an update to clients and training would be provided. However, each time a new or contradictory FAQ was issued, the industry would have to start from scratch and begin coding and testing again. This was an extremely costly to the industry.

Second, regulatory uncertainty adds unnecessary costs for settlement agents, lenders and consumers. The multiple FAQ's led to "gray" areas in the law that lent itself to non-standard interpretations throughout the industry. Settlement agents, lenders, title companies, underwriters and software vendors each had their own interpretations of the RESPA Final Rule. This uncertainty forces settlement agents to spend at least 30 minutes of time in each transaction to work with lenders to ensure proper compliance. When this time is spread across the roughly 6.5 million transactions that will occur in this year's rather weak housing market, it amounts to over 3 million hours of lost productivity for both lenders and settlement agents.

We urge the CFPB to produce clear and definitive guidance for the industry to rely on when promulgating its rule.

Promote Fair Competition

Under the current RESPA regulation, CFPB holds lenders liable for some costs that increase more than a certain amount at closing. This is called tolerance[4]. The

[4] HUD's 2010 RESPA rule established a system of "tolerances" or limits on the amount actual settlement charges can vary at closing from the amounts stated on the GFE. The rule established three categories of settlement charges, each with different tolerance. If, at settlement, the final settlement charges exceed the estimated charges on the GFE by more than the permitted tolerances, the consumer is entitled to the benefit of the estimated charges. In many cases this requires the lender to cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement.

CFPB is considering increasing this liability on lenders. This increased liability will likely lead to unintended consequences for lenders, settlement agents and consumers.

This increased liability will most likely force lenders to limit the number of settlement agents that they conduct business with for fear that it will be necessary to limit their liability for tolerance violations. To a degree, this contraction has already occurred due to the introduction of the tolerance regime and provider lists in the 2010 HUD RESPA Rule. Not only will small businesses that provide these services during the closing process be hurt by this inability to compete, including settlement agents, but consumers will be harmed as well from less consumer choice and competition that will ultimately lead to higher costs.

Settlement agents need to continue to have a part in real estate settlements as an independent, third party to the transaction. We urge the CFPB to work with us to ensure that settlement agents still provide the settlement statement and conduct the closing. A independent third party conducting the settlement is absolutely necessary to protect consumers.

Avoid Unnecessarily High Costs for Small Business

The industry estimates that the proposals and forms under consideration by the CFPB will be very costly for industry and consumers. When the industry went through the most recent round of RESPA changes in 2010, our vendor partners reported that the comparatively smaller changes by HUD's rule cost each software company approximately $800,000 – $1 million to implement. Based on a conservative estimate, this round of changes is expected to cost closer to $2 to $2.5 million per software company.

During the 2010 reform, most of our software vendors did not pass on the costs of these changes to their title agent clients. It is expected that because of the high cost associated with this new effort and the relative proximity to the last reform, many of our vendors (the smaller ones in particular) will likely have to pass on the costs to their clients. We estimate that **these costs will include $800 per employee in upfront implementation and training costs and a 20% increase in yearly software maintenance fees.** Over 60% of settlement agents are small businesses that gross less than $500,000 in revenue per year with 5 or fewer employees that will have trouble absorbing these increased regulatory costs[5].

More troublesome, because of the complexity of this new form, **it is estimated that closing staff at small settlement providers will be able to close two fewer**

[5] "2010 Abstracter and Title Agent Operations Survey" American Land Title Association (June, 2011).

transactions a day[6]. This represents a 25% reduction in productivity for most settlement agents.

This increased expense and decreased revenue comes at the exact wrong time for our fragile real estate market and the economy. However, with some simple changes to the rule and forms, we believe that these costs can be substantially reduced.

It is important to remember that even the slightest changes can be very costly for industry to implement. Something as seemingly insignificant as changing the line numbers on the proposed forms from the current line numbers on the HUD-1 will be an enormous software coding effort for vendors. The change affects not only the proposed form but also many other closing documents that are produced by the software.

In addition, changes that might be perceived as industry-friendly can actually be very costly and problematic for industry. While some might think that industry would prefer a model disclosure form (as required by TILA), in fact, a single, promulgated disclosure form (as required by RESPA) would be significantly less costly to implement. If the CFPB adopts the model form approach, software companies will need to produce custom disclosure forms that meet the approval of the hundreds or thousands of mortgage lenders rather than one standard form for all transactions. This lack of standardization could lead to a duplication of effort that dramatically increases the costs estimated above and produces confusion for consumers.

It is worth noting that in March the CFPB convened a Small Business Review Panel under SBREFA in order to determine the potential impact of the proposal on small business and identify any less costly alternatives. The SBREFA panel was required to issue a report in May. The contents of this report will be released in July 2012 and will be essential for ensuring that the new disclosures do not overly burden small business.

Test the Disclosures on Actual Closings Instead of Isolated Interviews with Consumers

While these disclosures represent only a small fraction of the documents presented at closing, they represent one of the best opportunities to improve the closing process for consumers. Each one of these documents must be reviewed with the consumer before they sign them at closing. This can be a time consuming process and usually ends with the consumer having a sore wrist and confused mind.

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[6] We are estimating an additional 15 minutes per closing. With an estimate of 8 closings per day per closer, this extra time will reduce productivity by 2 closings per day per closer.

This whirlwind of documents may also have a negative impact on consumers. We frequently hear stories of consumers who, when facing a stack of documents they need to sign so that they can move into their new home, simply give up and sign without taking the time to read and understand the contracts and their obligations. Better efforts should be made to ensure that government disclosures actually help consumers rather than hinder their understanding of the transaction.

To achieve this, qualitative testing of disclosures should take place in the context of the greater transaction. During the last round of RESPA Reform in 2002-2009, consumer testing took place in a vacuum where the testing of the GFE and HUD-1 were conducted individually instead of as part of an actual loan and real estate transaction. While the new forms passed that testing, many ALTA members today find that consumers are having a more difficult time, rather than a less difficult time, understanding their costs. The same does not need to happen this time around.

Encourage Consumers to Make Informed Decisions

At a minimum, federally-mandated mortgage disclosures should not prejudice consumers against protecting their financial investment. Rather, federally-mandated disclosures should encourage consumers to investigate whether a service is in their best interest.

The choice of words used to refer to certain services can greatly influence consumers' likelihood of considering those services and acting in their best financial interests. Owners Title Insurance serves as a good example. Some versions of the Loan Estimate use the term "not required" to disclose to consumers the closing costs that are not mandated by the lender, but are available to the consumer, including Owners Title Insurance. However, by calling a service "not-required," these proposals contain a less than encouraging implication that the service is of less value to consumers. This message prejudices consumers against considering these services, even when these services are often in consumers' best interests and protection. A consumer without an owners' title insurance policy is out of luck when their ownership interest is challenged, while their lender is off the hook and indemnified of any cost. This is tragic, and it can be prevented.

ALTA strongly encourages policymakers to avoid using the term "not required" in these disclosures, and instead use terms like "recommended" or "advisable". These terms encourage consumers to investigate services like owner's title and make an informed decision. This concept was recognized by HUD in the current Settlement Cost Booklet where the guide encourages consumers to investigate these services, including an Owners Title Insurance policy, indicating: "If you want to protect yourself from claims by others against your new home, you will need an owner's policy."

Conclusion

Following these principles will ensure that the CFPB avoids unintended consequences for consumers, industry and the entire real estate market. We believe that the best way to ensure all these principles are met is for the CFPB to clearly delineate the rights, responsibilities and liabilities of lenders and settlement agents for the preparation and delivery of the settlement disclosure to the consumer. Lenders should continue to have responsibility and liability for preparing the part of the disclosure related to the loan costs, while settlement agents should continue to have responsibility and liability for preparing the part of the disclosure related to the settlement costs. This can be done in a number of ways, and we urge CFPB to work with industry on this issue.

ALTA appreciates the opportunity to discuss our principles for improving federally mandated mortgage disclosures. We strongly believe that getting this right is more important than getting it done fast. ALTA is eager to serve as a resource to the Subcommittee and other stakeholders, and I am happy to answer any questions. Thank you.

Consumer Mortgage Coalition

Testimony of

Anne C. Canfield

Before the

Subcommittee on Insurance, Housing and Community Opportunity

of the

Committee on Financial Services
United States House of Representatives

"Mortgage Disclosures:
How Do We Cut Red Tape for
Consumers and Small Businesses?"

June 20, 2012

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Chairman Biggert, Ranking Member Gutierrez, and Members of the Subcommittee, I am Anne Canfield, and serve as the Executive Director of the Consumer Mortgage Coalition, the CMC, a trade association of national mortgage lenders, servicers and service providers.

The CMC appreciates the Subcommittee's attention to the Consumer Financial Protection Bureau's (CFPB's) "Know Before You Owe" initiative to streamline mortgage origination disclosures.

Along with its industry colleagues, the CMC has been a long-time and strong supporter of efforts to streamline mortgage disclosures. Mortgage disclosures should assist consumers in understanding their mortgage transactions to help them make informed and prudent decisions. A well-informed consumer will also help prevent abusive practices from taking hold.

The CFPB has an historic opportunity given that the regulatory authority over the two principal federal statutes, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) governing the mortgage origination process are now located in one Bureau.

It would be most unfortunate if the CFPB were to repeat the experience that occurred when the 2008 amendments to Regulation X were implemented. At that time, the confusion surrounding the 2008 rule necessitated eleven rounds of Frequently Asked Questions (FAQs) after the rule was final that never provided the clarity the industry needed, and required delaying enforcement of the regulation by four months. While this was an extremely difficult and expensive experience for the industry, more importantly, the 2008 amendments resulted in a set of mortgage disclosures that are even more confusing to consumers than any of the previous disclosure regimes.

A Methodical Process Is Needed

In order to get it "right," the CFPB must take a holistic and methodical approach to this project otherwise chaos is likely to ensue.

First, the CFPB should continue to examine the existing TILA, RESPA and related rules to determine where modifications to those rules might be needed so that any superfluous disclosures that are emanating from the existing rules can be either eliminated or modified.

Second, the Dodd-Frank Act includes a number of provisions that will result in additional mortgage disclosures. All of the Dodd-Frank Act rules that will drive additional mortgage disclosure requirements need to be finalized, including, but not limited to the Qualified Mortgage (QM) and Qualified Residential Mortgage (QRM) rules[1]. The

[1] The QM and the QRM rules will need disclosures to verify whether points and fees are under their 3% cap. It is important that the definition of what is included in the 3% cap be the same in both the QM and QRM rules, otherwise the disclosures will be incomprehensible to consumers.

disclosures will work only if they are designed together. Indeed, that was a main purpose in assigning to a single regulator the task of designing the disclosures.

Third, once all of the Dodd-Frank Act mortgage related rules that will result in additional mortgage disclosure requirements are finalized, those rules should be placed "on hold" until all of the new disclosure requirements are ready to be implemented. Both the substantive rule changes and the disclosure changes should be implemented *once*, at the same time.

Fourth, the new disclosures should then be designed to accommodate all of the existing and new disclosure requirements, along with the disclosure requirements set by the states, unless the CFPB agrees to preempt state disclosure requirements.

Fifth, once the new draft disclosures are designed, they need to be tested on actual closed loans across all available loan products to ensure that they actually work. Testing the disclosures on closed loans may reveal that changes will need to be made to the draft forms.

Sixth, once the format of the forms is finalized, a reasonable implementation period needs to be given so that the industry is given the necessary time to change its systems, train its employees, and monitor and audit the changes to ensure that the industry is in full compliance with the new requirements.

I would also like to reemphasize that it is extremely important that both the substantive rule changes and the disclosure changes be implemented *once*, at the same time. Otherwise, the industry will be required to repeatedly change, undo, and then redo its systems and individual company-designed disclosures to meet the substantive rules' disclosure requirements, and then overhaul the systems and disclosures when the CFPB finalizes its new disclosure requirements. Not only would such a confusing process be very expensive, but the disclosures resulting from this ever-changing rule and disclosure regime would be extremely confusing to consumers. Piecemeal disclosure changes are not consistent with well-designed disclosures.

- ***Dodd-Frank Act July 21st Proposed Rule for Revised Disclosures***

The Dodd-Frank Act requires that the CFPB propose a rule revising the mortgage disclosures by July 21, 2012. We recommend that the CFPB and the Congress agree that it would be prudent to delay the CFPB's compliance with this requirement. Since the CFPB cannot yet determine which substantive revisions need to be made to the existing Federal and State disclosure requirements because the Dodd-Frank Act substantive rules and their related disclosures have not been finalized, any disclosure revisions that the CFPB were to recommend by July 21st would not be useable.

As an alternative, the CFPB could propose an Advance Notice of Proposed Rulemaking (ANPR), but it would be more logical to simply delay the disclosure rulemaking until the Dodd-Frank Act substantive rules that will drive additional disclosure requirements are finalized. We have been urging that improved disclosures be implemented for many years, so we do not want to delay this initiative unnecessarily. However, it is far more important that this project be done right, rather than quickly.

It is not unprecedented for Congress and the regulatory agencies to informally agree that deadlines that were set in the midst of the consideration of a very large and complex bill be delayed if it makes sense. In this case, Congress separately required two different deadlines. One is for several mortgage rules that will need disclosures. The other is for integrated disclosures. It makes sense to finalize the new Dodd-Frank rules first, and then design disclosures that integrate those new rules with and into the integrated disclosures. Doing it backwards will mean doing it ineffectively. The CFPB needs leeway to get disclosures right so that they work for consumers.

Four-Step Disclosure Regime

Even though the CFPB had not decided on what the rules governing the disclosures would be, it did release nine prototype disclosures and requested comment through an iterative process. The detailed comments filed by the CMC or the CMC and some of our industry colleagues are included in the Appendices attached to this testimony.

This task is difficult because it requires disclosing a complex set of related transactions that must all align at a single point in time so that the loan can close. Due to the Regulation X prohibition on lenders contracting to set third-party charges, the lenders must disclose third-party charges that the lender cannot control, and that can change at any time. That is, not only is the complexity due to the number of settlement services, but their prices can float. Designing disclosures that convey a large number of moving charges requires balancing the competing goals of comprehensive disclosures with consumer comprehension. Disclosing a large number of ongoing changes after the loan application has been made, but before the loan closes, may be comprehensive, but often leaves consumers confused.

We believe that a balance can be achieved by setting a reasonable number of disclosures, with the ability to handle the inevitable changes. We would like to recommend that the CFPB adopt a streamlined, four-step disclosure regime.

- ***Step One: Loan Estimate Within Three Days of Application***

A single disclosure would be sent to the consumer within three days of the lender receiving a completed loan application. (The CFPB is considering requiring the lenders to provide consumers with two disclosures – one disclosure before the lender has enough information to provide the consumer with a price quote, and another after the lender has sufficient information to provide the consumer with a price quote.)

- ***Step Two: Loan Estimate/ECOA Notice After Loan Approval***

After the loan has been underwritten and using the same disclosure form that was sent to the consumer initially, the consumer would receive a second, updated disclosure. After underwriting, the settlement charges are firmer and the loan terms are known. This would eliminate today's problem where repeated re-disclosures are continually sent to consumers whenever a settlement charge changes. It would also allow the updated disclosure to be streamlined with the ECOA notice of action taken on the application, so the consumer would receive one disclosure at this stage in the transaction, instead of two disclosures.

- ***Step Three: Final Loan Estimate***

Again, using the same disclosure form, the third disclosure – a final loan *estimate* – would be provided to the consumer three days before closing. Lenders are currently subject to a zero tolerance with regard to their costs from the time the first disclosure is sent to the consumer to closing, so loan charges would not change throughout the transaction.

Settlement charges, however, can change until closing, although they are subject to a 10% tolerance – i.e., they cannot increase more than 10% from the time the initial estimate is provided to the consumer through closing. (The CFPB is considering imposing a zero tolerance on lenders from the time the initial loan estimate is provided to the consumer until closing for third party costs for services provided by affiliated businesses or by service providers that the lender selects. Since Regulation X prohibits the lenders from controlling third party costs, this proposal is not reasonable and may simply result in costs being driven up as lenders try to ensure that there is enough "cushion" to absorb any cost increases charged by settlement service providers during the transaction.)

With the zero percent tolerance on any change to the lender's cost being made and the 10% limitation on third-party costs already in place, there are not many costs that can change between the time of the final loan *estimate* and closing. Changes in costs can occur between the final loan estimate if the closing date changes because the odd days interest and tax charges would change. Also, changes can occur if the buyer and seller renegotiate items related to the property, but not the loan. (E.g., a seller decides not to sell the chandelier in the house and needs to provide compensation to the buyer for the chandelier.)

If the consumer decides at any point in the process to change the loan product, new disclosures would need to be provided and a new three-day waiting period would ensue from the time the final loan *estimate* is provided until the date of closing.

If a consumer is the victim of a "bait and switch" situation – where they believed they were supposed to get one type of loan and found at closing that they were receiving another loan product – that would constitute mortgage fraud. Current laws prohibit that practice. Clear disclosures will also help to ensure that the consumer is not victimized.

- ***Step Four: Final Closing***

Again, using the same disclosure form, the consumer would be provided with a final closing document – i.e., the revised HUD-1. Attached to the HUD-1 would be a loan settlement sheet that would provide detailed information to closing agents so that they will know where to disburse the funds.

(The CFPB is considering imposing a requirement that the final closing documents be provided to the consumer at least three days before closing. In reality, this will likely result in at least a seven day requirement because lenders will need to provide the final closing documents. While well-intentioned, this would cause an enormous disruption in the home buying and closing process across the country. In addition, the CFPB does not have the statutory authority to impose this requirement for RESPA-related settlement service charges.

This experiment was tried – and it failed – in 1975. Congress repealed the requirement six months after it went into effect because of the dislocation that occurred. Home buyers were moving out of their homes, but because of the artificial waiting period that had been statutorily imposed, they and their families had to live in temporary lodging with the household belongings in moving vans until they could meet the twelve-day waiting period that was required to close on their loan. A brief review of the history of this idea and the statutory prohibition against it is attached at Appendix B.)

- ***Summary***

This four-step disclosure regime would –

- Provide more clarity to the consumer by allowing them to compare the cost of their loan, using the same disclosure form, from the beginning of the transaction to the end;
- Eliminate the problem created by the 2008 Regulation X that has resulted in a blizzard of disclosures being sent to consumers every time a settlement charge is changed;
- Combine certain disclosures, allowing them to serve a dual-purpose in some instances; and
- Help to prevent consumers from being victimized because they will receive mortgage disclosures that they can understand.

<u>The Design of the Disclosure Form</u>

While the content of the disclosure form will be driven both by the Federal and State statutory requirements, as well as requirements that both the regulators and the industry know is of importance to consumers, we recommend that disclosure forms be designed so that they can be customized to the loan product the consumer chooses.

Each loan has certain basic loan elements that would be always be disclosed, but then the form should be designed so that it can be customized to disclose the terms for the loan product the consumer chooses. For example, a consumer that selects a fixed rate loan product does not need to receive a disclosure form that has lines or space on the form that discloses ARM-related loan features.

This will help to eliminate unnecessary confusion and assist in preventing "bait and switch" situations from occurring.

Conclusion

The CMC has strongly supported streamlining mortgage disclosures for many years, and has been in full support of the CFPB's initiative on this issue. Improved, streamlined, and integrated disclosures – disclosures that work – have been needed for years. Now is the time to take the time to get it right.

Thank you for the opportunity to testify and I will be pleased to answer any questions you may have.

Consumer Mortgage Coalition

June 20, 2012

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2. *April 16, 2012,* Joint Letter Recommending that the CFPB Take a Holistic Approach; Recommending "Four-Step" Disclosure Regime
3. *April 3, 2012,* Joint Letter on Round Nine
4. *February 15, 2012,* Joint Letter on Rounds Seven and Eight
5. *January 27, 2012* Joint Letter on Process
6. *December 5, 2011* Joint Letter on Round Six
7. *October 31, 2011* CMC Letter on Rounds Five and Four
8. *August 8, 2011* CMC Letter on Round Three
9. *July 12, 2011* CMC Letter on Round Two
10. *June 28, 2011* CMC Letter on Round One

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Appendix A

ORIGINATION DISCLOSURES

TODAY	PROTOTYPE DISCLOSURES	RECOMMENDED
Truth in Lending (TIL) disclosure of loan terms, and Good Faith Estimate (GFE) of settlement charges, both within 3 days of receipt of enough application information to price the loan.	Loan Estimate within 3 days of receiving a borrower's name, address, credit report, and unverified property value and income. Without more, the lender cannot price the loan. The lender will not know the LTV, whether the home will be owner-occupied, the lien position, whether it is a purchase or refinance, etc. The Loan Estimate would disclose loan terms, although the lender cannot price the loan. It would also disclose settlement charges, some of which would be binding on the lender. When the application is complete, the lender will see how inaccurate the original disclosure was. Presumably, an accurate disclosure will then be required.	Loan Estimate including loan terms and settlement charges, within 3 days of receipt of enough application information to price the loan.
Revised GFE if certain settlement charges increase 10% in the aggregate.	Some disclosure will be required if a smaller range of settlement charges increase, but no prototype has been released.	When the loan is approved (30 days after the application is complete), an updated Loan Estimate, which integrates the required Regulation B / ECOA notice of credit action taken.

Within 30 days of a complete application, the lender must deliver the Regulation B / ECOA notice of credit action taken.	Within 30 days of a complete application, the lender must deliver the Regulation B / ECOA notice of credit action taken.	
Revised TIL 3 days before closing if there were changes in the loan, but not in the settlement charges. Per RESPA, the borrower may request the HUD-1 the day before closing, but only known settlement charges can be required to be disclosed.	A final Settlement Disclosure, including all charges, 3 days before closing. Congress required settlement charges to be disclosed before closing in the 1970's. This was unworkable, so Congress amended RESPA to prohibit it, only six months after its implementation.	Updated disclosure of loan and settlement charges three days before closing. Loan charges will be known at this point, but not all settlement charges. Per RESPA, the borrower may request the Settlement Disclosure the day before closing, but only known settlement charges can be required to be disclosed.
HUD-1 settlement statement at closing.	No new disclosure at closing.	Final Settlement Disclosure of all loan terms and charges.

Links to the "Know Before You Owe" Mortgage Prototypes

Round 1 Ficus Pecan	**Round 4** Jasmine Nandina Separate page	**Round 7** Sassafras Mimosa
Round 2 Redbud Dogwood	**Round 5** Pinyon Yucca	**Round 8** Honeylocust Butternut Hemlock
Round 3 Azalea Camellia	**Round 6** Hornbeam Ironwood	**Round 9** Tupelo Basswood

Appendix B

A RESPA LESSON LEARNED:

Is it about to be "relearned?"

The CFPB said it may require delivery of its Settlement Disclosure for consumer mortgage loans three business days before closing in all circumstances. The Settlement Disclosure would replace the existing HUD-1 settlement statement. Both the HUD-1 and the Settlement Disclosure contain detailed, specific information on all loan terms and on all settlement services. Settlement services include title examination, title insurance, owner's title insurance, hazard insurance, transfer taxes, recording fees, notary fees, etc. If adopted, this will wreak havoc in the mortgage marketplace.

This idea was actually tested in the 1970s, so it is important to understand and learn from the history of the Real Estate Settlement Procedures Act of 1974 ("RESPA") because it taught a valuable lesson.

Congress enacted RESPA on December 22, 1974,[1] with an effective date 180 days later (or June 20, 1975). This first version of RESPA required advance disclosure of settlement costs:

> "Any lender agreeing to make a federally related any lender agreeing to make a federally related mortgage loan shall provide or cause to be provided to the prospective borrower, to the prospective seller, and to any officer or agency of the federal government proposing to insure, guarantee, supplement, or assist such loan, at the time of the loan commitment, *but in no case later than twelve calendar days prior to settlement*, upon the standard real estate settlement form developed and prescribed under section 4, or upon a form developed and prescribed by the Secretary specifically for the purposes of this section, and in accordance with regulations prescribed by the secretary, *an itemized disclosure in writing of each charge arising in connection with such settlement*. For the purposes of complying with this section, it shall be the duty of the lender agreeing to make the loan to obtain or cause to be obtained from persons who provide or will provide services in connection with such settlement the amount of each charge they intend to make. In the event the exact amount of any such charge they intend to make. In the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided."[2]

The initial purpose was to ensure that consumers would know what they were required to pay at closing but, unfortunately, that was not the result. Instead, lenders and closing

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[1] Pub. L. No. 93-533, 88 Stat. 1724.
[2] RESPA § 6, before RESPA was amended (emphasis added).

agents were unable to prepare disclosures because the necessary information was unavailable at the exact time it was needed. The result was that lenders and closing agents had to delay closings, and consumers were stranded in hotels and other temporary accommodations, with their belongings being held in moving vans, due to an artificial requirement that they receive their closing documents twelve days before closing.

Aside from the logistical problems this requirement caused, many consumers also incurred added costs because their interest rates increased; breach of contract issues ensued because the homebuyers were not able to fulfill their contractual obligations to close on a date certain; and more.

It is important to understand that mortgage transactions are different from other consumer transactions in that they are not limited to a single transaction, the loan. The mortgage transaction is actually two transactions – a loan and a real estate property purchase – where the HUD-1 (or the CFPB's new Settlement Disclosure) must include charges related to both the real estate property purchase and sale and the loan. Even if the loan is a refinance, where the purchase and sale of a property is not involved, there are still a number of settlement services involved – those related to the loan.

The original RESPA required disclosure of the cost of each settlement service, and that has not changed. After a lender makes a pre-closing disclosure, however, there is no law prohibiting a settlement service provider from changing its price. The regulation implementing RESPA, Regulation X, prohibits lenders from contracting with third-party settlement service providers to set the costs of their services, so the lender is unable to ensure that the third-party costs do not change. Thus, requiring lenders to provide consumers with a final settlement statement three days before closing where costs cannot change, is a physical impossibility that would reinstate the chaos that ensued in the mid-1970s.

Not surprisingly, Congress reacted to the mayhem that was taking place in the mortgage marketplace across the country:

> "Since the implementation of RESPA on June 20 of this year, this committee has received an enormous amount of complaints from all around the country from lenders, real estate agents, attorneys, and most importantly, from the home-buying public. The Subcommittee on Housing and Community Development conducted extensive hearings on October 28, 29 and 30, hearing testimony from lenders, realtors, title companies, consumer groups, attorneys, homebuilders, the General Counsel of the Department of Housing and Urban Development, and the Acting Chairman of the Federal Home Loan Bank Board and a member of the Federal Reserve Board.... The subcommittee was told by lenders that the period from formal loan application to loan settlement had been increased by an average of 11 ½ days, and that borrowers were disturbed because of the additional administrative procedures and additional time involved in obtaining the loan. Mortgage loan closings, the subcommittee was told, were substantially delayed, increasing red tape, with borrowers and lenders equally confused....The subcommittee was told that processing delays were causing buyers to lose earnest money and numerous transactions were terminated because of the complications

> caused by the Act.[3]"

Then-Senator Proxmire (D-WI), Chairman of the Committee on Banking, Housing and Urban Affairs, described how he was informed of the chaos by his constituents:

> "On Saturday afternoon I was at the Wisconsin-Michigan football game and I heard people from Ohio, Michigan, Minnesota, Iowa, Wisconsin, all complaining about R.E.S.P.A. Several people just paraded around me saying "down with R.E.S.P.A."
>
> I went to the Green Bay Packers game, playing the San Francisco Forty-Niners on Saturday night. It was the same old cry. There was more interest in R.E.S.P.A. than in the Packers. R.E.S.P.A. is doing about as well as the Packers, I might add."[4]

Congress repealed the requirement for a preclosing settlement statement on January 2, 1976, just six months after it became effective.[5] Its 1976 revision added what is now RESPA § 4(b), which has since changed minimally:

> (b) Availability for inspection; exceptions
> The forms prescribed under this section [the settlement statements] shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that:
> (1) the Bureau may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and
> (2) the borrower may, in accordance with regulations of the Bureau, waive his right to have the forms made available at such time. Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.[6]

Congress corrected its initial error by requiring delivery of settlement statements "at or before settlement[.]" Additionally, if the consumer asks to see the statement one day before closing, the lender or settlement agent is required to disclose *only* known costs. In other words, Congress, having learned its lesson, prohibits requiring a completed settlement statement before closing. Moreover, RESPA allows consumers to waive receipt of the settlement statement "at or before settlement," assuring that settlements will

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[3] H.R. Rep. No. 94-667, at 2449-50 (1975), 1975 U.S.C.C.A.N. 2448, 1975 WL 12503 (Leg.Hist.).
[4] *Oversight on the Real Estate Settlement Procedures Act of 1974,* 94th Cong. 1 (1975) (opening statement of Senator Proxmire; cited in Robert R. Elliott, *R.E.S.P.A. Revisited (Upon You),* 62 ABA J. 1131 (1976). Mr. Elliott was General Counsel at the Department of Housing and Urban Development.
[5] Pub. L. No. 94-205 § 5, 89 Stat. 1158.
[6] RESPA requires disclosure of settlement charges. The Truth in Lending Act ("TILA") requires disclosure of loan terms. The RESPA prohibition on requiring settlement statements before closing does not apply to TILA disclosures.

not be delayed.

Congress amended RESPA to explicitly prohibit any requirement to deliver a settlement statement before closing. The late Senator Proxmire learned the hard way why settlement statements must be able to be amended until closing. While their efforts are well-intentioned, the CFPB should learn from the mistakes made in the past.

Appendix C

"Know Before You Owe" CMC and Joint Industry Comment Letters

April 16, 2012

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

Dear Director Cordray:

We read with great interest your interview with Kate Davidson in the March 26, 2012, issue of the *American Banker*, in which you stated, "We want to make sure we get that as right as we can, so we're trying to be careful."

The undersigned organizations are especially grateful that you are taking this approach. While this statement was about the Qualified Mortgage rulemaking, we want to help the Consumer Financial Protection Bureau get it right on all of the mortgage-related rulemakings, especially the Know Before You Owe project to integrate, streamline and simplify mortgage disclosures.

In order to get this particular rulemaking right, we suggest first that it be coordinated with other key rulemakings and that relevant guidance on rulemakings be followed. We also suggest that a rulemaking schedule be established, that an ANPR be considered and, finally, that the testing protocol be expanded to cover the range of loans in today's market.

The new mortgage disclosures not only need to integrate RESPA/TILA regulations but they also need to work hand in hand with the QRM, QM and HOEPA rules. However, the CFPB is designing the new mortgage disclosures before it has finalized those other rules. We are concerned that putting the cart before the horse is a recipe for unnecessary delays in the rulemaking process that will inhibit the Bureau's goal of making sure that, "the costs and risks of these financial products are made clear." In addition, this patchwork is likely to add unnecessary costs and delays to industry's implementation and compliance efforts and will confuse consumers.

The Office of Management and Budget's Office of Information and Regulatory Affairs highlighted the importance of regulatory scheduling in its March 20, 2012 memo[1] which instructs the heads of executive departments and agencies to ensure the: "coordination of timing, content, and requirements of multiple rulemakings that are contemplated for a particular industry or sector, so as to increase net benefits; and Consideration of the interactive and cumulative effects of multiple regulations affecting individual sectors as part of agencies' retrospective analysis of existing rules."

We recognize that this memo may not apply directly to the CFPB. Nevertheless, it does provide a useful framework for which to consider all of the new mortgage regulations required under the

[1] http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf

Dodd-Frank Act. We also recognize that CFPB is under strict statutory deadlines for publishing rules on other regulations. Below are a few suggestions, as indicated, for how the Bureau can balance these challenges:

1. Publish for comment an orderly rulemaking schedule. The schedule could lay out 1) the details of each regulatory proposal, 2) how they interact with each other, and 3) the order in which you plan on proposing, finalizing and requiring industry to implement each regulation. By providing this schedule CFPB can reduce uncertainty and help consumers and industry better plan for the future.

2. Consider using the Advanced Notice of Proposed Rulemaking (ANPR) process to satisfy the requirements under section 1032 of Dodd-Frank Act. This will allow the public to provide the Bureau with useful feedback that can be used to guide the drafting of all of these proposed rules.

3. Improve implementation by testing the draft disclosure forms on actual closed loans for a full range of loan products and for a wide range of local real estate practices. This testing would ensure that the forms are workable and include the right loan information, for a variety of states. Such testing would demonstrate where the forms are well designed and where they may need improvement. Thorough, real-world testing can reduce both the challenges and costs of implementation that are ultimately borne by consumers. This also would facilitate implementation of the new disclosure forms and prevent certain loan products from becoming unavailable because the forms and rules do not accommodate them.

Laying out an orderly schedule and testing will ensure that the Bureau meets the goals of Executive Order 13563[2]. In that Executive Order, President Obama urged agencies to "identify and use the best, most innovative and least burdensome tools for achieving regulatory ends." To implement this Executive Order, OIRA directs agencies to "take active steps to take account of the cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules." It also directs them to carefully consider, in the analysis of costs and benefits, the relationship between new regulations and regulations that are already in effect. This cost-benefit directive is especially important for the Bureau, whose regulations are subject to a statutory cost-benefit analysis under 12 USC 5512(b)(2)(A).

We appreciate that the Bureau has been as open as it has been so that stakeholders can offer input on the design of the new disclosure forms. As you noted, the Bureau has, "gotten a lot of feedback that needs to be sifted through" on the design of the forms. However, stakeholders have not had the same ability to offer input on the underlying regulations that will govern the forms and instruct our members how to properly fill them out. Our ability to offer useful feedback to the Bureau has been limited by this lack understanding of the underlying rules that will govern the use and application of the forms. The Bureau offered the public and stakeholders nine opportunities to offer comment on the design of the forms but just one opportunity to offer input on the underlying regulations that will govern them. More public comment on the regulations is necessary to ensure that we get this right.

[2] http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf

In addition to this letter, we intend to file more detailed comments on the Bureau's Small Business Regulatory Enforcement Fairness Act outline by April 16, as the Bureau has requested. At the same time, we urge the Bureau to recognize that consumers and industry will benefit from efforts by the Bureau to harmonize and streamline multiple rules and take steps to improve this process. We look forward to continuing our work with you to truly improve disclosures for consumers across the United States.

Sincerely,

American Financial Services Association
American Land Title Association
Community Mortgage Banking Project
Community Mortgage Lenders of America
Consumer Mortgage Coalition
Mortgage Bankers Association
National Association of Federal Credit Unions
National Association of Home Builders
National Association of Mortgage Brokers
National Association of Realtors
Real Estate Services Providers Council, Inc. (RESPRO®)
Real Estate Valuation Advocacy Association

American Bankers Association
American Escrow Association
American Financial Services Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association
National Association of Realtors
The Real Estate Services Providers Council, Inc. (RESPRO®)

April 16, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: **Know Before You Owe Mortgage Loan Initiative**

Dear Director Cordray:

The undersigned are pleased to have this opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on the rulemaking accompanying the Know Before You Owe (KBYO) mortgage loan initiative. This is an important initiative for our customers – consumers.

These comments represent our thoughts on the CFPB's memorandum dated February 21, 2012, entitled "Outline of Proposals Under Consideration and Alternatives Considered" (the Outline). We commend the CFPB for issuing this broad outline setting the regulatory context for the delivery of the reformed mortgage disclosures. It is important that all stakeholders work towards an improved mortgage disclosure system. In this sense, we believe that the objective of this reform process is not the mere issuance of a regulation. The real goal for all stakeholders is to ensure that we achieve a balanced and efficient set of rules to guide mortgage disclosures for the next generation. The true objective, as mandated by the Dodd-Frank Act, is to craft a solid and clear regulatory system that well accompanies a combination of two laws' disclosures to so that they properly inform and protect consumers.

This is very difficult work that requires careful consideration of current and pending laws and requirements, as well as the operations of the industry and the interests of consumers.

We therefore urge that the CFPB closely consider and analyze the impact of these proposals and our concerns with the substantive and procedural alternatives being discussed.

We support the CFPB's approach of reviewing the consumer's entire experience, from initially considering a loan, through application and after loan closing, as that approach will result in the best disclosures. This ability to consider disclosures holistically was absent prior to the Dodd-Frank Act because no regulator had authority to do so. Congress provided the CFPB with authority to design disclosures comprehensively for the first time.

The CFPB's iterative approach to developing the prototype disclosures has been a sound one, and we encourage the CFPB to use the same approach to developing the underlying rules because the underlying issues are significant, and deserve at least the same attention as the forms. In a recent meeting with CFPB staff, industry representatives were provided an opportunity to offer feedback on some of the rules. While we appreciated the opportunity to meet, there was insufficient time to fully review most of the issues raised. At this time, we urge continuation of those discussions.

This letter begins by setting out general comments on the KBYO initiative, including the need to coordinate it with related rulemakings for it to be successful, and highlighting the major items of concern mentioned in the Outline. The second section of this letter provides more specific comments on the revisions to mortgage disclosures and rules described in the Outline. In the third section, we recommend disclosure timing requirements, with particular attention to resolving the current problem of frequently revised Good Faith Estimates (GFEs) and minimizing unnecessary waiting periods for consumers needing to close their loans in a timely manner.

I. General Comments

A. Doing it Right Must Be the Overriding Goal

We urge the CFPB to take the time necessary to get the disclosures right. Congress prioritized the quality of the improved disclosures over getting them changed quickly,[1] and we recommend that the CFPB adopt the same approach.

[1] Congress directed the CFPB to publish a single, integrated mortgage disclosure in three places: RESPA § 4(a); TILA § 105(b); and in Dodd-Frank Act § 1032(f). Only in the third of these provisions did Congress address timing, making plain that the quality of the integration is more important than the timing. Further, even when it did address timing, Congress did not provide a due date for a final rule, which demonstrates that Congress did not want to rush the CFPB into yet another poorly designed disclosure.

Additionally, Congress required that the disclosures be validated through consumer testing, § 1032(b)(3), and provided the CFPB with the option of using trial disclosure programs, § 1032(e). Congress is aware that consumer testing and trial disclosure programs are time-consuming endeavors, but included them nevertheless. The Congressional intent to get disclosures that work, even if it takes time, is clear.

1. Congress Provided the CFPB With Broad Powers to Ensure a Successful Outcome

In creating the CFPB, Congress merged the rulewriters and gave the Bureau the broad exemptive powers under RESPA,[2] TILA,[3] and under Title X of Dodd-Frank[4] to ensure that consumers receive an integrated set of mortgage disclosures that enables them to better navigate the mortgage process. The CFPB has authority to exempt transactions from all of TILA,[5] allowing it to exempt transactions from individual provisions within TILA. Since the effective date provision for Title XIV of the Dodd-Frank Act is enacted in TILA, the CFPB has broad authority to revise the Title XIV effective dates where appropriate to ensure that the KBYO project has a successful outcome.

It is important that the CFPB consider all of the forthcoming rules in developing the KBYO disclosures because only then will the CFPB be able to identify, analyze, and address their interconnections, and prevent unintended consequences. This will prevent repeating the experience that occurred when the 2008 amendments to Regulation X were made. At that time, the confusion surrounding the 2008 amendments to Regulation X necessitated eleven rounds of Frequently Asked Questions (FAQs) after the rule was final, and required delaying enforcement of the regulation by four months.

2. QM and QRM Rules Need to Be Synchronized and Integrated

There are a number of other rulemakings in the pipeline that will impact the disclosures, including a final qualified mortgage (QM) rule and a final qualified residential mortgage (QRM) rule. Investors and originators will use the disclosures to determine whether a loan is a QM loan or QRM loan. Thus, it is important that the disclosures accommodate the QM and QRM rules. The CFPB can accomplish this by requiring disclosures that clearly delineate which charges are included within points and fees, as both the QM and the QRM rules will cap points and fees.

3. The Definition of the 3% Cap on Points and Fees Needs to be Finalized and Synchronized in Both the QM and QRM Rulemakings

During underwriting, lenders must be able to determine whether the points and fees exceed the QM and QRM caps. Few, if any, lenders will be willing to make non-QM loans because of possible TILA liability. Even if a lender were willing to make a non-QM loan, if during underwriting the points and fees increase to exceed the QM or QRM cap, the lender would likely need to reprice the loan and, presumably, redisclose a Loan Estimate. A lender also must then be able to determine if the increased rate or points makes the loan a high-cost Home Ownership and Equity Protection Act (HOEPA) loan

[2] RESPA § 19(a).
[3] TILA § 105(a), (f).
[4] Dodd-Frank Act § 1032(a).
[5] TILA § 104(5).

under the new Dodd-Frank HOEPA thresholds.

4. Mortgage Originators Need to be Able to Easily Determine if Loans Are QM Loans to Avoid Steering

Mortgage originators also will need to determine whether a preexisting loan is a QM loan when the consumer is shopping for a new loan, because originators are prohibited from steering a consumer from a QM loan for which the consumer is qualified to a non-QM loan.[6] For this reason, mortgage originators will also need to determine whether the prospective new loan will be a QM loan.

5. The Definition and Requirements for the APR to APOR Comparisons Need to be Made and Synchronized

In 2009, when the Federal Reserve proposed to revise the definition of finance charge to improve the usefulness of the APR, Dodd-Frank, and its requirement for APR to average prime offer rate (APOR) comparisons, had not been enacted. Any amendments related to the APR need to be thought through in the context of the seven new APR to APOR comparisons required by Dodd-Frank because they are interrelated. For example, if the CFPB were to include more items in the APR, it would presumably want to include the same items in its definition of APOR so that the comparisons will measure what they are intended to measure – the amount by which the rate on a particular loan exceeds the market rate, the APOR.

6. Potential Amendments to the Finance Charge Definition Would Need to Be Integrated (Outline pp. 17-20)

The CFPB has indicated it may consider removing some exclusions from the finance charge definition. The prototype Loan Estimate and Settlement Disclosures de-emphasize the APR and finance charge disclosures, so the need for such simplification is mitigated. The disclosure of the finance charge seems to be particularly unnecessary considering the fact that upfront fees are being categorized as "Settlement Fees" or "Settlement Costs" rather than as prepaid finance charges. Information on finance charges imposed after closing – mortgage insurance costs and interest – is disclosed in more detail than under current disclosures.

One possibility is to determine whether the finance charge remains useful and, if not, remove disclosures of it and of the APR.

The CFPB acknowledges that a more inclusive finance charge could result in increased APRs for many loans, thereby making more loans exceed federal and state high-cost loan thresholds. (Outline p. 20.) The definition of finance charge could also affect the calculation of points and fees in the QM and QRM rules, causing more to hit the cap on points and fees.

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[6] TILA § 129B(c)(3)(B).

We note that the 2009 all-in APR proposal pre-dated Dodd-Frank, which lowered the HOEPA thresholds. This exacerbates the interplay between these requirements. This is a prime example of why the disclosure rules cannot be considered in isolation from the substantive rules, including whether *bona fide* third-party fees are included in the definition of points and fees (which appears contrary to the intent of the Dodd-Frank Act.)

We urge the CFPB to refrain from adding more complexity to this reform system by revising the APR until we have seen how the forms might work. If the Bureau were to decide to move forward, it must consult with stakeholders, as this change would be costly and would affect various other rules, as indicated.

B. RESPA and TILA Remain Separate Statutes

Although their disclosures are being integrated, RESPA and TILA remain separate statutes. The CFPB has suggested that it may incorporate Regulation X FAQs into Regulation Z or its commentary. (Outline p. 12.) We recommend that they be incorporated into Regulation X to the extent they implement RESPA because Regulation Z only implements TILA.

Both the RESPA and TILA statutes and implementing regulations provide liability and remedies respecting their respective disclosures, but the liabilities and remedies are not the same. There is no basis under these statutes or Dodd-Frank to apply RESPA liability to TILA disclosures or *vice versa*. The CFPB should specify in its proposal which liabilities and remedies flow from each disclosure. If this is not clear, years of expensive and unnecessary litigation will ensue.

The CFPB is considering whether to propose a rule that requires use of standard forms under RESPA for mortgage loans subject to RESPA, but optional model forms for transactions that are subject only to TILA. Standard forms should only be required for the sections of the integrated disclosures that contain the RESPA-required disclosures, and there should be one standard form each for purchases, refinances, and home equity loans. We note that many model TILA forms will be needed to accommodate the wide range of loan products available today.

C. Implementation Should Be Efficient and Cost-Effective; Guidance Will Be Necessary

1. Guidance Will Be Necessary

We respectfully urge that when the final rule is published, the CFPB embark on a process for implementation that commits to providing timely guidance for the questions that will inevitably arise. Commentary developed and issued with the final rule is unlikely to address all of the issues that will arise as a result of such a massive and complicated overhaul of the disclosure rules. The shorter and more difficult the implementation process, the more important timely guidance will be.

The CFPB may want to consider issuing proposed rules on both disclosures and substantive issues, soliciting comments on the proposed rules, then reproposing the rules for comment before issuing a final rule. This would allow both consumers and industry to see the major substantive decisions that the CFPB will be making, and identify areas where additional guidance is needed and where loopholes need to be closed.

2. Implementation Needs to be Efficient and Cost-Effective

The implementation period should provide sufficient time for training, systems development and the many operational changes that the rule will necessitate. For larger lenders, a considerable amount of time will be needed not only to integrate these changes but for the programming and testing of a large number of complicated, often legacy, systems and the data passed among them. Smaller lenders not only need time to train and make these same changes with fewer resources, but they must also await the completion of guidance from larger lenders, vendors, and secondary market aggregators. Smaller lenders need such guidance because, unless the final rules are absolutely clear on what is required to comply, large lenders will establish overlays of additional requirements to ensure that the loans they buy from smaller lenders comply. Different large lenders have differing overlays, making it more difficult for smaller lenders to make their loans and sell them in the secondary market. We also respectfully urge that the minimum time period for compliance be twelve months, and it should ensue after questions are answered and sufficient guidance is released.

3. Implementing Rules is Costly

Implementing revised mortgage disclosure forms is a costly, time-consuming task for all. The CFPB stated in its Small Business Panel outline that, "it is possible that routine systems updates would at least partially mitigate these one-time [implementation] costs since the costs would, in part, already be budgeted." (Outline p. 6.) It is true that lenders routinely update their systems, and that these costs may already be budgeted, but budgeting costs does not reduce these costs, it merely tries to anticipate them. More importantly, the cost of routine systems updates is minor in comparison to the costs of implementing major regulatory changes.

The CFPB also questions whether implementation costs would be mitigated by vendors that offer free updates and training to small entities. (Outline p. 6.) In checking with vendors, many have indicated that they will not offer a free update service for redesigning the GFE and HUD-1 because of the costs involved. Even if a vendor were to offer some training materials for which it has not yet billed directly, there will still be significant costs to our members for employee training. The more the rules change, the higher the implementation costs.

The CFPB's inquiry about free updates indicates that the CFPB needs additional information as to what is involved in systems changes, especially by changes that would redesign disclosure forms. For perspective, at one large lender, implementing the Regulation Z amendments that became effective October 1, 2009 required over 70,000 hours, while implementing the 2008 amendments to Regulation X took more than twice as much time. These costs are significant, and are ultimately borne by consumers. Careful planning of the timing of the rulemakings, accompanied by one set of changes to the disclosures, can greatly reduce costs and improve efficiencies, while delivering a more comprehensible disclosure regime to consumers.

4. Integrating Disclosures Would Satisfy the Cost-Benefit Analysis Requirement

Congress required that the CFPB's rules pass a cost-benefit analysis.[7] The CFPB stated in its Small Business Panel outline, "The proposals under consideration are not, *by themselves,* anticipated to require subsequent updates of software and compliance systems beyond the initial update." (Emphasis added). Viewing related rulemakings in isolation masks the actual costs, and that risks increasing the costs unnecessarily. Further, § 1022 does not permit the CFPB to assess the costs and benefits of each rule in isolation. It requires the CFPB to consider, among other things, "the impact of proposed rules[.]"[8] Congress used the word rules in the plural, and did not limit the impact analysis to CFPB rules. Thus, in the KBYO rulemaking the CFPB must consider the impacts of other proposed rules, including the TILA and the QRM rulemakings. We do not believe that a piecemeal implementation process would pass a cost-benefit analysis, in part because of its unnecessary costs, and in part because piecemeal rulewriting results in flawed disclosures, such as those in place today.

We urge that the CFPB use a holistic approach to viewing the consumer's experience, including a consideration of all the origination disclosures, and that it consider the regulatory burden of implementing all the new Dodd-Frank rulemakings as part of its cost-benefit analysis. This approach would both improve the disclosures and minimize implementation costs.

D. More Prototypes and Testing Are Needed

The mortgage market offers a range of loan products to address diverse needs. In order to ensure that these disclosures are useful, the CFPB should develop prototypes for all standard loan products of Fannie Mae, Freddie Mac, and the Federal Housing Administration, as well as construction loans and bridge loans.

The prototypes should be carefully tested in conjunction with lenders and settlement service providers to ensure that they accommodate the many issues that arise in mortgage lending and provide the correct information to consumers. Rather than simply testing the

[7] Dodd-Frank Act § 1022.
[8] Dodd-Frank Act § 1022(b)(2)(A)(ii).

prototypes with focus groups, factual situations derived from loans that have actually closed should be used to verify that the prototypes will work – that lenders will know how to complete them correctly and consumers will understand them – at every stage of the transaction from application through closing. This will reveal the flaws[9] that may exist in any disclosure regime.

E. Unnecessary Changes Should Not Be Made

In 2008, as you aware, HUD issued new RESPA rules to which the industry has just adjusted. Those changes included a new definition of application, the imposition of tolerances, and a revised disclosure regime. In the Outline, reviewed in greater detail in sections II and III below, the CFPB proposes to revise these new provisions to: establish more difficult tolerances; establish new waiting periods and responsibilities for disclosures; change the definition of application; and even possibly change the definition of the Finance Charge and the APR. We oppose this approach. As reviewed in this letter, reform can be accomplished by building on the strengths of the current system, without unduly revising the provisions that work. Reform should be focused where Congress intended – on combining the RESPA and TILA disclosures to finally enhance consumer understanding of their mortgage loans.

II. Specific Comments on Revisions to Rules and Disclosures

The Outline and the nine rounds of prototypes are subject to change as the CFPB works through the large number of responses it continues to receive. Notwithstanding that there will be changes, we note below some of the most significant issues.

[9] Under the prototypes, we do not know how a lender would populate the Projected Payments disclosure for a loan on which the payment could change more than four times before reaching its maximum. The prototypes have used up to four columns but never more than four. If a loan product would require more than four columns to show all the changes before the payment reaches its maximum, there would either be additional columns or some of the changes would not be shown. Either way, it is not clear that consumers would understand how the payment could change. Another area where testing is needed is on the revised Loan Estimate. It is not clear whether it would include only the items that change, or everything then known. Either way, consumers are not likely to understand the disclosure. Finally, we do not how the CFPB would require the prototypes to be prepared for no-closing cost loans or subordinate loans, nor do we know how the CFPB will treat preapprovals, such as whether a post-application identification of a property address would be a changed circumstance. We believe the rules should clearly permit "prequalification" programs. These programs are extremely important in the home-shopping process, but the rules applicable to them are unintelligible in today's RESPA regime. Prequalification programs allow prospective homebuyers to approach a lender, who will check their credit, verify income, and then provide assurances that will allow real estate agents to proceed with more precise searches for prospective homes. This permits buyers a better grasp of affordability, and possibly gain an advantage over other shoppers because they can reliably show the seller that they have the means to buy the house. Current RESPA rules, however, obfuscate the distinction between an "application" and a "prequalification" program.

A. Tolerances Should Not Be Tightened (Outline pp. 9-11)

The CFPB has indicated it is considering reducing certain tolerances from their levels under Regulation X. Since the tolerances imposed as recently as the 2008 Regulation X amendments largely solved the problem of unexpected cost increases at closing, we do not believe the tolerances need to be lowered yet again. We know of no data indicating that the ten percent tolerance on third party fees is insufficient. The CFPB should not lower the tolerances unless it has data that a tightening of the tolerances is necessary to prevent surprises at closing, and that unintended consequences will not result.

Specifically, the CFPB has indicated that it may apply a zero tolerance if the lender selects the settlement service provider. The CFPB explains that it may be appropriate to hold lenders to a higher standard if the lenders do not allow consumers to shop for the service provider. RESPA permits lenders to require consumers to pay for the services of attorneys, credit reporting agencies, or real estate appraisers "chosen by the lender to represent the lender's interest in a real estate transaction[.]"[10]

Lenders do not control the charges of third parties. A zero tolerance would make lenders liable for charges they do not control, which is unfair and unworkable. Currently, the zero tolerances apply to individual fees rather than to the aggregate of all fees in the zero tolerance category. Adding additional zero tolerance fees would be very problematic if each fee were considered separately.

The CFPB also suggests that the fees of third-party providers that consumers must select from a "list of service providers" provided by the lender also bear a zero tolerance. We suggest that this written list of service providers be eliminated. Notably, the Loan Estimate prototypes to date have not included or referenced lists of service providers. A lender should only be held to a ten percent tolerance if the consumer asks for recommendations for third-party services or the lender requires the third-party provider.

If the consumer selects the service provider without, or regardless of, a lender recommendation, the lender should not be held to a tolerance because lender has no knowledge of or control over the pricing set by such providers.

Further, a requirement for written lists harms small businesses. A lender will not place a provider on the list unless the lender is relatively sure of the provider's costs. The Regulation X FAQs indicate the lender may not include a provider on the list unless the provider is likely to be available. The more providers the lender includes on its list, the greater its risk of error. The tendency is for lenders to list a small number of large providers who offer their services over a wide area, to reduce tracking costs and ensure availability. This disadvantages smaller settlement service providers.

[10] RESPA § 8(c).

B. The RESPA Definition of Application Should Not Be Revised (Outline, p. 7-9)

As detailed further below in section III-A below, the definition of application under RESPA should not be revised to delete the clause that allows lenders to request additional information of their choosing at application. The definition should be applicable under TILA, as well.

There is a clear tension between providing applications early and providing applications that can be relied upon by the borrower and the lender. The undersigned believe the rules should assure that getting a reliable estimate is the greater imperative. Respectfully, we believe this is an area where a misplaced belief in the early disclosure as a shopping tool should not be permitted to lead to the wrong result.

C. Settlement Agents Should Deliver Settlement Disclosures (Outline p. 15)

Respectfully, we do not believe that the rules need to be revised to require that lenders themselves provide consumers with settlement disclosures. This requirement would be unduly burdensome, and would create unnecessary waiting periods for consumers needing to close their loans on a timely basis.

D. "In 5 Years" Comparison (Outline, Attachments B-1, B-2)

The Loan Estimate prototypes attached to the Outline contain an "In 5 Years" comparison. Dodd-Frank does not require this new terminology, and implementation of this comparison will require additional training and systems changes. The costs and benefits of implementing these new terms must be carefully evaluated. It is not apparent that this will meaningfully assist consumers.

E. The Loan Calculation Disclosures (Outline, Attachments C-1, C-2)

The Settlement Disclosure prototypes attached to the Outline contain three "Loan Calculations" disclosures that are of questionable value. They are the Total of Payments, Total Interest Percentage, and Lender Cost of Funds (also called the Average Cost of Funds).

The first two disclosures would always be inaccurate on an ARM loan and on any loan paid off before final maturity.

The Lender Cost of Funds (or Average Cost of Funds) is not a helpful disclosure and might be harmful to consumers because it could distract consumer attention away from relevant information. While we appreciate the CFPB's suggestion that the lender disclose a "publically available cost of funds index" (Outline p. 7), we do not believe that would be useful to consumers either. If this disclosure is included, explanatory language should disclaim its importance, explain that an index is used that does not specifically apply to the loan, and, most importantly, that borrowers should the use interest rate and settlement costs and any other relevant concerns, such as the quality of service, as appropriate reasons to select a particular lender or settlement service provider.

We strongly urge that the CFPB use its authority under TILA to eliminate these disclosures entirely. If these disclosures are required, however, it is important that they not be designated a "material disclosure" under TILA to provides a basis for rescission. In addition, we recommend that their lack of accuracy and relevance be stated.

F. The Definition of "*Bona Fide*" Discount Points Needs to be Clearly Defined (Not discussed in the Outline, but it is important to note.)

It is particularly important to clearly define the term *bona fide* discount points[11] in order to remove any subjectivity. Any lack of clarity, even seemingly minor, will prevent loans from being made due to regulatory uncertainty, even to qualified applicants.

G. Guidance on Average-Cost Pricing Needs to be Coordinated (Outline p. 12)

The CFPB has indicated it is considering guidance to facilitate the use of average-cost pricing under RESPA. We support the use of average cost pricing. We recommend that the CFPB consider applying it to any APR exclusions as well.

H. Machine Readable Record Retention Requirements (Outline p. 17)

The CFPB is considering requiring lenders to maintain standardized, machine-readable, electronic versions of the Loan Estimates and Settlement Disclosures and the reasons for any changes to the information provided in those disclosures. It is not clear whether the costs and benefits of such a requirement would justify this change. For many lenders, major systems and other changes may be necessary. One possibility would be to make machine-readable records optional to allow lenders to migrate to this approach. Clearly, the comparative cost differences of paper versus automated data must be carefully evaluated before the CFPB seeks to introduce this as a requirement.

I. Several Overlapping Rules (Outline p. 21)

The CFPB has said it is not aware of any federal regulations, other than TILA and RESPA, that duplicate, overlap, or conflict with the proposals under consideration. The QM, QRM, and all Dodd-Frank Act amendments to TILA interact with the KBYO initiative. This letter provides the CFPB with a recommendation as to how it can integrate these rules, with Regulation B, into a streamlined, understandable disclosure regime.

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[11] TILA § 129C(b)(2)(C).

We note that under § 1024.7(a)(5) and the HUD FAQs at GFE #31, lenders may not require an applicant to provide documentation as a condition of providing the GFE and, the applicant must be given a ten-business day shopping period after the initial GFE is issued. § 1024.7(c). It is not clear whether documentation may be required during that ten-business day shopping period. Yet Regulation B §§ 1002.9 (a)(1)(ii) and (c) require action within 30 days after receipt of an incomplete application.

The CFPB should also consider Homeowners Protection Act (HPA) requirements. Before the Dodd-Frank Act, no regulator had the ability to issue HPA regulations. The CFPB now has the opportunity to clarify HPA requirements and integrate HPA disclosures with the RESPA and TILA disclosures. The Loan Estimate and Settlement Disclosure prototypes have significant amounts of information related to mortgage insurance. It would be useful for the CFPB to consider how the KBYO disclosures work with the HPA disclosures to avoid overdisclosures or other confusing disclosures.

III. Timing of Disclosures

The CFPB has a difficult task of designing disclosures that make clear a complex transaction that develops continuously over a period of weeks.

A. Pre-Disclosure Loan Estimate

The CFPB is considering requiring that any preapplication, consumer-specific, written estimate of loan terms or settlement charges contain a prominent disclaimer that the document is not the Loan Estimate required by TILA and RESPA. (Outline p. 9.) Preliminary estimates are useful to consumers for shopping prior to making a loan application, and we agree with this approach.

After application, which follows shopping, we suggest that the rules emphasize a clear, four-step disclosure timing regime that would provide consumers with information they need, when they need it, and without excessive overdisclosures. An advantage to emphasizing a four-step timing regime is that consumers would know when to expect their disclosures, and they would know what types of information would be included in each. This would help consumers understand the mortgage loan transaction as it develops. A finite number of disclosures would be easier for consumers to understand.

The form used in each of the four steps should be as consistent as possible so the consumer will be able to easily comprehend the information being presented as the transaction moves forward through the process. The CFPB's prototype Loan Estimate and Settlement Disclosures are more similar than the current GFE and HUD-1 and we support efforts to make them as similar as possible.

B. Step 1: Loan Estimate Three Days After The Lender Receives an Application

Within three business days of a lender's receipt of an application, the lender would deliver a Loan Estimate. This timing is similar to the timing under current rules, but there is one new wrinkle caused by combining RESPA and TILA disclosures.

With the combination of RESPA and TILA disclosures and the advent of a more detailed form, mortgage brokers may be unlikely to be able to provide the Loan Estimate within three days because brokers do not have a good portion of the necessary information about the loan terms. Brokers will need to rely on lenders to provide this information. If brokers are to be effective in assisting consumers, they will need time to do so. The lender will need up to three days to prepare the Loan Estimate, measured from the date the lender receives the application from the broker. Otherwise, if a broker were to take two days to select a lender, it would be difficult for the lender to prepare the Loan Estimate in one day. Too short a time could result in rejecting the application, even if the applicant were a qualified consumer.

As noted earlier, there is a clear tension between providing disclosures early and providing disclosures on which the consumer and lender can rely.

At this early point in the transaction, important information is unknown. How much is known will depend, in part, on what the CFPB defines to be an application. The CFPB has indicated that it may revise the Regulation X definition of application, which triggers the requirement for a Loan Estimate, so that the application is limited to only six items: the consumer's name; monthly income; social security number; the property address; an estimated property value; and the loan amount sought. (Outline pp. 7-9.) This would remove from the Regulation X definition the seventh item, "any other information deemed necessary by the loan originator."[12] With only this information, a significant amount of the information required to be disclosed by the prototype Loan Estimates would be unknown when the disclosure is required.

For example, the lender would not know:

- Whether the borrower will occupy the home as a principal residence;
- Whether the loan will be a first or junior lien;
- Whether the loan is a purchase or refinance;
- If it is a purchase:
  - The purchase price;
  - The amount of transfer taxes;
  - The real estate broker's fee; and
  - Any seller credits or employer-paid items;

[12] 12 C.F.R. § 1024(2)(b).

- Whether the consumer prefers an adjustable-rate (ARM) loan;
- Whether the consumer wants to pay discount points to reduce the interest rate and, if so, how many;
- What loan term (in years) the consumer wants;
- Whether the consumer wants a balloon loan;
- Whether the consumer prefers a prepayment penalty in exchange for a lower rate;
- Whether the loan would have an escrow;
- The cost of homeowners' insurance;
- Whether the property is a condominium and if so, the amount of the dues; and
- Whether the consumer will retain an attorney.

The latest prototype Loan Estimate requires disclosure of all of these items, and for good reason. A robust Loan Estimate requires this information. A consumer's estimate of the property value may be inaccurate, but the loan-to-value ratio is a significant determinant in the pricing of the loan. HUD included the seventh item, "any other information deemed necessary by the loan originator," in its 2008 RESPA reform rule because of its recognition that the GFE would be binding and subject to tolerances. For this reason, HUD permitted the lender to seek any needed information needed before it was bound.

Also, the lien position and whether the property would be owner-occupied would have an impact on the pricing of the loan.

If the lender has only six items of information, it will not be able reliably estimate the loan costs. Therefore, the Loan Estimate would need to be revised when the lender has enough information to solidify the earlier estimate. This would both be confusing to the consumer and add unnecessary costs to the transaction.

We recommend the CFPB incorporate into its definition of application the reasoning behind Regulation C, which requires lenders to collect and report, among other things, the loan type applied for; the loan purpose; the property type; and whether the lien is first or subordinate.[13] These are all necessary for pricing. The lender needs to collect this information in any event, and the method most consistent with the policies behind the Home Mortgage Disclosure Act (HMDA) and Regulation C would be to permit the lender to collect necessary information during application intake.

Additionally, under the new ability-to-repay requirements, lenders are likely to require more, not less, information to protect consumers. For example, many lenders are likely to seek information on residual income or debts beyond those contained in credit reports. We do not want a situation where RESPA-TILA requirements could hamper compliance with the ability-to-repay rule.

The process should provide consumers the time they need to decide whether to apply for an ARM or fixed-rate loan, or to decide how many discount points to pay. Encouraging

[13] 12 C.F.R. § 1003.4(a).

dialog between the lender and consumer on these important decisions would be the better consumer protection policy. Therefore, the three-day clock should begin when the lender has the information it needs from the borrower, because otherwise the lender may need to reject the application, even if the applicant were qualified.

Therefore, we recommend that the CFPB define application as under RESPA currently, for the Loan Estimate so that the lender can collect any information the lender deems necessary to accurately price the loan and populate the Loan Estimate before the three-day clock begins to run.

C. Step 2: Disclosure Upon Loan Approval; Combine With Regulation B Disclosure

Regulation X has an unintended consequence that results in revised GFEs whenever a settlement service charge, which is subject to a ten percent tolerance, changes, due to borrower-requested changes or permissible changed circumstances. The CFPB has expressed concern that repeated redisclosures may harm consumers if the third-party charges can increase ten percent with each revised GFE. The CFPB has indicated it wants to resolve this overdisclosure problem by requiring a redisclosure only when the charges subject to a ten percent tolerance, in the aggregate, exceed the tolerance due to changed circumstances or borrower-requested changes. (Outline p. 11.)

The CFPB's statement in the Small Business Panel outline that "available compliance software likely offers the functionality to track the timing and reasons for changed circumstances" (Outline p. 13) is not the main issue. Rather, the main issue is that there are too many revised GFEs today. Tracking possible changes in costs on a continual basis is burdensome. Many settlement service providers are small businesses, for whom tracking transaction-specific charges is burdensome.

Settlement service charges are numerous and they are dynamic, yet consumers need a static disclosure. Even if the CFPB were to require a revised Loan Estimate when certain charges had increased more than ten percent, charges would still be dynamic.

A workable approach would be to require lenders to redisclose the Loan Estimate at a certain *point in time*, rather than when the charges reach a certain *dollar amount*. Beyond the initial disclosure, that point in time should be when the costs have firmed up sufficiently that a redisclosure would be useful. Some charges would still be dynamic, but the number of revised disclosures would be reduced. We believe that the appropriate point in time is when the lender delivers the Regulation B notification of action taken, which is no later than 30 days after receipt of a complete loan application.[14] This approach would remove the problem of excessive redisclosures, would be operationally workable, and would dovetail well with Regulation B disclosure requirements, making a clean disclosure that consumers could understand. It would also further streamline the disclosures by integrating the KBYO disclosures with other origination disclosures.

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[14] 12 C.F.R. § 1002.9(a)(1).

Of course, certain changes in the loan product will always require revised Loan Estimates regardless of settlement services and regardless of Regulation B. For example, changing from a fixed-rate loan to an ARM, changing from a QRM to a non-QRM loan, or adding a balloon payment or other risky feature will always require a new disclosure. These disclosures would need to be Step 1 disclosures because they will require repricing the loan.

D. Step 3: Disclosure At Least Three Days Before Scheduled Closing

The CFPB is considering requiring delivery of a Settlement Disclosure three business days before closing. (Outline p. 14.) Our suggested timing would be that lenders provide a third Loan Estimate at least three days before closing. This disclosure would not provide the specific disclosure that would be provided in Step 4, yet it would provide consumers with important information that will let them know whether the charges are within the tolerances and the amount of cash that will be needed to close the mortgage loan transaction.[15]

Requiring a final Settlement Disclosure three days before closing would lead to negative unforeseen consequences. It would require the lender to assure, three days prior to scheduled closing, that the financing has been secured as described in the closing documents. This, in effect means that the transaction becomes "wet" in advance of the settlement date. Having a "wet" transaction means the loan must be "booked" in the lender's pipeline, and the funds made available at that earlier date. This means that the loan is in the warehouse "pipeline" a full three days longer than required in today's operations—but unlike today's loans, the loans would be "booked" but yet continue to carry risks that costs and conditions are still subject to change.

This three-day advance booking of loans has several deleterious effects. First, the lender is taking on contractual risks on any changes that may occur (and changes are fully expected to occur as the negotiations between buyer and seller can advance) in the three-day waiting-period. These risks are largely unpredictable. Second, having wet transactions in the pipeline for three additional days means that, to do the same level of transactions that lenders do today, lenders will have to increase warehouse capacity by a considerable amount. We are still estimating the precise amount of the increase necessary to absorb the effects of this rule, but some lenders have preliminarily forecasted that they expect a 30-40 percent more warehouse capacity. The impact to warehouse capacity means, of course, that the added costs and risks will be reflected in

[15] RESPA § 4(b) provides, "Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day." The CFPB does not have authority to require a settlement statement three days before closing.

loan pricing to the consumer. In addition, it should be noted that lenders cannot augment warehouse line capacity unless they increase net worth—for many banks, such increases is impossible in the short and mid-range term. It is costly in the long run. This would put smaller lenders at a significant disadvantage.

Additional waiting periods due to revised disclosures would exacerbate this warehouse problem greatly, as the lender would incur extra costs for each waiting period. This would be especially inappropriate for waiting periods due to changes in a purchase transaction rather than the loan transaction.

Providing the updated Loan Estimate at least three days before closing would avoid establishing unnecessary waiting periods that delay closings, and it would avoid unnecessarily upending current business practices.

It is important not to trigger waiting periods unless they would provide a tangible consumer benefit.

Waiting periods should be required only for loan-related changes, not purchase-related changes. The buyer and seller may negotiate details of their transaction up to closing without advising the lender. Requiring a waiting period for these changes is unnecessary because the borrower negotiated and agreed to the change.

The CFPB suggests that a waiting period should only be triggered if: the APR increases by more than 1/8 of 1 percent, an adjustable-rate feature, prepayment penalty, negative amortization feature, interest-only feature, balloon payment, or demand feature is added to the loan; or the cash needed to close increases beyond an unspecified tolerance. (Outline p. 14.)

We agree with the CFPB that a minor increase in the APR should not require a waiting period. A change that benefits the consumer, such as a decrease in APR, should never require a waiting period. Short of adding a risky feature to a loan product, any change due to a consumer request should not require a waiting period because the consumer would benefit from it. For example, the consumer may elect to revise the deductible on the homeowner's insurance policy and thereby change the premium. The consumer would have already discussed this with the insurance agent, so there would be no need for a waiting period.

We do not agree that a change in the cash needed to close, by itself, should trigger a waiting period – a new Loan Estimate can provide that information without an unnecessary delay. Waiting periods themselves can significantly increase the cash needed to close.

Cash to close can change for a large number of reasons, some unrelated to the loan, some minor, and some that are the consumer's choice. These do not warrant a waiting period in all cases. Prorated charges and daily interest change daily, but these changes do not warrant waiting periods because they are predictable.

The trigger for a waiting period should be loan-related changes to the consumer's detriment that are significant enough that the consumer needs three days to decide whether to abandon the loan. At this stage of the transaction, the consumer has a financial stake in getting the loan closed, and this needs to be weighed in determining whether a waiting period is appropriate.

Whatever the choice of circumstances to support a waiting period, the rule should permit consumers the ability to waive a waiting period whenever they choose.

Nevertheless, the triggers for waiting periods and for their waiver need to be very clear while not unnecessarily restrictive. Today, consumers can waive their waiting periods if they have a "*bona fide* personal financial emergency[.]"[16] Lenders are unable to determine when such an emergency exits, so they cannot permit waivers. If the trigger for a waiting period or waiver is in any way unclear, lenders will require waiting periods to avoid liability. If the rule it is unduly restrictive, borrowers will in too many cases be unduly delayed.

If the CFPB were to require unnecessary waiting periods, these would become the new unwelcome surprise just before closing.

E. Step 4: Final Disclosure at Settlement

After the last waiting period, or, in most cases where there is no waiting period at all, the person conducting the settlement would provide the Step 4 disclosure, the Settlement Disclosure. It would be easiest for consumers if the disclosure looked the same in Steps 1 through 4, with the difference in the final disclosure being the amount of itemization.

We also suggest that the pages be re-ordered so that the loan-specific information appears in a section separate from the settlement information.

The CFPB is weighing whether the lender or the settlement agent should be responsible for preparing the RESPA-required information. (Outline p. 15.) If it is to be the lender, the lender would need to get final information from the settlement agent at least a week before the closing. We believe this approach would increase waiting periods unnecessarily. Further, the lender should not be responsible for verifying the accuracy of the settlement agent's charges because that would delay closings even further.

From the consumer's point of view, it would be better to have the settlement agent prepare the settlement-related information.

[16] 12 C.F.R. § 1026.19(a)(3).

IV. Conclusion

We greatly appreciate the CFPB's work, and look forward to a result that will truly improve the mortgage process for consumers. For the reasons discussed, we strongly urge the CFPB to design and implement all of the disclosure changes, including those required as a result of Dodd-Frank, comprehensively. Done correctly, this will ensure that the regulations and disclosures are well-designed and benefit consumers.

This is an historic opportunity to finally put in place a mortgage disclosure regime that enables consumers, our customers, to make informed credit decisions. We share in the CFPB's and Congress' mutual goal of ensuring that this project comes to a successful conclusion.

Sincerely,

American Bankers Association
American Escrow Association
American Financial Services Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association
National Association of Realtors
The Real Estate Services Providers Council, Inc. (RESPRO®)

American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association

April 3, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Mortgage Loan Prototypes Round 9, and Potential Changes to the Underlying Mortgage Disclosure Regulations

Dear Director Cordray:

The undersigned are pleased to submit comments on the Round 9 prototypes of Know Before You Owe mortgage origination disclosures. In addition to releasing Round 9 prototypes, as part of convening its Small Business Review Panel for the redesign of these disclosures, the CFPB has provided the first indication of its thinking about how it may amend the substantive regulations underlying the disclosures.

During the Know Before You Know iterations, we have submitted a large number of comment letters that walk the CFPB through a large number of very technical, but important details. We have been disappointed that many of these issues have not been addressed or corrected.

In the appendix to this letter, we address the Round 9 prototype disclosures themselves. The CFPB released the Round 9 prototypes just after February 15, when the undersigned submitted a lengthy joint letter commenting on Rounds 7 and 8. We recognize the CFPB did not have time to react to all the suggestions in that letter, and some of the matters about which that letter commented remain in this final round. We do not repeat here all the concerns expressed in the February 15 letter, although we continue to note some of the issues that are more significant.

Additionally, we along with other trade associations have written to encourage the CFPB to use an iterative approach to redesigning its regulations as well as the disclosure forms because both the regulations and forms work together. In this connection, we will provide comments shortly on the issues raised in the Small Business Review Panel materials, which we hope are only the first step in such an iterative process.

We look forward to continuing to provide feedback as the CFPB continues with its Know Before You Owe and other initiatives.

Sincerely,

American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association

APPENDIX

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I. Partial Escrows

The Round 8 Butternut prototype had the best disclosure of partial escrows to date. In contrast, the Round 8 Hemlock prototype had a partial escrow disclosed in a manner that could mislead borrowers about material facts. In Round 9, the underlying loan again has a partial escrow, with a disclosure slightly better than in Hemlock, but not as clear as in Butternut.

The Round 9 Basswood escrow disclosure is improved from the Hemlock escrow disclosure. In Hemlock, page one under Projected Payments discloses the Estimated Escrow as $422.94, then discloses under Information about Escrow for Taxes, Insurance & Assessments again as $422.94. It states, "Your escrow payment covers the taxes, insurance & assessments listed in Section F on page 2." This may lead the borrower to believe the escrow payment includes homeowners' association (HOA) dues when it does not. It does not alert the borrower to the important fact that HOA dues will need to be paid in addition to the escrow payment.

Basswood is improved from Hemlock in that Basswood shows, under Projected Payments, the Estimated Escrow is $699.50, while the Escrow Information for Taxes, Insurance & Assessments is a different, higher, dollar amount. This difference in dollar amount, lacking in Hemlock, can alert the borrower to the fact that at least one item is not included in the escrow payment.

Basswood lacks, however, the Butternut disclosure that the dollar amounts differ *because* the loan has a partial escrow. Butternut adds, "Your escrow payment only covers the property costs in Section F on page 3. *Some of your costs are not in escrow.*" (Emphasis added.) The emphasized sentence adds a great deal of clarity. The check-box for a partial escrow does as well, by distinguishing between a total escrow, a partial escrow, and no escrow. Partial escrows are common. It is important for borrowers to understand what their escrows cover, and just as important to understand what they do not cover. The Butternut approach is a much clearer disclosure about important information.

For these reasons and for the reasons detailed in our February 15 letter, we urge the CFPB to adopt a Butternut-style disclosure for partial escrows in both the Loan Estimate and the Settlement Disclosure.

II. ARM Disclosures

A. ARM Disclosures Need to Include the Fully-Indexed Rate

The underlying loan in Round 9 is a 5-year, interest only, 5/3 adjustable-rate mortgage (ARM) loan. There are a large number of ARM products in the market, and it is very difficult to determine from the few prototypes that have been released whether the prototypes will provide consumers with sufficient ARM information, and whether creditors will have rules that clearly define how to complete the forms.

Most ARM products cap the interest rate adjustments based on the initial interest rate. The initial interest rate is not necessarily based on the index and margin used to set future rates. If two loans had the same initial interest rate and caps, the disclosures would look nearly identical even if one loan had a deeply discounted initial rate and the other loan had a premium initial rate. It is critical that this difference be readily apparent to consumers at the Loan Estimate stage and through closing.

An example may help illustrate how misleading the Round 9 Loan Estimate prototype could be. In the Round 9 transaction, the borrower would see that after the initial interest rate of 4.375% expires, the rate could increase by 3% after 5 years to 7.375%, and then could reach its maximum of 8% after another three years. But the borrower would not know how likely that would be. There is a disclosure that the Index + Margin is LIBOR + 4%, but the consumer would not know what the current index value is.

Assume this borrower is comparing two loans that are identical except that one loan uses LIBOR as an index and that the LIBOR value is currently 1%, while the other loan uses a different index that is currently 4%. It very likely that the second loan will be substantially more expensive than the first, but the only differences between the Loan Estimates for the two loans would be the one word description of the Index on page 2 and the APR and TIP disclosures on the last page. Multiple costs are included in the APR, and Tupelo explicitly states that the APR "is not your interest rate." Reliance on the APR disclosure to inform consumers about their interest rate would not be clear. We suggest that the CFPB test this pair of examples with consumers to see if they are able to consistently identify the second loan as substantially more expensive.
It is important that consumers are clearly informed about what the rate and payment would be if the index did not change. This disclosure should be revised to make clear that the second loan may be much more expensive than the first.

B. Acronyms Are Not Clear

Tupelo and Basswood both on page one refer consumers to the "AIR" and the "AP" tables on page four. These are unfamiliar acronyms and their meaning will not be apparent. We suggest spelling out the names. If there is insufficient space, the words "for details" could be eliminated without detracting from the meaning.

C. Number of Columns in Projected Payments

In the Round 9 loan, it appears that four columns are sufficient to show the initial payment and every change due to (1) the loan switching from interest-only (IO) payments to payments of principal and interest; (2) each rate change that could occur until the loan reached its maximum payment; and (3) termination of mortgage insurance.

However, with other loan programs, far more columns could be required to show all of the possible payments. There needs to be clear rules on the maximum number of columns that should be displayed and, if the maximum number of columns is not sufficient to show all of the changes in payments, which columns should be displayed and which should be omitted.

D. Minimum Rate and Payment

The prototypes in Round 9 disclose a 4.375% initial interest rate, but a 5% minimum interest rate. That is contradictory and confusing.

The Round 9 prototypes do not address how to disclose the minimum payment if the interest rate can decrease below the initial interest rate. This is possible in the vast majority of ARM loans.

E. Adjustable Payment Table

The Adjustable Payment Table does not make clear that it covers only principal and interest payments while excluding mortgage insurance payments.

The table discloses that the loan has no "optional payments" but does not explain what this means. If this is meant to disclose whether there are optional payments on a loan with negative amortization, the disclosure is unnecessary because page one states that the loan amount cannot increase after closing. Nearly every IO loan and ARM loan permits the borrower to pay more than the scheduled payment without penalty, so the "No" answer here is confusing.

In the Round 9 loan, the IO period ends at the same time the first rate adjustment occurs. If the IO period were to end at a different time, would additional rows showing additional changes in amounts be required?

F. Adjustable Interest Rate Table

The Adjustable Interest Rate Table discloses the index is "LIBOR." There are multiple LIBOR indices. How completely does the lender need to describe the index?

The table does not indicate what index value the lender used in preparing the disclosure. The date of the index should be included so it will be easy to verify.

This table may be a good place to disclose the fully-indexed rate.

III. Loan Estimate

A. The Loan Estimate Needs to Disclose a Mortgage Broker's Fee for Shopping Purposes

Each lender and broker agree on a fee among themselves, but individual brokers can reach different agreements with different lenders. Consumers need to know the broker's fee for shopping purposes, so it needs to be on the Loan Estimate.

B. Consistent Headings Are Helpful

Page two of the Loan Estimate has a new heading, "Closing Cost Details." This is the same as the heading used in the Settlement Disclosure. The consistent terminology is an improvement because it will help consumers use the disclosures together.

C. "In Five Years" Should Exclude Settlement Fees

On page three, the Loan Estimate discloses the amount paid in five years. It includes the $5,963 in settlement fees. This is not an accurate description of loan costs in part because it is an initial cost rather than a cost for the time value of money. Moreover, it includes some costs that are unrelated to the loan. A major portion of it is for owner's title insurance coverage, which is not required for the loan, and which the buyer likely would have paid in a cash transaction. We believe no settlement fees should be included in the amount paid in five years. Consumers can see the settlement costs already, and there is no point in repeating them.

IV. Settlement Disclosure Page Two

A. Elimination of "Financed in Loan Amount" Column

The "Financed in Loan Amount" column that appeared in Round 8 was eliminated in Round 9, and the closing costs that were considered to be financed in the loan amount in Round 8 are now considered as paid by the borrower at closing. These are sensible improvements.

The closing costs that are financed in Round 8 were based on an arbitrary assumption that any cash the borrower brings to closing is applied first to a down payment rather than to closing costs. Our February 15 letter details the issues with this arbitrary assumption. In a purchase transaction, there is no reason to apply the amount the borrower brings to closing to a down payment before applying any of it to closing costs. We recommend that the Closing Costs Financed equal the total borrower-paid closing costs due at closing minus the cash the borrower brings to closing.

B. Payment of Broker Fee by Lender in "Paid by Others" Column

Round 8 was a retail loan, so it was not clear how a mortgage broker's compensation would be shown. In Round 9, the broker's fee is shown on a separate row with the payment by the lender shown in the "Paid by Others" column. This should be an adequate disclosure for the Settlement Disclosure.

C. "Paid by Others" Column/Identification of Payer in First Column

Both the mortgage broker's fee and the Texas Title Guarantee Fee are shown in the Paid by Others column, and the first column identifies that the fees were paid 'by Lender." Aside from questions of space, it may not be difficult to identify the lender in the first column as the payer, but it may be more difficult if the payer is an employer or government agency providing closing cost assistance.

D. Shaded Text Can Be Hard to Read

Basswood uses shaded text boxes that contain transaction-specific information on the first three pages. Tupelo also does on the first two pages. What we learned from the 2008 amendments to Regulation X is that information amounts contained in a shaded area does not fax well, and can be illegible. Settlement Disclosures are frequently faxed. We recommend removing shaded text boxes.

E. Additions Should Read Down Rather Than Across

It would be preferable for numbers that are added together to be placed vertically rather than horizontally.

V. Settlement Disclosure Page Three

A. Elimination of "Increase Over Limits" Table

The Increase Over Limits table has been eliminated. It is not clear how the consumer would know whether there was a tolerance violation or how the lender could reflect whether any violation has been cured. This information is important and in need of inclusion on the form.

B. Elimination of "Interest Rate Changes" Table

This table was not particularly useful and was potentially very confusing, so its elimination is welcome.

C. Calculating Cash to Close

The Calculating Cash to Close table now has a third column, "Did This Change?" indicating yes or no and describing why amounts changed. If a row says yes, the amount changed, it is not clear whether the explanation for that row should always be the same. For consistency, we believe it should.

D. Summaries of Transactions

The table labeled Summaries of Transactions in Round 9 has a subheading, or sublabel, that says, "Use this table to see a summary of your transaction." This is unnecessary because it is self-evident. It also is inconsistent with the table, which summarizes two transactions.

The Summaries of Transactions no longer contain the row for Closing Costs Financed in Loan Amount. This change makes the summary of the borrower's transaction easier to understand.

The prototypes scatter in several places the adjustments to the purchase price between the buyer and seller. This could be streamlined and made easier to use by including all the adjustments in one table, as we recommended in our February 15 letter. This would greatly simplify the Cash to Close disclosure and the Summaries of Transactions, while streamlining the Settlement Disclosure. It would also narrow the differences between a Settlement Disclosure used on a refinance and that used on a purchase transaction, which is helpful.

VI. Settlement Disclosure Pages Four and Five

A. Presentation Could be More Consistent

There is added a new heading on page four, "Additional Information About This Loan." While the heading is consistent with the Loan Estimate, there could be greater uniformity in presenting the disclosures that appear on both forms. The Settlement Disclosure lists under "Loan Calculation" what the Loan Estimate includes under "Comparisons." The Settlement Disclosure includes under "Other Disclosures" what the Loan Estimate includes under "Other Considerations." These could be more uniform.

B. Partial Payments

The partial payment information has a new sentence that reads, "If this loan is sold, your new lender may have a different policy." This change is helpful, but it would be more accurate to say, "If your loan or servicing were sold, the policy may change."

C. Security Interest

The property address would now be inserted on blank lines, rather than appearing in a string of text. This would be easier to implement, and would allow the borrower to see the same information.

D. Escrow Account Information

The disclosures continue to combine information about loans with and without an escrow. We believe the suggested disclosures we submitted with our February 15 letter on Rounds 7 and 8 would be clearer.

The dollar amounts are now disclosed in a table rather than a narrative, which is easier to implement, and is a helpful change.

Under "In the future," the disclosures could be clearer about what the lender may do if the borrower fails to pay any of the property costs. The prototype lists adding the unpaid amount to the loan amount, adding an escrow, or requiring the borrower to pay for insurance the lender buys. All of these are true, but the information is not complete. We recommend adding that the lender may "require you to pay the amount to the lender in full immediately." We also recommend adding that, "Failure to pay your nonescrowed property costs is a default on your loan, even if you make your loan payments in full and on time."

E. Total of Payments

The Total of Payments amount on an ARM loan is necessarily based on assumptions about future interest rates, but the assumptions are unclear. In the Round 9 transaction, how the amount was calculated is unclear. It may contain escrowed or nonescrowed property costs. If so, that would be inappropriate because the borrower would pay those amounts even in a cash purchase. Those costs are not loan costs. It is possible that the total amount includes future increases in the interest rate, but the borrower will not see how they were calculated.

F. Approximate Cost of Funds

This disclosure is renamed Approximate Cost of Funds, from Average Cost of Funds or Lender Cost of Funds in Round 8. The CFPB has indicated that it will use a publicly available cost of funds index because of the difficulties in calculating the cost of funds. This is an improvement. We agree that calculating, or even defining, the cost of funds is disproportionately complex in relation to any consumer benefit. This method also avoids requiring disclosure of trade secrets or proprietary information, such as what warehouse lenders charge.

We continue to question how disclosing a cost of funds could possibly benefit consumers. As we have explained earlier, the cost of funds may be one factor in loan pricing, but is certainly not the only one, or even the most significant factor.

Not only does the disclosure not benefit consumers, it may lead them to use the cost of funds as a shopping tool. What if consumers are lead to believe they are better off with a lender who discloses a lower cost of funds but charges a higher interest rate on the loan? This disclosure risks causing affirmative harm and offers no benefit. We continue to urge that the CFPB remove it from the form.

G. Appraisal

This section now refers to the contact information below, so that it will not be necessary to provide an address in this section. That is a positive change because it makes the form easier to prepare without sacrificing the quality of the information.

H. Lender's Contact Information

Tupelo contains a different lender's address than Basswood. It is unclear whether the CFPB intends that the address be the branch address where the originator is located, where the application was taken, or where the lending bank maintains the legal or home address. If it is to be the place of application, the location will need to be defined when applications are electronic. It would be preferable to use the address information that is most helpful for consumers when they need to call or contact the lender with questions, either before or after closing. Lenders should be permitted to list the address that is the service center address and toll-free phone number that can best route calls.

American Bankers Association
American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

February 15, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Mortgage Loan Prototypes, Rounds 7 and 8

Dear Director Cordray:

The above-named trade associations have long supported reform of the mortgage disclosure process because we believe that American consumers and the industry will benefit from clearer and more understandable disclosures. We applaud your efforts and appreciate the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Rounds 7 and 8 of the "Know Before You Owe" prototype integrated mortgage disclosure forms. Our joint comments on these prototypes are detailed in the Appendix to this letter. We are also submitting additional comments on the new Honeylocust Loan Estimate.

We note that the first five rounds of the Know Before You Owe project for mortgage lending focused on the Loan Estimate, while three rounds have focused on the Settlement Disclosure Form. We also note the difficulty in fully evaluating these forms without the accompanying rules.

The Real Estate Settlement and Procedures Act (RESPA) and the Truth in Lending Act (TILA) requirements have never been integrated before, so many of these issues, including the timing of disclosures and re-disclosures, and attendant remedies and penalties, are novel and have not been considered through any public comment procedure before the CFPB's Know Before You Owe initiative.

The creation of the forms also demands attention to how the forms will work with mortgage technology so that their introduction can be as efficient and economical as possible. Notwithstanding, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) deadline for a formal proposed rule is fast approaching.

Given the benefits of an iterative process, the complexity of the issues, and the short statutory deadline for such an ambitious integration proposal, it is important that the CFPB act very soon to solicit input on the issues to be addressed in the accompanying regulations. In a recent letter to the CFPB (attached), the undersigned and other trade associations made recommendations for such a process.

We recognize that the CFPB may not yet be prepared to publish a full proposed rule, but any guidance and dialogue about the regulations would be most welcome. It would be helpful if the CFPB could indicate how dynamic the forms will be. Will disclosures inapplicable to a particular transaction be removed or left blank? This information would be helpful for implementation planning because dynamic forms can be more difficult to implement, especially for smaller lenders.

We also urge the CFPB to test the latest forms across the full range of product types through varying lenders and settlement service providers in different areas of the country. For example, the prototypes would benefit from being applied to loans with temporary buydowns, bridge loans, construction/permanent loans, subordinate loans, and credit sales. (When a lender sells a foreclosed property and finances the sale, disclosure of the sales price is required.) We will need to see examples of how the CFPB would complete the prototypes across all the standard loan products of Fannie Mae, Freddie Mac, FHA, and VA to understand what is required. Preparing these examples would reveal areas where the prototypes need further development, and would focus the CFPB's attention on areas where the rules themselves need to be integrated and otherwise improved. We would be very pleased to assist this effort.

Additionally, we suggest the Bureau engage a cross-section of large, mid-size, and small lenders in pilot testing these forms in real world transactions, before the forms are finalized and implemented. A pilot program would provide an opportunity for the Bureau to make necessary clarifications, and resolve unforeseen problems before the forms are used universally.

We agree that it is extremely important for the CFPB create a new disclosure scheme that works to inform consumers of important information without unnecessary complexity. But were the CFPB to finalize these forms before resolving the key issues including those raised in this letter and its appendix, the project will fail, leaving consumers with suboptimal disclosures, as is the case today.

Again, we appreciate the opportunity to offer detailed comments on the latest Know Before You Owe iterations, and we look forward to providing input to improve this effort going forward.

Sincerely,

American Bankers Association
American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

APPENDIX

I. Overview of Comments on Rounds 7 and 8

1. *Length of Form*. The prototypes are longer than they need to be. We suggest a number of areas where they can be shortened without removing helpful information.

2. *Who Prepares the Form*. If a lender closes a loan directly, the lender will prepare the Settlement Disclosure. Often, though, a settlement agent will close a loan. In this event, it is unclear whether the lender or the settlement agent will prepare and deliver the Settlement Disclosure. It is also unclear when the form is to be provided, at, a day before, or three days before closing. If there is a settlement agent, we believe the settlement agent should provide the form with information from the lender.

   We also urge the CFPB not to require unnecessary waiting periods because they can be costly and disruptive for consumers. Minor amendments to the Settlement Disclosure, and amendments that benefit the consumer, should not require waiting periods. The consumer should have a reasonable ability to waive the waiting period without the lender or settlement agent having to make judgments about whether the consumer has a *bona fide* personal emergency. These issues are only some of the many that will require resolution in rules accompanying the forms.

3. *Consistency Between the Forms*. It is important that the Loan Estimate and Settlement Disclosure forms be consistent so consumers and lenders can use them together. We appreciate that in Round 8 the CFPB has included both a Loan Estimate and Settlement Disclosure prototypes so we can see how well they are integrated. We believe there remain unnecessary differences that we discuss below. The Cash to Close calculation on both the Loan Estimate and the Settlement Disclosure needs to be revised because it omits important information. Both forms should use the same calculation so that the forms are consistent and easy to compare.

4. *Consumers Need to Distinguish Loan Costs and Purchase Costs*. The prototypes too frequently mix the costs of purchasing a property with the costs of a loan. Unless consumers can see clearly which costs are for the loan and which are for the purchase, consumers will have a hard time understanding their final loan costs and comparing them to the estimated loan costs.

   This distinction needs to begin in the Loan Estimate because different lenders estimate purchase costs differently. The cost of hazard insurance or homeowners association (HOA) dues, for example, at the Loan Estimate stage, is nothing more than a guess. If purchase costs are intermingled with loan costs, identical loans from two lenders could appear to have different loan costs because of estimated purchase costs. That would be a poorly designed loan disclosure. The distinction between the purchase and loan costs needs to be carried over into the Settlement Disclosure for the same reason, and so the Settlement Disclosure will integrate with the Loan Estimate.

5. *Closing Costs Financed in Loan Amount Should Be Simplified*. The Dodd-Frank Act does not require this disclosure, and for that reason we recommend it not be required. If the CFPB retains it, we recommend simplifying it.

   The disclosure of Closing Costs Financed in Loan Amount appear in multiple places, and it is not clear how the amount is calculated. We suggest that the amount be disclosed once, in the Closing Costs section at the bottom of page one. We suggest that the amount disclosed as Closing Costs Financed in Loan Amount should equal the amount by which closing costs the borrower pays at closing exceed Cash to Close. This would be streamlined and would include all relevant information.

6. *Cash to Close and Summaries of Transactions in Purchases*. Both the Loan Estimate and Settlement Disclosure for purchase transactions could be simplified if the items affecting the "Amount Owed by Buyer to Seller" were disclosed on a separate table so that a single number could then be entered into the Cash to Close and Summaries of Transaction tables. This would make it much easier to see whether changes were due to the loan transaction or to the purchase transaction. It would also reduce differences between the format of the disclosures for purchases and refinances. This table and seller-related information would simply be left blank on a refinance.

7. *Consistent Nomenclature*. The Round 7 and 8 prototypes use the similar terms Settlement Fees, Settlement Costs, and Closing Costs to mean different things, which is confusing. We suggest using Loan and Title Fees in lieu of Settlement Fees for clarity.

8. *Escrows, Partial Escrows, and Loans Without an Escrow*. There are positive changes in Rounds 7 and 8 concerning escrows, including the addition of a place to show the aggregate adjustment that RESPA requires to determine the initial escrow deposit. Butternut has the ability to show a partial escrow, which is important because partial escrows are common. However, information on taxes and escrow appears in different places on the forms and could be streamlined.

   Importantly, the forms still do not make it easy for the consumer to compare loans with different escrowed items, or to understand that they need to budget to make large quarterly or annual payments of non-escrowed items. Also, escrowed items appear double counted.

9. *Corrected Tolerance Violations*. The Round 8 prototypes, in the Increases Over Limits section, show a tolerance violation, but do not tell the consumer how the violation will be or was corrected. If the violation is not corrected at settlement,

then we suggest that there should be a statement to the effect that the consumer should "Contact the lender for a refund of the Over Limit amounts." More often, however, lenders will make the correction at or before closing. The rules should confirm that the lender may correct the error by reducing the amount of the Origination Charges (if the violation relates to those charges) or by paying a portion of the charges as shown on the Closing Cost Details page (by paying a specific fee or in the case of a 10 percent category violation, by either paying a specific fee or an amount towards the category). These corrections should reduce the borrower paid amounts in the "Final" column so that "No" would appear in the Over Limit column.

10. *Risky Feature Disclosures Belong Together*. The prototypes contain disclosures about prepayment penalties and balloons on page one, and about negative amortization and a demand feature on page four. These disclosures could be provided more efficiently. The demand feature could be added after the prepayment penalty and balloon payment rows on the first page. Alternatively, the prepayment penalty, balloon payment, and demand feature could be included on a subsequent page. Disclosing the absence of negative amortization should not be necessary when page one makes clear that the loan amount cannot increase.

    Loans without a demand feature, prepayment penalty, or a balloon are common. We suggest the disclosure in this case might read: "This loan does not permit the lender to demand early repayment of the loan or to charge a prepayment penalty if you prepay the loan. The scheduled payments will repay all interest due each month and do not include any large balloon payments."

    If the risky features are explained in detail on a subsequent page, the question arises whether the description may be omitted on loans that do not have the risky features. Some lenders prefer the ease of a standard form, while others would prefer not to disclose in every loan information about features they do not offer or offer only rarely. Additional dialog on this question is important.

11. *Loan Terms Should be Grouped Together, Followed by Fee Disclosures*. The prototypes first disclose loan terms, then jump to fee disclosures, and then jump back to loan terms. For the consumer's ease, it would be clearer to group the loan terms together, then show the fees. This would also make it easier to coordinate preparation of the disclosure between the lender and settlement agent, because the lender generally has information on loan terms while the settlement agent generally has information on settlement fees.

12. *Useless Items Should be Removed*. We recognize the Dodd-Frank Act has imposed conflicting goals on the CFPB – to provide streamlined, integrated disclosures while simultaneously adding new disclosure requirements, without removing old disclosure requirements. However, we urge the CFPB to use its exception authority to remove or shorten disclosures that consumer testing shows are not useful or that are unnecessarily duplicative.

We do not believe the Total Interest Payment or Average Cost of Funds disclosures are useful. Neither are the Amount Financed and the Finance Charge. We would support the CFPB's use of its exemption authority to remove all of these from the form.

13. *MISMO*. To improve and automate the inefficiencies of paper-based processes and to maintain clarity, consistency, and accuracy, the mortgage industry has moved significantly towards the use of "intelligent" electronic data and document creation and dissemination. The mortgage industry has coalesced around the development and adoption of standards managed by the Mortgage Industry Standards Maintenance Organization (MISMO). Among the standards developed by MISMO is a document-creation format known as SMART Doc®. The SMART Doc standard provides many advantages, including:

    a. **Improved Loan Quality**: It enforces superior data and loan quality and integrity because all systems and users apply the same language and meaning (standard data and descriptions).
    b. **Greater Accuracy:** Documents are created once, with no re-keying or input, which significantly reduces errors. Data and calculations are consistent across documents. Key data relationships, such as the collected fees on the settlement statement, automatically map and accurately reflect the same calculations on earlier disclosures.
    c. **Flexible Views and Representations:** Documents may have differing presentations on a computer screen and on paper. These differing representations may be customized to meet usability or other requirements. Consumers can interact with the electronic form because the information is not limited the hard coded form.
    d. **Current and Compliant**: It ensures greater compliance. The industry will not be required to map to static, hardcoded templates and forms to keep up with rapidly changing regulations and will not be required to maintain thousands of forms in a forms library for each different term or condition.
    e. **Less Cost and Maintenance**: Electronic documents are data-driven. Compliance updates and changes do not require determining what has changed on the physical forms.

    As the CFPB moves forward with this project, we urge it to consider the practical nature of how documents are generated and populated, and that MISMO and SMART Doc® be part of that consideration. Industry experts are available to assist the CFPB in this effort.

14. *Proposed Disclosures*. We include a number of proposed disclosures at the end of this appendix.

15. *Substantive Rules*. As indicated in the transmittal letter, the substantive rules to accompany these forms are crucial. As the CFPB drafts substantive rules, we believe the following principles should apply:

- Loan costs should be separate from purchase costs.

- Loan costs should not include costs of services that the lender does not require (such as home inspections that borrowers choose to obtain) or that borrower would normally incur as a prudent homeowner (such as hazard and flood insurance).

- If fee tolerances will apply, fees in the same tolerance categories should be grouped together to the extent possible.

- If disclosure of a "Finance Charge" continues to be required, it should be clear which fees are and are not finance charges, without adding another table.

- It should be clear which fees are and are not included in the "points and fees" for Qualified Mortgages (QM) under the Ability to Repay rule and for loans exceeding Home Owner's Equity Protection Act (HOEPA) triggers without adding another table. If the QM points and fees definition were not identical to any points and fees definition for Qualified Residential Mortgages (QRMs) in a Risk Retention rule, the CFPB's challenges in improving mortgage disclosures would be more complex than they already are.

- If changes in fees will require redisclosure and a new waiting period, then costs beyond the creditor's control, or that are affected by a change in the closing date, should not be subject to the new waiting period. This would include, for example, purchase costs, fees controlled by the settlement agent or title company, prepaid taxes and insurance, prepaid interest, and any initial escrow deposit. This would help prevent unnecessary disruptions that would seriously inconvenience consumers and that could be very costly to them.

- All terms on the forms, such as borrower and settlement date, will need clear definitions in the instructions and rules.

II. Page One

Several changes to the first page are improvements, but concerns remain.

1. *Settlement Information*
   - The name of the Settlement Agent in Round 8 is changed to a company name rather than the name of an individual, which is preferable. The person could change at the last minute, and redisclosure in that event would be wasteful.
   - File # is now included here, which is a helpful change.
   - The Location information has been deleted in Round 8. This is helpful because it was not clear whether the location that was required to be disclosed was the location of the settlement agent's office or the location of the settlement. The settlement agent's office address is now shown on the last page in the Contact Information section in Round 8. This is the information the consumer needs to retain after closing.

2. *Transaction Information*
   - The sales price in Round 8 is no longer shown here but is moved to Settlement Information. This is preferable. There is a sales price only on purchase transactions and, operationally, it would be preferable to limit differences between disclosures on purchase transactions and refinance transactions to those that are reasonably necessary. The sales price does not need to appear on the first page because the consumer is well aware of the sales price, primarily from having signed a contract that sets the price, likely after the consumer actively negotiated it. The dollar amount is large, so it is likely the consumer would remember it very well.
   - In some purchase transactions, not all of the buyers are borrowers. In refinances, a non-borrowing co-owner needs to receive the disclosures for right to cancel purposes. Should only borrowers be listed or should non-borrowing co-owners be separately identified?

3. *Loan Information*
   - The Lender's address is no longer shown here but on the last page in a Contact Information section. We support this because it is more streamlined. The lender's mailing address is not important enough to appear on the first page.
   - File # is no longer shown here but under Settlement Information. This is a helpful change.

4. *Loan Terms*
   Round 7 added a helpful notation under the Monthly Principal & Interest directing the borrower to the Projected Payments for a Total Mortgage Payment. It is retained in Round 8, which we support.

5. *Projected Payments and Escrows*
   While both Rounds 7 and 8 contain improvements in the escrow disclosures, they remain materially misleading. The disclosures should make clear what is and is not escrowed, what each of the items cost regardless of whether they are escrowed but without double-counting, and the consequences of not escrowing them. We discuss the issues, then include a suggested disclosure.

   a. *What is and is not escrowed.*
   In the transaction depicted in Round 8, it appears that the borrower is escrowing all items except for HOA dues. In Round 8, under Payment Calculation, in the Estimated Escrow line, the non-escrowed HOA dues are excluded. It appears, then, that all non-escrowed items are excluded from that line. (In Round 7, there is no mention of HOA dues, but it is not clear whether this is because there are no HOA dues, or whether it is because there are HOA dues but they are not escrowed.)

   Butternut shows the escrow exclusion far more clearly than Hemlock. Disclosing what is excluded from an escrow is just as important disclosing what is included because the consumer has to pay both escrowed and non-escrowed items. It is especially important for consumers without escrows, or with partial escrows, to understand their total housing expenses because they need to budget for the non-escrowed items.

The Projected Payments section on the first page should show a loan payment and the mortgage insurance payment, as all prototypes in Rounds 7 and 8 do. They each also show the monthly escrow payment, which is appropriate.

However, Hemlock, in the Information About Escrow for Taxes, Insurance, and Assessments, shows the escrow payment of $422.94 per month. It does not state that some items are not escrowed. Rather, it shows that the loan has an escrow. If the consumer reads the text after the checked Escrow box, the consumer would see that the escrow payment covers the taxes, insurance, and assessments listed someplace on page two. At this point, the consumer may not see a reason to look up the items on page two, because the consumer was told that "Your escrow payment covers the taxes, insurance, *& assessments* . . . ." Hemlock does not appear to alert the consumer to the fact that HOA dues need to be paid separately, which is clearly a shortcoming.

In contrast, Butternut shows the escrow payment is $422.94, then shows below that "Estimated Taxes, Insurance & Assessments" are $551.25 per month. Already, this consumer sees that at least one cost is not included in the escrow payment. Next, Butternut tells the consumer that there is a "Partial Escrow[,]" and that "Some of your costs are not in escrow." Now, the consumer has a reason to go look up on page three what is included and excluded. Butternut is better than Hemlock at showing what is and is not escrowed. The Partial Escrow box and explanation are important improvements, especially so because partial escrows are common.

Hemlock makes the property or loan appear cheaper than the property or loan in Butternut, but they are the same. This is misleading. It is especially a concern in the Loan Estimate stage, because a consumer may compare two Loan Estimates, one showing more and the other showing fewer escrowed items. The loan with fewer escrowed items would appear to be the cheaper loan, even if it is more costly. We therefore recommend including the Butternut-type approach in Loan Estimates as well as in Settlement Disclosures.

The projected payment disclosure should include *all the same* items regardless of whether they are escrowed because the consumer still has to pay them all, regardless of whether they are escrowed.

b. Double-counted escrowed items

Escrowed items are included in the Payment Calculation in Round 8. However, Butternut and Hemlock each include the escrowed items again in the line below the Estimated Total Monthly Payment. This appears to double-count the escrowed items. If two loans were identical except that one escrowed more items, the Round 8 prototypes would make the loan with more escrowed items appear more costly.

c. Escrow information is scattered
In both Rounds 7 and 8, information on escrows, taxes, and insurance appears in multiple places. It would be preferable to consolidate the information, except on the first page of the form, in the Initial Escrow Account Disclosure Statement so it will be in one place and would not need to be repeated.

d. Title of line
In the left column of the page one line about escrowed items, Mimosa and Sassafras read, "Information About Escrow for Taxes & Insurance[.]" Butternut reads, "Estimated Taxes, Insurance & Assessments[.]" On Hemlock and Honeylocust, it reads, "Information about Escrow for Taxes, Insurance, & Assessments[.]" If the title is getting too long, it could be revised to simply "Escrow" with the disclosure rather than the title communicating the necessary information.

Suggested disclosure
We recommend replacing the Projected Payments and Closing Costs sections with the disclosure in the Proposed Disclosure at the end of this Appendix. It includes the word "housing" in the title to emphasize that the costs must be paid regardless of the loan. It uses the Round 8 transaction.

6. *Cash to Close*
In both Rounds 7 and 8, the Cash to Close item is a single row, but it tries to communicate two different concepts. It tries to show both how much cash the borrower will need to bring to closing, and it tries to show the amount of Settlement Fees included in Closing Costs.

Settlement Fees include settlement fees that the borrower paid before closing, which is confusing in a Cash to Close disclosure. We suggest breaking this down, as below.

We are not sure what goes into the category of Settlement Fees or why those specific fees are so relevant to the consumer that they need to be included in a large font on the first page. Some relate to the loan, but not all loan costs are included. Some are unrelated to the loan, but not all non-loan costs are included. If the intent is to highlight the loan costs, the amount in this row should not include any purchase costs. We suggest "Settlement Fees" be renamed "Loan and Title Fees" for clarity.

It would be preferable to split this disclosure into three rows:

- A Settlement Fees row that shows $5,519.53.
- A Cash to Close row that shows the $27,625.00, with a cross reference to that calculation.

- A Closing Costs Financed in Loan Amount row that would show the amount of financed closing costs, and have two check boxes for the source of the closing costs payment.

This would be consistent with the tax treatment of discount points on a purchase transaction. The IRS deems discount points as not financed in the loan amount (and therefore possibly deductible in the year paid) if the amounts the borrower paid at or before closing equal or exceed the discount points.

There is a closing costs disclosure in the Proposed Disclosures at the end of this Appendix.

III. Closing Cost Details: Sassafras and Hemlock Page Two, Mimosa and Butternut Page Three

1. *Line Numbers.*
Mimosa has line numbers on pages two and three. Butternut uses faint line numbers on pages two and three. We are not sure whether the faint numbers are to be visible to the consumer or what their purpose is. Line numbers can be helpful in populating forms.

However, there are so many possible settlement services that it would not be practical to assign a name and a specific line number to each. Moreover, many third-party service providers use inconsistent terminology. The lender does not control all the service providers and cannot require them to adhere to specific language. Moreover, rigid language would require rule changes for even minor marketplace developments. It is important to have room for blank fields because there are many possible settlement services.

Additionally, the substantive rules will likely treat the same fee differently depending upon transaction-specific factors, such as whether the borrower shopped for a service. Listing fees in fixed numerical order would frustrate listing them in the order that makes the most sense to the borrower.

2. *Settlement Fees, Settlement Costs, and Closing Costs*
The names of these fees in both Rounds 7 and Round 8 are not descriptive. What Mimosa terms Closing Costs in Sassafras is Settlement Fees, while Butternut and Hemlock use the term Closing Cost Details. Settlement Fees means something different in the prototypes than Settlement Costs. Fee and cost have similar meanings, so the distinction between the terms in the prototypes is unclear. We suggest using Loan and Title Fees in lieu of Settlement Fees for clarity.

Both Rounds 7 and 8 use the same basic categorization of settlement fees + settlement costs = closing costs. The logic behind these terms and categorizations is unclear.

3. *Columns*

Instead of showing amounts paid outside of closing by the borrower or seller in the far right hand columns as Sassafras did, Hemlock and Butternut now show them as sub-columns under borrower paid and seller paid. The far right hand column now only covers amounts paid by others, and does not appear to require that the timing of the payments by others be disclosed. These are all very positive changes in Round 8. This will make it much easier for both the borrower and seller to confirm that they are being credited for amounts paid before closing and that they understand what amounts are being paid at closing, which is extremely important.

We are glad that Mimosa's "Paid By/To/When" column is removed in Round 8. It would have been difficult to fill out because: (1) there is not sufficient room to list who is paying the amount; (2) the "to" appears unnecessary because who is receiving the payment should be apparent from the left hand column (other than the identification of the payee as an affiliate, but this is not a clean way of providing that information); and (3) it requires distinguishing whether amount was paid "at" closing or "before" closing. On the last point, if the amount is being paid by someone other than the borrower or seller, there is no apparent benefit to the borrower or seller in disclosing whether the amount was paid at closing or before closing. The elimination of this column is helpful.

We are pleased that the Mimosa Closing Cost Summary is removed in Round 8 because it was highly confusing. It attempted to show closing costs or settlement fees financed in the loan amount. If some settlement fees had been disclosed as financed in Loan Amount on this table, it is not clear how that would be shown on page three in Closing Costs. The last row of Mimosa's Closing Costs Summary table shows the amount of $3,614.79, with the explanation that it is the Settlement Costs minus Seller Credits. However, "Settlement Costs" shown on page three are $3,741.40 paid by the Borrower at settlement and $24.00 paid by the Seller at settlement with no settlement costs paid outside of settlement. This does not reconcile with the $3,614.79 amount. It appears that this amount was calculated by determining the Cash to Close amount of $16,331.79 minus the $9,000 remaining down payment due, minus $3,717.00 in "Settlement Fees Paid in Cash at Closing." Consumers would not understand this.

4. *Closing Costs Financed in Loan Amount*

Sassafras, Butternut, and Hemlock have a "Financed in Loan Amount" column. This is very problematic because it is arbitrary, confusing, and does not seem to have a purpose.

In the Round 8 transaction, the borrower is bringing $27,625.00 to settlement, while the total borrower-paid closing costs are only $13,613.04. The only amount that the borrower appears to have paid before closing is a $3,000 deposit toward the purchase price.

Butternut and Sassafras apply the cash that the borrower brought to closing first to a down payment rather than to closing costs, which is arbitrary.

The prototypes are also completely arbitrary about which closing costs are considered financed and which are not. Itemizing which closing costs are financed and which are not is not useful to the consumer. Unless the borrower paid an amount prior to closing towards a specific fee, it is not clear what logic a lender should use in determining which fees are financed.

For example, in Hemlock on page two in section B, the Paid at Closing column contains $335 for the appraisal. In the Financed in Loan Amount column, there are fees totaling $335 (the lender's attorney's fee and the flood monitoring fee). If the latter two fees were moved to the Paid at Closing column and the appraisal fee were moved to the Financed in Loan Amount, the transaction would be economically exactly the same, but the disclosure would be rather different. Similarly, the Paid at Closing column contains $75 for the Title - Closing Protection Letter, while the Financed in Loan Amount column contains three fees totaling $75 (tax status research, flood determination, and tax monitoring fees). If these amounts were each moved to the opposite column, the transaction would be exactly the same but the disclosure would be different.

The total amount the consumer finances is relevant, but because money is fungible, trying to categorize which fees the borrower finances and which the borrower pays at closing is futile. The consumer will not benefit from such a meaningless disclosure.

Mimosa does not have a Financed in Loan Amount column, but it does have unclear categorizations. On page three, Mimosa distinguishes between "Services in Connection with Your Loan" and "Title Charges." Title charges may be services in connection with a loan, so this distinction is unclear and appears somewhat arbitrary. Mimosa includes the lender's title policy as a title charge, even though it is a service the lender requires for the loan. Mimosa also includes a document preparation fee as a service in connection with the loan, but it is not clear who charged this fee. If it were the settlement agent, would the fee be a title charge or a service in connection with the loan?

The analogous Sassafras page two distinguishes between settlement fees based on whether the borrower shopped for them, but it is not always clear how to make a distinction based on the fact of shopping. Sassafras includes among services the borrower did not shop for an owner's title policy. Lenders do not require owner's title policies, so the borrower must have elected this item. Electing to purchase an optional service may be viewed as having shopped for it, even if the lender provided the name of the title insurer. For owner's title insurance, the borrower must elect the amount of coverage to purchase, which is a type of shopping. A structural inspection fee is disclosed as a fee the borrower shopped for although the seller paid it. If the seller shopped for this service, would it still be included with services for which the borrower shopped?

6. *Down Payment*
   In Round 8, the down payment amount of $18,525.00 is arbitrary. The buyer actually only paid $3,000.00 prior to closing, and may therefore have difficulty

grasping a disclosure that the down payment was substantially higher. If the down payment were changed to $3,000.00, there would be no practical or economic impact on either the buyer or seller, but the amount of Closing Costs Financed in Loan Amount would be $0. On the other hand, if the down payment were changed to $27,307.41, there would be no practical or economic impact on the buyer or seller, but the Closing Costs Financed in Loan Amount would be the entire $13,613.04 in borrower-paid closing costs.

Further, there seems to be no bar to disclosing a higher down payment in the Loan Estimate, and it is not clear what would be done in those situations.

In the Round 8 transaction, the buyer owes additional amounts to the seller due to adjustments for taxes and HOA dues prepaid by seller. Adjustments could also go the other way when the adjustments are for items unpaid by the seller. It is not clear how such adjustments affect the calculation of Closing Costs Financed in Loan Amount or the down payment.

On Mimosa, the Down Payment Summary table should be deleted. On Sassafras, the "Calculating Borrower's Cash to Close" table should be deleted.

The amount disclosed as Closing Costs Financed in Loan Amount should equal the amount by which closing costs the borrower pays at closing exceed Cash to Close. Closing costs the borrower paid before closing are not financed in the loan amount. This would provide a consistent disclosure based upon the actual amounts of the loan, the closing costs, and the cash the borrower provided at closing. It would avoid a hypothetical down payment that the borrower never made. It would avoid the complications of how to deal with the adjustments for taxes and assessments between the buyer and seller. It is also more logical because the buyer has to first obtain the loan to pay the seller, and closing costs have to be paid before the remaining loan proceeds can be paid to the seller.

7. *Sub-Totals of Borrower-Paid Fees.*
In Sassafras, the sub-total of all the fees the borrower paid for each category on page two is shown on the first row of the category in the left hand column. In Round 8, these amounts have been moved to the middle of the Borrower-Paid column. However, because the Borrower-Paid column has three sub-columns, these amounts now look like they are shown in the Borrower-Paid/Paid Before Closing column, which is confusing. It is not immediately apparent that this is the total of all borrower paid amounts, rather than just the amounts paid before closing. Sassafras is preferable in this regard.

    a. *Real Estate Broker Fees*
    Real estate broker fees in Round 8 are moved down to the last category of fees, the new G, Other Costs. This is a welcome change. It will better align the categories of fees shown on Settlement Disclosure with the categories of fees shown on the Loan Estimate. It will also remove real estate broker fees from the Settlement Fees that are disclosed on the first page of the form. This change makes comparisons with the Loan Estimate easier, and it moves

Settlement Fees closer to being the costs of the loan rather than the costs of the purchase transaction.

b. Mortgage Broker Charges
Neither Butternut nor Hemlock shows a mortgage broker fee. Any mortgage broker fee should be shown on a row under Origination Charges, regardless of whether the borrower or the lender pays it. A separate summary, as in Mimosa and Sassafras, is not necessary. Moreover, disclosure of a mortgage broker fee as part of the lender credit is unnecessary. HUD developed that approach before to the issuance of the Federal Reserve's Loan Officer Compensation Rule. There should be a place to show whether the lender or consumer paid a mortgage broker fee, to disclose and document that there was no dual compensation. A simple check-box should suffice.

c. Appraisal Management Fee
We note that this fee is listed separately from appraisal fees in Round 8. The Dodd-Frank Act permits this separation, but we oppose it. Consumers cannot shop for appraisers or appraisal management companies, so breaking down the fee would not help them shop. It would unnecessarily confuse their important task of comparing the Loan Estimate to the Settlement Disclosure. The total cost would help them shop and help them compare the forms, and, for those reasons, should be the required disclosure.

d. Title Insurance Premiums
While Sassafras listed the premiums for the lender's policy and the owner's policy separately, the Round 8 prototypes show them as a lump sum. Given that lenders generally do not require a borrower to purchase an owner's policy, this is not a positive change. Additionally, we do not know whether there will be a change in the substantive rules such that title insurance premiums that are now excluded from the finance charge would be included. There would be little justification for including the cost of an optional owner's policy in the finance charge because it has nothing whatever to do with the loan.

e. Title Insurance Coverage
The amounts of coverage for both the lender's policy and owner's policy are now shown on a row separate from the premiums. This is an improvement because, while Sassafras showed the amounts of coverage, it did not explain what those amounts were.

f. Settlement Fees Calculation.
There is a row for lender credits. If a lender pays an amount, it is not clear when the amount should be shown as a lender credit on this row (and if so, in which column) or whether it should be shown in the "Paid by Others" column.

g. Prepaids/Property Taxes
Sassafras had shown "(current period)" for property taxes while then new forms show "(___ mo)", which is consistent with how other prepaid items are shown.

h. Initial Escrow Payment at Closing/Aggregate Adjustment
Mimosa, Butternut, and Hemlock provide a space for the aggregate escrow adjustment. We strongly support this addition because it is consistent with the statutory escrow accounting requirements, and because aggregate escrow accounting is a consumer protection.

i. Other Costs
This new category was added in Round 8, and it appears to address a number of troublesome issues. It includes fees for services that lenders do not require and that are not loan costs, including: (1) real estate broker fees; (2) fees for inspections, home warranties, and the borrower's attorney; (3) the additional costs of a mobile signing agent; and (4) costs related to the property that are beyond the lenders control, such as HOA fees. It would be helpful if another title, such as Non-Loan Related Costs, were used in the interest of clarity. We request confirmation that the intent was to include these non-loan costs here because the lender does not require, elect, or control them.

On the Closing Costs Details page, we recommend showing the Initial Escrow Deposit at Closing as a single line and a single dollar amount. We recommend consolidating all the escrow information on page 5, as in the Proposed Disclosure at the end of this Appendix.

IV. What Changed & Summaries of Transactions: Sassafras and Hemlock Page Three, and Mimosa and Butternut Page Two

1. *Calculating Cash to Close*
The calculation of cash to close should be consistent between the Loan Estimate and Settlement Disclosures. The Honeylocust calculation leaves out the loan amount, the purchase price of the property (and in a refinance would probably leave out the payoff of the loan being refinanced and/or the amounts that would be disbursed to others), and the amount of closing costs that the borrower is likely to pay prior to closing, such as the appraisal fee.

2. *What Changed, Estimate and Final*
   - While Sassafras only showed final figures, the Round 8 prototypes show the previous estimates as well as the final amounts. This is a positive change because it will make it easier for the consumer to compare the Settlement Disclosure with the Loan Estimate.

   - In the Final column, the amounts that have changed are shown in bold type, while the amounts that have not changed are not bolded. Switching between bold and unbold based on a transaction-specific reason may be operationally difficult and disproportionately costly to implement, so we recommend against requiring it.

a. Bold Type/Category Totals
In Butternut, the columns cannot be totaled because they show both the total for all categories of Settlement Fees and Settlement Costs, as well as the individual amounts for each category. It would easier to understand, and easier to compare with the Loan Estimate, if the totals for Settlement Fees and Settlement Costs were shown in bold type, and the individual category amounts not in bold type.

b. Down Payment – Closing Costs to be Financed
In Round 8, these rows are substantially similar to Sassafras. It would be preferable on both the Settlement Disclosure and the Loan Estimate to calculate and disclose the Amount Owed by the Buyer to Seller on a separate table so that a single number could then be entered into the Cash to Close and Summaries of Transactions tables.

c. Increase Over Limits
This section shows a tolerance violation in Round 8. If the violation is not corrected at settlement, then we suggest that there should be a statement to the effect that the consumer should "Contact the lender for a refund of the Over Limit amounts." There may not be a need for such a notation if the violation is corrected pre-closing.

3. Interest Rate Changes
There is a new Interest Rate Change section in Round 8. It is not clear what this is meant to accomplish. For a fixed rate loan, no changes in the rate could occur after closing. That would be shown prominently on the first page of both the Loan Estimate and the Settlement Disclosure, so there is no need to show it again, or to include the row concerning adjustable rate terms.

For ARMs and step rate loans, it is hard to conceive of how this section could be completed, or what it would communicate to consumers. There is a need for additional prototypes disclosing these types of loans so that the disclosures can be improved through testing on more complex loan products.

4. Summaries of Transactions
In Round 8, there are added two Other Credits & Adjustment rows in the summary of the borrower's transaction, one above the Items Prepaid by Seller that are Due from Borrower row, and the other above the Adjustments for Items Unpaid by Seller row. The new rows are meant to be headings for the materials shown immediately below them, but they need to be reformatted to make that readily apparent to a consumer. The purpose for adding these headings appears to be to make it easier to understand what the Other Credit and Adjustments amount is, that appears in the What Changed section at the top of the page. The Borrower's Transaction section does not total up of all of the credits and adjustments, so the borrower may not realize that the $3,317.59 amount shown in the What Changed section is the sum of the $3,030.09 and $287.50 amounts shown below. There may also be adjustments due to the seller and credits to the borrower in the same transaction, which would make it even harder for borrowers to understand.

It would be preferable to show all credits and adjustments in the suggested Amount Owed by Buyer to Seller section.

The Proposed Disclosures at the end of this Appendix suggests how these disclosures can be streamlined.

IV. Loan Disclosures Page: Page Four

1. *Left Hand Column*
- We appreciate that the word "home" is changed to "property" in Round 8.
- It would be helpful if demand feature and negative amortization disclosures could be removed entirely on loans that do not have those features.

2. *Partial Payments*
The Rounds 6, 7, and 8 prototypes have disclosure about partial payments. They give the lender two options, disclosing that the lender will or will not accept partial payments. Partial payments involve many issues. We cannot comment on the partial payment iterations because we do not have the underlying rules. It is unclear how a lender would prepare a form with a rigid yes-or-no disclosure because a servicer may sometimes accept partial payments and other times not, depending on a number of circumstances. This is one area where more iteration would be constructive.

2. *Right Hand Column*
The Escrow Information in Mimosa, Sassafras, and Hemlock is in a lengthy, dense narrative form. Butternut uses a much-improved concise table. It is easier and faster to find the pertinent information in Butternut. Butternut's table would be easier for creditors to complete than inserting numbers into the middle of a narrative.

3. *In the Future*
All the Round 7 and 8 Settlement Disclosures have an "In the future" paragraph that mixes information relevant to a loans with and without an escrow account. It would be preferable to consolidate this information under the escrow or no escrow sections above.

V. Loan Calculations & Other Disclosures: Page Five

1. *Total of Payments*
Butternut and Hemlock include a Total of Payments of $354,038.18, described as the total the borrower would have paid after making 360 scheduled payments. It is not clear how the total was calculated. The total divided by 360 is $983.44. In both Butternut and Hemlock, the scheduled principal and interest payment is $548.25, a significantly lower number. It is possible that the calculation was made including some portion of escrowed items in the Total of Payments.

Again, the disclosure would communicate to consumers that loans with escrows cost more than loans with no escrows, which is inappropriate. If this Total of Payments disclosure survives, it should be calculated without any escrowed property taxes, insurance, or HOA fees.

On an ARM loan, this disclosure would always be inaccurate, possibly very much so. Almost no loans last anywhere near 30 years, so it is unclear what benefit this disclosure adds. For these reasons, we recommend removing this disclosure.

2. *Loan Calculations/Lender Cost of Funds/Average Cost of Funds*
This section in Round 8 is similar to that in Round 7, except that Butternut discloses an "Average Cost of Funds" rather than a "Lender Cost of Funds" and discloses the cost of borrowing from the Federal Home Loan Bank of San Francisco.

There are fundamental problems with this disclosure. First, it is not clear that this disclosure will provide information to borrowers that will be helpful to them for any purpose. Second, it assumes that the lender bases its loan pricing on its cost of funds at the time of origination. The lender's current cost of funds may be one element of loan pricing, but it is certainly not the only factor. The price at which the lender sells, or expects to be able to sell, the loan can be just as important. Supply and demand, for both loan originations and loan sales, are also significant factors in any loan pricing. The amount of fees Fannie Mae and Freddie Mac may charge for a loan is often a consideration, but these fees are not related to the lender's cost of funds. The cost of complying with applicable laws also affects the cost of loans, but is unrelated to the lender's cost of funds. Any disclosure of the lender's cost of funds would imply that the loan pricing is based on the lender's cost of funds, which would be rather misleading at best.

Because we do not know the substantive rules behind this disclosure, we do not know whether all lenders would disclose the same rate even if they are not eligible to borrow from Federal Home Loan Bank of San Francisco. Consumers may not see how the Federal Home Loan Bank of San Francisco has anything to do with a mortgage loan in Pennsylvania. If the intent is to use a cost of funds that does not require difficult definitions and expensive calculations, we suggest using a rate that will not cause consumer confusion.

We urge the CFPB to consider how difficult it would be for lenders to define and measure their cost of funds and for consumers to interpret these confusing amounts. Overall, we believe the limited benefits of any cost-of-funds disclosure would be outweighed by the costs of providing the disclosure and by the disadvantages of using an inherently misleading disclosure.

3. *Other Disclosures/Appraisal Copy*
This section in Round 8 is the same as in Sassafras, except that in Appraisal Copy the phone number to contact the lender is shown in a sentence rather than below the section. Because Round 8 uses a concise Contact Information section, it would be much easier to state, "If you have not yet received it, please contact the lender at the

phone number shown below." This provides the same information with less regulatory burden.

4. Contact Information
A new Contact Information section consolidates the contact information for the lender, mortgage broker, real estate brokers, and settlement agent. This is much clearer and easier to find and use.

5. Originator Fee Summary
Sassafras involved a mortgage broker and contained an Originator Fee Summary showing who paid the fee. On loans with a mortgage broker, we suggest including the broker's compensation under the origination charge (on page 3 of Sassafras), with a check box to show who paid the broker. The Sassafras approach takes up more space than should be necessary. Butternut and Hemlock do not involve a mortgage broker and do not contain any disclosure of an Originator Fee. We support this also, because when there is no mortgage broker, there is no need to disclose compensation to loan originator employees. That compensation would be complex to define, extraordinarily complex to calculate, and would not offer any consumer benefit.

VI. Honeylocust Loan Estimate

We appreciate that Round 8 includes both a Loan Estimate and Settlement Disclosures. We assume the Loan Estimate will go through additional changes before the integration project is complete. We look forward to the next iteration. In the interim, we make the following comments.

Page One

1. Payments for Taxes, Insurance & Assessments
The same changes suggested above for Project Payments should be made to the Loan Estimate.

2. Closing Costs/Cash to Close/Closing Costs Financed in Loan Amount
The same changes suggested above should be made to the Loan Estimate.

Page Two

1. Amount Owed by Borrower to Seller
As suggested above, in purchase transactions there should be a separate table calculating the amount owed by the borrower to the seller.
2. Calculating Cash to Close
The cash to close calculation should be simplified by using the Amount Owed by Borrower to Seller to eliminate numerous lines from this calculation and make the calculation for both purchases and refinances more alike.

Page Three

1. In 5 Years/Total of Payments
Instead of showing the In 5 Years comparison in the Loan Estimate and the Total of Payments in the Settlement Disclosure, whichever disclosure the CFPB believes is

most useful to the consumer should be shown on both the Loan Estimate and the Settlement Disclosure and the other eliminated.

The "In 5 Years" comparison double-counts principal payments, making the loan look more expensive than it actually is. A more clear disclosure would be:

$29,073	Interest, mortgage insurance and fees you will have paid.
$9,465	Principal you will have paid off.
$38,538	Total you will have paid in 5 years.

2. Headings

The Loan Estimate uses the headings of Comparisons and Other Considerations while the Settlement Disclosures use the headings Loan Calculations and Other Disclosures. The headings should be consistent.

Proposed Disclosures

Page 1 changes: Replace the Projected Payments and Closing Costs sections with the following (examples use Butternut/Hemlock transaction figures):

Projected Housing Payments

Payment Calculation	**Years 1-7**	**Years 8-30**
Loan Payments Principal & Interest Mortgage Insurance	 $548.25 $55.82	 $548.25
Taxes Insurance & Assessments *Amounts can increase over time.* Estimated Escrow Estimated Amount You Pay Directly	 $422.25 $128.31	 $422.25 $128.31
Estimated Total Monthly Housing Payments	**$1,154.63**	**$1,098.81**
Escrow *See Details on Page X.*	**[ ] Escrow.** Your escrow payments cover all of your taxes, insurance & assessments. **[ ] Partial Escrow.** Your escrow payments only cover some of your taxes, insurance & assessments. You must pay other costs directly, possibly in one or two large payments a year. **[ ] No Escrow.** You must pay all taxes, insurance & assessments directly, possibly in one or two large payments a year.	

Closing Costs

Loan and Title Fees	**$5,519.53**	*See Closing Cost Details on Page 3.*
Cash to Close	**$27,625.00**	*See Summary of Borrower's Transaction on Page 2.*
Closing Costs Financed in Loan Amount	**$0**	[x] Your Closing Costs will be paid from your Cash to Close. [ ] Your Closing Costs paid at closing are more than your Cash to Close. The excess will be paid from your Loan Amount.

Page 2 changes:

Summary of Borrower's Transaction/Changes to Cash To Close

	Estimate	**Final**
Loan Amount	$104,975.00	$109,805.63
Less Loan & Title Fees	$5,170.00	$5,519.53
Less Settlement Costs	$4,406.37	$8,093.51
Less Disbursements to Others		
Less Adjusted Purchase Price	$123,500.00	$126,817.59
Plus Deposit from [RE Broker]	$3,000.00	$3,000.00
[ ] Cash to Borrower [X]Cash to Close	**-$25,101.37**	**-$27,625.00**

Summary of Seller's Transaction

	Final
Adjusted Purchase Price	$123,500.00
Less Loan & Title Fees	$0
Less Settlement Costs	-$8,645.00
Less Disbursement to Payoff of First Mortgage	-$79,162.87
Less Disbursement to Payoff of Junior Mortgage	
[ ]Plus [ ]Less Other	
Less Excess Deposit from [RE Broker]	
Equals [X] Cash to Seller [ ]Cash From Seller	**$39,009.72**

Changes in Closing Costs and Interest Rate

Closing Costs Increase Over Limits?	Estimate	Final	Over Limit?
Costs that Could Not Increase			
A. Origination Charges	$2,769.00	$2,810.90	**YES** $41.90
D. Transfer Taxes	$2,470.00	$2,470.00	NO
Cost That Could no Increase by More than 10% in Total			
B. Services You Did Not Shop	$2,276.00	$2,583.63	
D. Recording Fees	$370.00	$370.00	**YES**
Total	$2,646.00	$2,953.63	$43.03

Contact the Lender for a refund of the Over Limit Amounts

Adjusted Sales Price

Sales Price of Property	$123,500.00
Plus Personal Property	
Items Prepaid by Seller Due from Borrower	
City/Town Taxes 1/24/12 to 12/31/12	+3,030.09
County Taxes ____ to ____	
Assessments _____ to _____	
HOA Dues 1/24/12 to 3/31/12	$287.50
Adjustments for Items Unpaid by Seller	
City/Town Taxes _____ to _____	
County Taxes ____ to ____	
Assessments _____ to _____	
Less Existing loan(s) assumed or taken subject to	( )
Adjusted Purchase Price	**$126,817.59**

Move Loan Calculations and Other Disclosures to Page 4. On Closing Cost Details page, show Initial Escrow Payment at Closing as a single row showing the amount of the deposit. Move Escrow Account Information to Page 5 and revise as follows to show all escrow information in one place:

Taxes, Insurance & Assessments (Property Costs)

Estimated Property Costs. Your property costs are estimated. In the future, it is likely that your property costs will change and that the amounts that you pay will change, whether they are paid from escrow or you pay them directly.

Year 1 Estimated Property Costs	Annual	Monthly
Paid From Escrow	$5.075.28	$422.94
You Pay Directly	$1,539.72	$128.31
Total	**$6,615.00**	**$551.25**

The monthly amount shown for property costs You Pay Directly is the monthly average of these property costs. These costs may actually be due in one or two large payments a year.

[ ] Paid From Escrow. $422.94 Monthly Escrow Payment
You will have an escrow account, also called an "impound " or "trust " account. We will pay the property costs listed below from your escrow account. If we fail to make a payment, we may be liable for penalties and interest.

Initial Escrow Payment at Closing *This payment is a cushion for your escrow account. The Aggregate Adjustment reduces the amount of the cushion.*	
Homeowner's Insurance $56.83 per month for 3 months	$170.49
Property Taxes $269.44 per month for 3 months	$808.32
Flood Insurance $96.67 per month for 3 months	$290.01
Less Aggregate Adjustment	-$422.00
Total	**$846.82**

[ ] Paid Directly. $1,539.72 Annually
The property costs listed below will be paid directly by you.

Property Costs You Pay Directly *You must directly pay the property costs listed below, possibly in one or two large payments a year.*	
HOA Dues	$1,539.72
Total	**$1,539.72**

[ ] You loan will not have an escrow account because:
[ ] We do not offer escrow accounts
[ ] You declined an escrow account. The fee for no escrow account is [$]____________[%].
Contact us if you wish to have an escrow account now or in the future

In the future, if you fail to pay property costs directly (including if you fail to pay after cancelling your escrow account), we may

- Add the amounts to your loan balance,
- Add an escrow account to your loan, or
- Require you to pay for property insurance that we buy on your behalf, which likely would be more expensive and provide fewer benefits than what you could buy on your own.

If you fail to pay property taxes, your state or local government may:

- Impose finance and penalties or
- Place a tax lien on this property.

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington DC 20552

January 27, 2012

Dear Director Cordray:

We, the undersigned organizations, are writing to urge you to adopt an expanded rulemaking process in the Consumer Financial Protection Bureau's (Bureau) very important work to synchronize and simplify disclosures and forms required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA).

We appreciate the efforts the Bureau has made to make the combining and streamlining of the forms an open process. The regular give-and-take between the Bureau, industry, and the public has been positive and holds the promise of better, more thoughtful, forms.

At this point in the process, however, it is becoming clear that the accompanying rules that will govern the use and application of these forms are every bit as important as the content of the forms themselves. Among other things, the rules will govern the timing and reliability of the forms and provide remedies for misdisclosure. Notwithstanding, no input on these rules has been invited. For this reason and to ensure a more workable proposal, we encourage you to use a similarly open and interactive process to arrive at the accompanying rules.

Specifically, we believe that the Bureau should adopt an iterative rulemaking process in advance of the July 21, 2012 statutory deadline for a proposed rule, under which it publishes an outline of potential underlying rules to accompany the disclosures and seeks written comment from the public on the content of the outline. It should then provide opportunities for similar input as the outline is revised leading up to a proposed rule.

Through this iterative process, the Bureau can develop its proposed regulation ahead of time and prevent unforeseen vagaries that will require extensive guidance after the rule is proposed. While we are cognizant of the July 21, 2012 statutory deadline for the proposed rule, we believe it is more important to get this right rather than simply getting it done. We do not believe the rule should be bifurcated in any manner resulting in unnecessary costs. Housing and mortgage markets remain under stress and considerable costs have been borne by consumers as a result of past reform efforts. The effort to harmonize RESPA and TILA must not add confusion or contribute unnecessary friction or costs. An iterative rulemaking process will help avoid both outcomes while giving the Bureau appropriate feedback from industry and the public as it moves toward a proposed rule.

Before the rule is proposed, the CFPB also should test its prototypes or draft disclosure forms on actual closed loans for a full range of loan products and for range of local real estate practices. The exercise of populating the forms with complete loan information for a variety of states and loan types, would demonstrate whether the forms are well designed and where they may add avoidable confusion for consumers. Early testing of this nature would prevent the possibility that after the rule is final, certain loan products will become unavailable because the forms and rules do not accommodate them or other potentially serious problems that could arise as a result of the diverse settlement practices found around the country. We would be happy to provide you with data and the names of lenders and settlement service providers for testing purposes.

Finally, we urge you to publically announce that you will convene a Small Business Advocacy Review panel as outlined by the Snowe-Pryor amendment (Section 1100G) to the Dodd-Frank Act (P.L. 111-203). To make this process as beneficial as possible to the Bureau and small businesses, we encourage the Bureau to make public its procedures for implementing and conducting these panels. Providing this level of transparency will help us and our members to offer useful information to the Bureau to ensure that the final product does not burden small business and will maximize consumer choice in settlement service providers.

Thank you for your time and consideration. We look forward to continuing our work with you to finally improve disclosures for consumers across the United States.

Sincerely,

American Escrow Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Community Mortgage Lenders of America
Mortgage Bankers Association
National Association of Home Builders
National Association of REALTORS®
Real Estate Service Providers Council, Inc. (RESPRO)
Real Estate Valuation Advocacy Association
The Realty Alliance

American Financial Services Association
Community Mortgage Banking Project
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

December 5, 2011

Mr. Rajeev Date
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Prototypes, Round 6

Dear Mr. Date:

The above-named trade associations appreciate the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Round 6 of the "Know Before You Owe" prototype integrated mortgage disclosure forms. We continue to support the CFPB's goal of developing clear and transparent disclosures that will benefit consumers. We appreciate the CFPB providing opportunities for comment as these forms are developed and tested. We look forward to continuing to work with the CFPB on this important task of creating clear and understandable mortgage disclosures.

In this letter, we comment on the Hornbeam and Ironwood prototype Settlement Disclosure Forms, which appear to be based on the existing HUD-1. We include a suggested Closing Costs statement and suggested Transaction Summary forms for your consideration, one for a purchase transaction and another for a refinance transaction. Many of our members, who have seen them, believe the suggested forms are more streamlined than the current HUD-1 and the Hornbeam and Ironwood prototypes, and they work better with the most recent Loan Estimate prototypes. The suggested forms are populated with information drawn from the Hornbeam and Ironwood prototypes and should be considered in revising the prototypes.

The suggested Closing Costs and Transaction Summary forms would all be dynamic, deleting items that are not used in an individual transaction, and adding them when needed. In a refinance transaction, for example, the seller's disclosures could be eliminated just as they are on the optional HUD-1A. In the suggested forms, we include lines and items that are not used to show how the forms would work in a variety of transactions, but we believe unused items could be eliminated.

At the same time, we do not believe the CFPB should require unused lines to be removed because the time and resources necessary to make the systems changes to implement such a requirement would be quite substantial for many lenders, while the difference to consumers would be negligible.

We understand that the first round of prototypes were developed using the existing statutory and regulatory requirements. As such, the prototypes do not indicate how the CFPB will handle disclosures required under state law. Some states require disclosures in addition to those required under RESPA and TILA. Ideally, when the CFPB's redesigned forms are complete, they will present clear, complete, relevant information and there would be no need for additional disclosures in some but not all states by some but not all lenders. We urge the CFPB to create a uniform nationwide disclosure system and preempt inconsistent state laws. In the alternative, the forms will need to be able to allow incorporation of a variety of state law requirements.

Additionally, we ask the CFPB to consider the disclosures in light of advances in technology. Years ago, consumers may have used good faith estimates as loan shopping tools but, today, technology advances have enabled consumers to shop for loans long before ever approaching any lender. This change obviates the need for shopping information in the CFPB's disclosure forms provided at the time of application.

Overview of Hornbeam and Ironwood Prototypes

We agree with the CFPB that disclosure forms should be clear, transparent, and understandable for consumers. While the first page of these disclosures is similar to the initial disclosure and provides some clarity concerning the loan terms, we are concerned about the organization and length of the Hornbeam and Ironwood prototypes. For example, there are disclosures about the interest rate on pages one and four; disclosures about the payment amount are on page one in two places, page three in the escrow payment breakdown, and on page five, with the escrow payment; disclosures about escrows are on page one in two places, page three in the escrow payment breakdown, and on page five; loan term disclosures are on pages one, four in the AIR table, and page five; and there are cost disclosures on every page. Additionally, page three of Hornbeam contains more columns than would fit on a piece of paper after the columns are populated. In an effort towards clarity, we suggest several ways to improve the forms while making them shorter. We attach forms that suggest clarifications, and below is a list of questions and suggested improvements to the disclosures.

Who Will Prepare the Settlement Disclosure Form?

Currently, creditors prepare final TILA disclosures while settlement agents prepare HUD-1s. The TILA disclosure is related to the loan, while the HUD-1 relates to a purchase and sale if there is one, and details about settlement charges and disbursements.

The Settlement Disclosure Forms are integrated, so it is not clear who would prepare them.

If creditors will prepare the forms, it will be imperative to require settlement agents to provide creditors, at least seven business days before closing, all necessary final closing costs to avoid redisclosure and a new waiting period. Otherwise, the redisclosures and new waiting periods could continually delay closings, which would be very inconvenient and costly to consumers, especially those who rely on the closing date for purposes of moving from one home to another. For this reason, it would be more practical to have settlement agents prepare the forms.

Consistent Terminology

It is critical that the Settlement Disclosure form work well with the Loan Estimate form. While the CFPB is still developing both forms, we have found that the Hornbeam and Ironwood prototypes do not work well with the most recent Loan Estimate prototypes. This is undoubtedly because the CFPB is still developing the disclosures. However, we suggest in this letter several ways the forms could be made to work together better because this will be important to consumers. One would be to use consistent terminology in Loan Estimates and Settlement Disclosure Forms. Here are some examples of inconsistent terminology:

- Both the Hornbeam and Ironwood prototypes, at the top of page two, refer to the "creditor." The Pinyon and Yucca prototypes that the CFPB issued in Round 5 of the Know Before You Owe initiative do so as well, at the top of page three. In several other places, the prototypes refer to the "lender."
- Both Hornbeam and Ironwood refer to a mortgage broker as a "broker" on page three and as an originator on page five. If this were a table-funded loan, would the broker be the lender, or would the funder of the loan be the lender and the broker be the originator?
- Pinyon and Yucca include a Loan ID, while Hornbeam and Ironwood use a Loan No. We suggest both should be designated "Loan ID No."
- Pinyon and Yucca disclose settlement costs, while Hornbeam and Ironwood disclose settlement fees.
- Hornbeam and Ironwood have categories called "Services in Connection With Your Loan" and "Title Charges." At least some title charges are in connection with a loan, so these category titles are not completely clear. Yucca and Pinyon have "Services You Can Shop For" and "Services You Cannot Shop For." Consumers certainly shop among lenders, so it is not accurate to say they "cannot" shop for services. We suggest using the titles "Services Selected by Lender" and "Services Borrower Shopped For" (or can shop for) in both the Loan Estimate and in the Closing Costs statements.

Loan and Purchase Transactions Should not be Blurred

On purchase transactions, both the Hornbeam and Ironwood prototypes do not consistently distinguish loan costs from property purchase costs, which we believe is confusing to consumers. The prototypes include personal property purchases added at the table, and pro-rated property rental income with loan term disclosures. This is confusing. We continue to urge that the purchase and loan transactions not be mixed together.

Headings on Pages One and Two

The headings at the top of pages one and two are crowded and would not accommodate long fields. We suggest creating space at the end of the form for contact information for the loan originator and mortgage broker. It should include the originator's and broker's names, phone numbers, e-mail addresses, and NMLS numbers. This would be similar to Pinyon and Yucca. It may also be helpful to include the NMLS website, http://www.nmlsconsumeraccess.org/.

Including the name of the settlement agent's employee who conducts the settlement should not be required. It is unnecessary, and it can change at the last minute. Redisclosure would be disproportionately disruptive.

The settlement information at the top of page one includes a location. The location should be the settlement agent's address rather than where the closing occurs because the borrower will need to retain the settlement agent's contact information.

The "File No." at the top of page one is vague. It should be "Settlement ID No." and should be under Settlement Information.

MIC should be spelled out as "Mortgage Insurance Case No." so consumers will understand what it is.

The heading on page two relates to the loan officer and lender, while page two relates to the purchase and sale transaction. Moreover, the information is largely redundant. This heading should be removed. The NMLS ID number should be included with the other lender contact information.

Monthly Payment

For many consumers, the most important information is the total monthly payment, which is the amount that includes principal, interest, taxes, and insurance. On both the Hornbeam and Ironwood prototypes, this information appears towards the bottom of page one as it is presented in the Pinyon and Yucca prototypes. We believe this critical information should instead be moved towards the top of the page, along with the other loan terms, perhaps with a reference to the related escrow information under the Projected Payments heading.

The form needs the flexibility to be able to handle daily simple interest loans. On these loans, the first payment amount is commonly larger than later payments.

Cash to Close

The Cash to Close is calculated very differently than the estimated Cash to Close on the Pinyon and Yucca prototypes. Hornbeam and Ironwood calculate the Cash to Close on page two as the sum of the contract sales price plus closing costs, less the deposit and loan principal, with an adjustment for taxes. Pinyon and Yucca calculate it on page two as the sum of origination charges, services the borrower can and cannot shop for, taxes, prepaids, and the initial escrow deposit. This difference is unnecessary and would be confusing.

The calculation of Cash to Close in Hornbeam and Ironwood implies that any amounts shown on lines 100-302 of the Settlement Disclosure Form would need to be estimated in preparing the Loan Estimate. These would include, for example, amounts the borrower pays for personal property as shown on line 102, assignments of the seller's escrow account in an assumption, rent due from a tenant of the property (currently shown on lines 104 or 105), the adjustment for taxes and assessments unpaid by seller listed in lines 210-212, and adjustments for unpaid utilities listed on lines 213-219. The intent may be to reflect these adjustments in the "Other Credits and Adjustments" line in the Calculation of Cash to Close in the Loan Estimates. However, creditors will not have this information when they prepare the Loan Estimate.

Closing and Disbursement Dates

The first page should contain both the closing and disbursement dates.

Page Two, Summaries of Borrower's and Seller's Transactions

Most of this information will not be relevant for a refinance or for a home equity loan. We suggest making this the last page, and eliminating it on refinances and home equity loans.

Page Three, Appraisal Fee

Both Hornbeam and Ironwood include in Line 906 a single entry for an appraisal fee, which we support. From the consumer's point of view, this is the best disclosure because it is short and free of clutter. We realize that one letter has expressed support for breaking the fee into the amount paid to an appraisal management company (AMC) and the amount paid to an individual appraiser. The reasons for that position are unrelated to the information consumers need.

Consumers need to know the amount of the charge, and if the CFPB will use tolerances, they will need to know whether the amounts subject to the tolerance, including this fee exceed, the tolerance. It makes no difference to consumers whether 60 percent of the fee goes to the appraiser and 40 percent to the AMC, or the reverse.

Consumers receive copies of the appraisal so they can see the level of analysis that it entailed. The fee does not determine the level of analysis. Many factors affect appraisal fees, such as local supply and demand, and the complexity of the appraisal.

Requiring a single disclosure is one way in which the CFPB can minimize the information overload in mortgage disclosures to avoid harming consumers.

Requiring two separate disclosures would greatly increase litigation risk if the charge were disclosed incorrectly, even in the absence of consumer damages or losses.

Page Three, Closing Costs

The fee disclosures in the Closing Costs statement should be consistent with their disclosure in the Loan Estimate. That is, page three of Hornbeam and Ironwood should have the same layout as page two of Pinyon and Yucca.

The escrow deposit should not be itemized. The borrower will receive an escrow analysis, so itemization is not necessary. RESPA requires aggregate accounting.

Page three does not make readily apparent that settlement costs are the sum of the 800, 900, and 1000 series.

Page Four, AIR Table

ARM loan disclosures should include the fully-indexed rate. The table does not disclose that if the index remains unchanged, the rate would increase or decrease to the fully-indexed rate. Nor does it disclose what the payment would be at the fully-indexed rate. The table should be revised to include these facts. We remain very concerned that consumers would not notice the difference between two loans with similar initial rates and lifetime ceilings, where one loan had a premium initial rate and the other loan had a deeply discounted initial rate. These would be very different loans, and the consumer needs to see and understand the difference.

In Yucca, Hornbeam, and Ironwood, this table is included with information on settlement charges. (Pinyon was a fixed-rate loan). This table shows information central to understanding the loan terms for ARM loans, and should be included with loan terms rather than settlement charges.

The acronym AIR should be deleted because consumers may not know what it means, on pages one and four. To the extent this table includes substantive information, it should appear on the first page because it is information about the loan terms, not closing costs. There should also be more information regarding the index because most consumers will not be familiar with "LIBOR" and how the index is calculated. We recommend that more information be provided, perhaps in the form of a link to the CFPB website that would provide additional information.

Page Four, Tolerances

It is not clear where the credits for the interest rate chosen would be included.

The refund due to the borrower should be more apparent. We recommend that there be a refund disclosure that refers to the 200 series, or state that the borrower will receive the refund separately.

Page Five, TIP Disclosure

In our view, the "Total Interest Percentage (TIP)" disclosure is completely unnecessary, will confuse, and even may harm, consumers. Unless consumer testing shows otherwise and that the disclosure is helpful, it should be eliminated. Currently, the interest rate and the annual percentage rate (APR) must be disclosed. Adding a third rate, the TIP, will confuse consumers because they are unlikely to understand that this rate is unrelated to the interest rate and APR. They also are unlikely to understand why the TIP rate is high or how to calculate it. As interest rates rise, this disclosure will become even more alarming, taking consumers' attention away from more relevant loan terms.

We also do not understand how a TIP rate can be calculated meaningfully if the interest rate can change over the life of the loan and if the future rates are not known at the time of application. Moreover, the calculation would apparently be based on an assumption that the loan is outstanding for its full term, although that is an extremely rare occurrence.

Considering all of these factors, we are especially concerned that consumers may choose a loan product because it has a lower TIP when another loan product would be more appropriate.

We understand that the TIP information would be required under § 1419 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 Act ("Act"). However, § 1405(b) of the Act allows the CFPB to exempt or modify disclosure requirements if the CFPB determines that an exemption or modification would be "in the interest of consumers and in the public interest." We strongly urge the CFPB not to require a TIP disclosure.

If the CFPB does includes a TIP disclosure, we urge the CFPB to provide consumers relevant information about it, including that it is unrelated to the interest rate and the APR even though it is expressed as a percentage rate. This statement should be clear on both the early and the late disclosures. Other information would also be necessary, such as the unusual assumptions underlying the calculation. This would best be handled by providing a link to a page on the CFPB website that explains this additional information.

Page Five, Cost of Funds

Similarly, the "Lender's Cost of Funds" disclosure is completely irrelevant to a consumer's choice of a loan, and is likely to be confusing. The prototypes state, "This is not a cost to you[,]" acknowledging the irrelevance of this disclosure.

The cost of funds disclosure is presumably based on the Dodd-Frank requirement that disclosures include the "the approximate amount of the wholesale rate of funds in connection with the loan[.]"[1] The Act did not define the wholesale rate of funds, when or how to measure it, or how it is "in connection with" a loan.

It would be very difficult operationally for lenders to calculate, or even define, their cost of funds. We strongly believe this disclosure should be eliminated because it has no borrower benefit and would draw borrowers' attention to information that is irrelevant to their borrowing choice.

If the disclosure is retained, we recommend that the CFPB calculate and publish the cost of funds rather than requiring lenders to calculate their cost of funds. Otherwise, the regulation would need to define the cost of funds, the period of time during which to measure it, whether it includes hedging costs and if so how, and so on. This regulatory definition and measurement would need to survive a § 1022 cost-benefit analysis, which would be difficult because the disclosure is entirely irrelevant to consumers' loan decisions, while, at the same time, presenting a significant, ongoing compliance burden.

Pages Five and Six, Other Disclosures

Generally, these pages include several disclosures that until now have been provided separately. If these disclosures are to be provided on the settlement disclosure form, we strongly urge that the CFPB undertake the necessary rulemaking so that these disclosures need not be given elsewhere in the process. Otherwise, the forms risk overburdening the consumer unnecessarily and diverting attention from the more important information on these forms.

Moreover, integrating numbers or variable rate fields into a paragraph of text as in the escrow account and security interest disclosures and in several disclosures in Hornbeam is difficult. If these disclosures will be used, they should be in tables. Tables would be easier for borrowers to understand and very significantly easier for lenders to implement.

Ironwood discloses the APR and finance charge on page five. TILA § 122(a) requires that these items be disclosed "more conspicuously than other terms[.]" If the CFPB will include these terms late in the disclosure, its regulation should be extremely clear that this is not a TILA violation.

[1] Dodd-Frank Act § 1419, TILA § 128(a)(17).

The "Escrow" disclosure on page five cannot accommodate loans in which some but not all items are escrowed, although this is common. The escrow disclosure should allow the disclosure contemplated by TILA § 106(c) that the borrower may select the hazard insurance provider so that it will be excluded from the finance charge.

The "Demand Feature" and "Negative Amortization" disclosures on a loan that lacks these characteristics is unnecessary. These disclosures should be required only for loans that have these characteristics. When required, the disclosure should be on the first page of both the Loan Estimate and the Settlement Disclosure Form. We note that the Yucca and Pinyon forms disclosed the absence of prepayment penalties and balloon payments. It is not clear why the absence of these particular features apparently would always be disclosed, but other risky features would apparently be treated differently.

The "Partial Payment Policy" needs a third option. "We will put partial payments in a suspense account. When we receive enough additional payment(s) to equal a full payment, we will remove the full payment amount from the suspense account and apply it to the loan."

The "Security Interest" disclosure on page five should refer to the property disclosed on the first page of the disclosure. It should use the word "property" rather than "home" because the property may not be the borrower's home.

The "Appraisal Copy" disclosure should not need to repeat the lender's contact information because it complicates preparing the disclosure without adding any consumer benefit. It could simply refer to the location of the contact information.

The disclosure about "Liability After Foreclosure" is misleading. This liability varies from state to state, and the two options provided may not be accurate under every state's law. Additionally, whether there is the possibility for personal liability after foreclosure may be fact-dependent. If this disclosure is required, then it should be rewritten to alert the borrower to potential, rather than certain, liability.

The "Tax Deductions" disclosure also could be misleading. There are other fact situations where mortgage interest may not be tax deductible beyond borrowing more than the home is worth. We suggest adding as the second sentence of this disclosure: "In some instances, mortgage interest may not be tax deductible regardless of the home's value."

The Ironwood "Closing Cost Summary" does not indicate how the lender should calculate the settlement fees that are considered to be financed in the loan amount.

The Ironwood "Total of Payments, Finance Charge, and Amount Financed" do not appear on the Loan Estimate. If these disclosures are not helpful to the consumer at the time of application, they are not helpful at closing, so it is not clear why they are in the Settlement Disclosure Form. Moreover, these disclosures appear unnecessary because the Loan Estimate discloses the Loan Amount, Settlement Costs, and the Five Year Comparison.

Finally, we recommend numbering the several disclosures.

Suggested Closing Costs Statement

The Hornbeam and Ironwood prototypes devote a large amount of space to costs paid outside closing and to tolerances. Our suggested Closing Costs statement streamlines these disclosures. It also removes line numbers, using instead letters for blocks to save space. We note that some lenders may find removing line numbers to be a very significant implementation hurdle, so we recommend that the CFPB permit but not require eliminating line numbers.

Aggregate Origination Charge

The suggested Closing Costs statement aggregates origination charges other than discount points and a mortgage broker's fee. It includes a line for a credit to the interest rate. There appears no benefit, either to consumers or lenders, to itemize origination charges more than this.

Real Estate Brokers' Fees

We moved "Total Real Estate Broker Fees" to the purchase money Transaction Summary for two reasons. First, the fees only apply to purchase transactions, so in refinances they would add unnecessary clutter. Second, real estate broker fees are not on the Loan Estimate, so removing them from the Closing Costs statement makes it easier for the consumer to use the Settlement Disclosure Form together with the Loan Estimate. Another alternative would be to list Total Real Estate Broker Fees as the last category in the Closing Costs statement rather than the first, because that would make it easier to compare with the Loan Estimate.

Costs the Lender Does Not Require

We added "Additional Closing Costs Not Required by Lender" as Block H on the Closing Costs statement because the prototypes have no place to put services that the lender does not require. Hornbeam and Ironwood show fees for a survey, pest inspection, and borrower's attorney, but we do not know whether the lender required these. It is highly unlikely that the lender required the borrower to have an attorney. If the lender did not require the services, including them as part of the "Settlement Fees" disclosed on the first page could mislead the consumer into believing that they are loan costs when they are not. We continue to urge against blurring loan costs with costs not required for the loan. By making clear to the consumer that a service is not required for the loan, the consumer will be able to decide whether to obtain the service, and who to negotiate with for that service. If the costs are mixed together, the consumer may miss this opportunity to make a decision.

We grouped together fees subject to the 10 percent tolerance, and label them as limited to the 10 percent tolerance disclosed on the loan Estimate. This shows tolerance information and tolerance cures clearly in the Closing Costs statement, ties the disclosure explicitly to the Loan Estimate for ease of comparison, and entirely eliminates the need for the page 4 "Limits on Increase" table.

We moved Recording Fees into "Services Selected by Lender" because they are currently subject to the aggregate 10% tolerance.

If there were a potential violation of the aggregate 10 percent tolerance, this suggested form would allow a lender to correct it in either of two ways. The lender could pay all or a portion of a specific charge, and show it on the row for that charge in the Paid by Others columns. Or, the lender could show a Lender Credit on a separate row with a credit to the borrower in the Paid by Borrower At Closing Column and the amount paid by Lender shown in the Paid by Others columns.

Costs Paid by Others

It is important to show whether borrower-paid and seller-paid items are paid at or before closing. The suggested Closing Costs statement has sub-columns for both the borrower and seller showing the amount of each fee paid at closing and paid before closing. It is not necessary to show to a borrower or seller whether items paid by others (including by the lender) are paid at closing or before closing. To save space in the suggested form, the "Paid by Others" columns show the amount of the payment and who paid it, but not the timing. This streamlines the statement and removes the table at the top of page 4 in Ironwood, without eliminating relevant information.

Lender Credits

The suggested Closing Costs statement has a Row D called "Lender Credits." It is in the same sequence as in the Yucca and Pinyon Loan Estimates page two, as the last item in settlement fees. On the Loan Estimate, we recommend labeling Lender Credits as "D" and relettering D through F as E through G, so the Loan Estimate and Closing Costs statement will work together. In all cases, we believe the titles of all rows should be consistent between the Closing Cost statement and the Loan Estimate.

Transfer Taxes

We include a Row E, Transfer Taxes, and note the tolerance. Again, we distinguish between transfer taxes on the mortgage and transfer taxes on the purchase transaction. It is important that the consumer be able to see the difference. Making clear which taxes are not a loan charge will better enable the purchaser to negotiate with the seller about who pays the taxes.

Escrow Deposit

The Initial Escrow Deposit, Row G, shows the amount transferred from an existing escrow account in a refinance transaction. In an assumption where the seller's escrow account is transferred to the buyer, that would be shown as an adjustment to the Net Amount Owed by Buyer to Seller, in the Transaction Summary, and not as a transfer in Row G of the Closing Costs statement.

Totals

The totals at the bottom show which items are included in Settlement Fees (A through D), which are in Other Closing Costs (E through H), and the amount the borrower and seller pay at closing, in bold.

Credit Insurance

There is also no disclosure of credit insurance premiums. We believe this is an important disclosure for consumers. We also note that under section 106 of TILA, credit insurance premiums must be disclosed in order to be excluded from the finance charge.

Suggested Transaction Summary (Purchase Money)

Simultaneous First and Second Mortgages

The suggested Transaction Summary form for a purchase transaction accommodates simultaneous first and second mortgage loans. In these cases, each loan would have its own Closing Cost Detail and loan term disclosures, but only one Transaction Summary.

Assumed Loans

This suggested Transaction Summary accommodates two loan assumption circumstances. The buyer may assume a loan that is the subject of the disclosure, or the buyer may assume a different loan. The assumed loan always reduces the net amount the buyer owes the seller. In the Summary of the Buyer's Transaction, in calculating the amount of cash to or from the buyer, closing costs associated with assuming one or more loans are added, but the amounts assumed are not subtracted.

Net Amount Owed by Buyer to Seller

In the Hornbeam and Ironwood prototypes, the net amount the buyer owes the seller is calculated twice, once in the Summary of the Buyer's Transaction and in the Summary of the Seller's Transaction. We save space and make the form simpler by calculating this only once. We similarly suggest showing the adjustments for taxes and assessments once rather than twice.

Real Estate Brokers' Fees

We put the real estate brokers' fees on the Transaction Summary for a purchase transaction because that is where they are most relevant. As noted above, another alternative would be to list them as the last category of fees on the Closing Cost statement.

Summaries of Transactions

We reordered the information in the Summary of the Borrower's Transaction and the Summary of the Seller's Transaction.

Transaction Summary (Refinance)

As with the Transaction Summary for purchases, this form can accommodate simultaneous first and second mortgages. Deleting inapplicable information simplifies the form considerably.

This form provides the same information as the current HUD-1A, but in a format consistent with the Purchase Money Transaction Summary and in a slightly different order. The final line is the cash to or from the borrower.

Conclusion

Again, we appreciate the opportunity to provide comments on these disclosures as they are being developed. We are pleased that the CFPB continues to improve the mortgage disclosures. We look forward to continuing our dialogue on future iterations.

Sincerely,

American Financial Services Association
Community Mortgage Banking Project
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

Attachments

cc: P. McCoy
B. Olson

CLOSING COSTS

Lender:	Loan ID __________	
☐ First ☐ Second Mortgage	☐ New Loan ☐ Assumption	☐ Purchase ☐ Refinance

	Paid by Borrower		Paid by Seller		Paid by Others	
	At Closing	Before Closing	At Closing	Before Closing	At/Before Closing	Paid By
A. Origination Charges Amount paid by Borrower limited to $2,510.00 disclosed on Loan Estimate						
Origination Charge	1,300.00					
Discount Points 1.00%	1,210.00					
[Credit for Interest Rate]	( )					
Broker Fee to Friendly Mortgage Broker Co.					2,420.00	Lender
Credit - Reduces origination charges paid by borrower to limit	( )					
B. Services Selected by Lender Combined charges paid by Borrower limited to $1,753.95 (10% over the $1,594.50 disclosed on Loan Estimate)						
Credit Report to Creditco		12.00				
Tax Status Research Fee to Collateral Research Inc.	55.00					
Flood Determination Fee to Collateral Research Inc.	25.00					
Tax Monitoring Fee to Monitoring Services Inc.	35.00					
Flood Monitoring Fee to Monitoring Services Inc.	40.00					
Appraisal Fee to Local Appraisal Co.		675.00				
Document Preparation Fee to Collateral Research Inc.	125.00					
Settlement or Closing Fee to ABC Settlement Co.	350.00					
Abstract or Title Search Regional Title Co.			275.00			
Title Examination to Regional Title Co.	200.00					
Title Insurance to Treasurer State of Iowa Coverage: Lender $121,000/Owner $135,000	110.00					
Recording Fees: Deed 27.00 Mortgage: $92.00	119.00					
Credit - Reduces combined charges paid by borrower to limit	( )					
C. Services Borrower Shopped For						
[None in this example]						
D. Lender Credits						
[None in the Example]	( )					
E. Transfer Taxes Amount Paid by Borrower limited to $0 disclosed onLoan Estimate						
Purchase: 216.00 Mortgage: $0			216.00			
F. Items Paid In Advance						
Hazard Insurance Premium (12 mo.) to XYZ Ins. Co.	596.00					
Flood Insurance Premium (12 mo.) to Natl. Flood Co.	1,695.00					
Daily Interest Charges (11/9 to 11/30)@9.66 per day	202.86					
G. Initial Escrow Deposit						
See Initial Escrow Account Disclosure Statement *[Deposit reduced by transfer of $__________ from Borrower's escrow account on refinanced loan.]*	1642.42					
H. Additional Closing Costs Not Required by Lender						
Survey Fee to Surveyors Inc.	105.00					
Pest Inspection Fee to Home Pest Co.	200.00					
Borrower's Attorney to Tyler & Brady LLP	400.00					
Settlement Fees (A+B+C+D) $4,256.00 Paid by Borrower at or before closing.	3,569.00	687.00	275.00		2,420.00	
Other Closing Costs (E+F+G+H)	4,841.28		216.00			
Total Closing Costs	**8,410.28**	687.00	**491.00**	0	2,420.00	

TRANSACTION SUMMARY [Purchase Money]

Loan Identifications:

First Mortgage Lender: Hornbeam Bank	Loan ID: 1111111111	[X] New Loan [ ] Assumption
Second Mortgage Lender:	Loan ID:	[ ] New Loan [ ] Assumption

A. Net Amount Owed by Buyer to Seller

Sales Price		135,000.00
Plus Personal Property		
Adjustments - Plus items paid in advance by Seller, Less items unpaid by Seller		(1,038.84)
City/Town Taxes _____ to _____		
County Taxes 7/1/11 to 11/9/11	(1,038.84)	
Assessments _____ to _____		
Less Existing First Mortgage assumed or taken subject to		( )
Less Existing Second Mortgage assumed or taken subject to		( )
[ ] Plus [ ] Less Other:		
Net Amount Owed By Buyer to Seller		133,961.16

B. Summary of Real Estate Brokers' Fees

Name of Real Estate Broker	Amount	
Reliable Realty Co	4,375.00	
Realty Pros LLC	4,375.00	
Real Estate Broker Fees Paid by Buyer		
Real Estate Broker Fees Paid by Seller		8,750.00

C. Summary of Buyer's Transaction

Net Amount Owed by Buyer to Seller (from A)		133,961.16
Plus Real Estate Broker Fees Paid by Buyer (from B)		
Plus First Mortgage Closing Costs		8,410.28
Plus Second Mortgage Closing Costs		
Plus Disbursements to Others		
Name	Amount	
Less Deposit Held by [RE Broker]		(4,000.00)
Less New First Mortgage Loan Amount		(121,0000.00)
Less New Second Mortgage Loan Amount		( )
[ ] Plus [ ] Less Other:		
Equals Cash [ ] To [X] From Buyer		17,371.44

D. Summary of Seller's Transaction

Net Amount Owed by Buyer to Seller (from A)		133,961.16
Less Real Estate Broker Fees Paid by Seller (from B)		(8,750.00)
Less First Mortgage Closing Costs		(491.00)
Less Second Mortgage Closing Costs		( )
Less Disbursements to Others		
Name	Amount	
		( )
Less Excess Deposit from [Name of RE Broker]		( )
[ ] Plus [ ] Less Other:		
Equals Cash [X] To [ ] From Seller		124,720.16

TRANSACTION SUMMARY (Refinance)

Loan Identifications:

First Mortgage Lender: Hornbeam Bank	Loan ID:	[X] New Loan [ ] Assumption
Second Mortgage Lender:	Loan ID:	[ ] New Loan [ ] Assumption

Summary of Borrower's Transaction

First Mortgage Loan Amount		
Second Mortgage Loan Amount		
Less First Mortgage Closing Costs		( )
Less Second Mortgage Closing Costs		( )
Less Disbursements to Others		( )
Name	Amount	
[ ] Plus [ ] Less Other		
Equals Cash [ ] To [ ] From Borrower		

Consumer Mortgage Coalition

October 31, 2011

Rajeev Date
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Prototypes, Round 5

Dear Mr. Date:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Round 5 of the "Know Before You Owe" prototype integrated mortgage disclosure forms. We continue to support the CFPB's iterative approach to redesigning these important disclosures.

We want to begin this letter, though, by noting that the prototypes may not be well suited for the ways in which consumer shopping is adapting to modern technology. Recently, software available on mobile web access devices such as smartphones and tablets has streamlined the home and mortgage shopping process. This technology is evolving rapidly. With mobile devices, consumers can find detailed information about homes for sale, including those located near where the consumer is at the time of a search. Mobile devices can retrieve information about homes, their cost, price history, comparable sales nearby, current loan rates, and an approximate monthly loan payment. Consumers can retrieve information about estimated loan payments based on loan terms the consumer selects, and they can receive estimated property taxes and insurance. They can receive competing quotes from multiple lenders. Software can connect consumers to lenders or real estate agents with a click. Very detailed information is available by a few clicks long before a consumer ever approaches a lender and receives a Loan Estimate.[1] The amount of information available to consumers will increase in the future.

[1] "Zillow takes its Mortgage Marketplace Mobile;" "Intuit"s Mint.com, 'Way to Save' compares home loan options to a person"s income, debt ratio and credit." "Mint.com works with CreditSesame.com on the product, which provides bank-level analytics to produce loan options for consumers. The Credit Sesame analytics engine creates a financial profile against thousands of products from lenders and brokers, producing a customized list of loan options." http://www.americanbanker.com/issues/176_196/zillow-PFM-mortgage-mobile-1042960-1.html?zkPrintable=true

Given this reality, it does not appear that the Loan Estimate disclosure will be used as a shopping tool because the consumer will have finished shopping by the time they apply for a loan. Therefore, we would encourage the CFPB to recognize the technology tools that are available today and focus its disclosure project on streamlining the disclosures that are needed once the consumer applies for a loan, rather than trying to use the Loan Estimate disclosure as a shopping tool.

When the project to streamline mortgage disclosures first began in 1995, technology and the electronic tools that were available to consumers at that time were almost nonexistent. The Consumer Mortgage Coalition recommended that technology tools be developed to assist the consumer in shopping for mortgage loans. With time, however, technology moved faster than the policymakers and the regulations. We are very fortunate today that technology is enabling consumers to have a robust shopping experience before they apply for a loan.

Page One

Closing Costs and Estimated Cash to Close

The statement that "All other estimated closing costs expire on 10/31/2011 at 3:30 p.m. MDT" implies that, if the borrower acts before that deadline, these other closing costs are subject to tolerances.

At the bottom of the first page, there are two labels for the same item, "Closing Costs" and "Estimated Cash to Close." This amount includes items for which tolerances would be inappropriate because they are not subject to the lender's control or even influence. The lender should not be subject to tolerances for items that borrower or seller control or elect. Nor should the lender be subject to tolerances for purchase transaction charges.

This amount includes owner's title insurance, homeowner's insurance premiums, homeowners' association fees, down payment, and seller credits. These items are all related to the property purchase transaction because they would be payable in a cash purchase. The total amount also includes transfer and recording taxes and other government fees. This apparently would combine taxes and fees on both the property purchase and on the mortgage. The lender should not be subject to tolerances for charges unrelated to the mortgage transaction.

Loan Estimate

The disclosure of the "Product" will need to be defined with specificity.

Loan Terms

This part of the prototype has important improvements. We support changing the term "Monthly Loan Payment" to "Monthly Principal and Interest" because the new term is more specific and clearer without adding confusion, an important improvement. The

Round 5 prototypes refer the reader to the "Payment Calculation" on the same page so all items that go into the payment are plainly detailed.

We also support the removal of "Cash to Close" from the first page and its replacement with "Estimated Cash to Close." The amount is estimated, so adding that word is very important.

Separating the estimated cash to close from the "Key Terms" is also helpful because some of the items included in the estimated cash to close relate to the property purchase rather than the loan amount. These items are not loan terms at all, and it is important that consumers are aware of this distinction.

Similarly, we support changing the title from "Key Terms" to "Loan Terms" and limiting the "Loan Terms" to terms that are indeed only loan terms.

In the Yucca Bank prototype, an ARM loan disclosure, under the "Interest Rate" is a reference to the "AIR table on page 2." We recommend spelling out the table's name rather than using an acronym. The term "AIR table" is not familiar to consumers, so spelling out the term will make it easier to understand, and will make it easier for consumers to find the table on page two.

Projected Payments

The Pinyon Bank prototype shows the principal and interest, the mortgage insurance payment, and the estimated taxes and insurance, noting that these can increase over time. It shows that the loan will have an escrow. It also shows that mortgage insurance premiums will terminate after year seven. These disclosures are clear.

The Yucca Bank prototype is the first Know Before You Owe prototype that relates to a loan without an escrow. It shows that the estimated taxes and insurance are zero. This is materially inaccurate, it is to the consumer's detriment, and we cannot support it.

It is very important that the consumer not be misled to think that a loan with no escrow is less expensive that a loan with an escrow, because the cost overall is the same. A consumer comparing the Pinyon Bank and Yucca Bank prototypes may think the Yucca Bank loan is far cheaper that the Pinyon Bank loan, while they are only slightly different. The difference is apparent only if the consumer were to notice the boxes checked to show "Escrow" or "No escrow." Some consumers may not know the term escrow. This important effect of the escrow is too obscure.

Some loans escrow multiple items, some loans escrow no items, and some loans escrow some but not all of the same items. The disclosures will need to accommodate each possibility.

For all of these reasons, we strongly recommend the following changes:

Change the title of the "Estimated Taxes & Insurance" row to "Estimated Escrowed Taxes & Insurance." This row would show the estimated monthly amount of the escrowed items, but not the monthly amount for items that are not escrowed.

Change the title of the "Escrow Information for Estimated Taxes & Insurance" row to "Estimated Taxes & Insurance You Will Pay Directly." This row would show the dollar amount of items that the borrower would pay directly.

This section would appear for Yucca Bank (no escrow), Pinyon Bank (escrow), and for a third loan on which some items are escrowed and some are not, as follows:

Yucca Bank:

Estimated Taxes & Insurance You Will Pay Directly	$212.00 a month	No escrow. You must pay your taxes and insurance separately from your loan payments.

Pinyon Bank:

Estimated Taxes & Insurance You Will Pay Directly	$0 a month	Escrow. Your monthly payments include your taxes and insurance.

Third loan, assuming that taxes and assessments of $105 will be paid from escrow and homeowner's insurance of $100 would be paid directly:

Estimated Escrowed Taxes & Insurance	$105.00 a month	Partial escrow. Your monthly payments include an escrow payment.
Estimated Taxes & Insurance You Will Pay Directly	$100.00 a month	Partial Escrow. Your monthly payment does not include all of your taxes and insurance. You must pay some taxes and insurance separately from your loan payments.

Closing Costs

The "Closing Costs" item is moved out of Key Terms, and is labeled as "estimated." Both are improvements.

Page Two

The prototypes do not yet make clear where certain third party charges are to be included, and this will certainly need to be very clear.

Loan Number

Including the loan number of the form is helpful. Consumers very commonly call with questions after they receive a disclosure, and having the loan number handy makes authenticating the consumer's identity easier.

Origination Charges

We support putting the discount points or premium credit for the selected interest rate on a separate line. This is an important item for consumers to understand.

Otherwise, there is no reason to itemize the origination charges in section A. The total cost to the consumer is the same, and none of the items are shoppable. This is one area where streamlining the forms can remove clutter without interfering with the consumer's shopping process.

We support moving lender credits from this section to the "Calculation" of estimated settlement costs. This is a more logical and clear location.

Services You Can Shop For

This section itemizes title charges that current RESPA rules aggregate. This would not be helpful for either the consumer or the lender.

The prototypes contain an itemization of "Title – Owner's Policy (optional)." We recommend removing this item because lenders do not require owner's title insurance. There are many optional items that lenders do not require, and these optional items should not be required to be disclosed in the Loan Estimate. The decision whether to purchase owner's title insurance should be included in the CFPB's consumer education materials, and interested consumers should be directed to title insurers for information. Lenders are not able to estimate the cost of owners' title policies as accurately as title insurers.

Prepaids

The term "Prepaids" is confusing because it implies that the included items are prepaid finance charges, although they may or may not be. Additionally, the term implies that the items are paid before closing, while they may be paid at closing. We suggest that the section instead be titled, "Items Paid in Advance."

Initial Escrow Payment at Closing

The prototypes continue to break down the escrow deposit into separate charges for separate items. If the Loan Estimate requires showing how much is deposited into an escrow for each item separately based on the monthly cost, the total of these amounts will not equal the amount actually deposited into the escrow. While it would be possible to devise and disclose an adjustment to reconcile the disclosure with the actual escrow deposit, a reconciling adjustment would be confusing. The cleaner approach would be to show the total amount actually deposited into the escrow.

Limits on Increases

This section does not accurately reflect the current RESPA tolerances. For example, current good faith estimate does not itemize the components of the lender's origination charges as the Round 5 prototypes do, and the zero tolerance applies to the origination fee as a whole. The Round 5 prototypes imply that the limit applies to the items individually.

These prototypes do not reflect the fact that interest rate-dependent charges can change until the rate is locked. There is no indication that the ten percent tolerance only applies to shoppable services if the borrower chooses a provider not identified by the lender.

The statement that certain charges "generally" cannot increase by certain amounts is unclear. The statement that increases are limited is followed by a statement that "We will notify you if a change causes an increase above these limits" seems to contradict the statement that there are limits.

Calculation of Estimated Cash to Close

We recommend that settlement costs that the consumer pays before closing not be included on the same line as the down payment.

It is unclear where to put credits paid by a third party, such as the consumer's employer. Is this item to go in "Other Credits and Adjustments" or in "Funds from Borrower"?

At closing, there is often an adjustment for taxes that the seller paid in advance (for periods after the closing date), or for taxes that the seller has not paid (for periods before the closing date). Are lenders to estimate these adjustments? If so, where are they to be disclosed?

The Uniform Residential Loan Application presents "Details of Transaction" in a different format than the prototypes calculate the Estimated Cash to Close. Consumers would benefit if these were more consistent.

A problem under current rules is that consumers receive far too many redisclosures before a loan closes. The Estimated Cash to Close is one item that will routinely change many times after application and before closing. As the CFPB considers the substantive rule changes, we strongly recommend this item not require repeated redisclosures. This item does not involve loan terms, and redisclosing it repeatedly will not assist shopping.

Adjustable Interest Rate Table

It is not clear whether this table will be the only required disclosure of ARM terms and conditions. The table does not show the current index value or the fully-indexed rate.

The Yucca Bank prototype describes the index as simply "MTA," which is not a household term. How specifically will the index need to be identified?

Page Three

Comparisons – In Five Years

We continue to believe that it does not make sense to show the amount of principal paid on both the first line ("Total you will have paid") and the second line ("Principal you will have paid off"). This double counts the principal paid. It would be preferable to show three lines: (1) interest, mortgage insurance and fees, (2) principal, and (3) total. In comparing loans, the borrower's main concern should be that line (1) be as low as possible.

Comparisons – APR

The APR disclosure alone will not be helpful because the consumer does not how it is calculated or what "your costs" include. Further, for ARM loans, the prototypes do not make clear which rates are used in the APR calculation, as the disclosures include the minimum and maximum rates but not the fully indexed rate.

Comparisons – Lender Cost of Funds

This disclosure is presumably "the approximate amount of the wholesale rate of funds in connection with the loan," required by Dodd-Frank Act § 1419.[2] It is not clear where the lender would obtain the percentages to disclose. We note that both Yucca and Pinyon are banks, both prototypes have the same issuance date, yet the percentages disclosed are different. The Dodd-Frank Act does not require an exact disclosure. It requires only disclosure of the **approximate** amount. We suggest that each lender should not have to calculate its own cost of funds, but instead be able to use a rate published by the Federal Reserve Board or the CFPB, similar to the average prime offer rate.

Other Considerations – Servicing

This section requires the lender to select between "We intend to service your loan" and "We intend to transfer servicing of your loan." The lender may also intend to transfer servicing to its affiliate. In these cases, we recommend this be treated consistently with Regulation X § 3500.21(d)(1). This treats a transfer of servicing between affiliates from the consumer's point of view, which is most appropriate. A transfer to an affiliate is not treated as a transfer as long as the payee, payment address, account number, and payment amount do not change.

Other Items

The Round 5 prototypes no longer contain the items on "Security Interest," "Contract Details," and "Tax Deductions." Have they been eliminated?

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[2] Dodd-Frank Act § 1419, Pub. L. No. 111-203, 124 Stat. 1376, 2155, Truth in Lending Act § 128(a)(17).

Signature lines have been added in Round 5. Requiring signatures on disclosures mailed to consumers would be impractical. We assume they will be optional.

Implementation Testing

We recommend that the CFPB test how to complete the prototypes with actual loan products. This testing process will make apparent the many implementation issues that inevitably arise with new disclosures. It would be far better to find and address the issues before the CFPB formally proposes forms in a rulemaking. We suggest trying to use the prototypes for a variety of loan products, including each of the Fannie Mae and Freddie Mac products, so that the CFPB will be fully aware of all the issues that new disclosure forms will entail.

Conclusion

We are pleased that the CFPB continues to improve the Loan Estimates through an iterative process, and we will continue to provide feedback where we can.

Sincerely,

Anne C. Canfield
Executive Director

Consumer Mortgage Coalition

August 8, 2011

Mr. Rajeev Date
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1801 L Street, N.W.
Washington, D.C. 20036

Re: Know Before You Owe Prototypes, Round 3

Dear Mr. Date:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Round 3 of the "Know Before You Owe" prototype integrated mortgage disclosure forms.

We understand that testing to date is limited to the layout and design of the forms rather than the substantive underlying rules. The two are intertwined, so that if the substantive rules are changed, the disclosures will need to change. Nevertheless, we offer comments where we can.

Page One

We support moving the rate-lock information to the first page. Whether the rate is locked may require the consumer's immediate attention and action, especially in a rising rate environment. We assume the CFPB will permit different language to cover other circumstances, such as a loan on which the rate is locked, or when the creditor's policies affect the timing of the lock.

We are pleased to see that the circles and arrows are removed from page one under Loan Terms. This is important because the industry does not today have the capacity to include those types of graphics in automated, transaction-specific disclosures, and they are not meaningful to consumers. We do notice that the new Page 1 introduces triangles under Projected Payments. We do not believe these graphics would survive the cost-benefit analysis required by section 1022(b)(2) of Dodd-Frank. They impart no meaning to consumers and would be a huge, unnecessary expense for the industry to bear.

We continue to have concern about the disclosures of the APR and about the amount the borrower will have paid after five years. In Rounds 1 and 2, we were concerned that this would imply incorrectly that the loan had a fixed rate. In Round 3, the loan does have a fixed rate. However, the Round 3 loan has a balloon payment after seven years. The APR disclosure says it describes the loan costs over 30 years. With Round 3, the CFPB has explained that the prototypes use existing RESPA and TILA rules, but the 30-year APR on a seven-year balloon appears inconsistent with Comment 17(c)(5)-4. That Comment states that a loan with a five-year term and 20-year payment schedule, absent a demand feature, should have disclosures based on the five-year term. This loan does not appear to have a demand feature because there is no disclosure of one, and it does not appear to be a renewable balloon loan under Comments 19(b)-5 or 22(c)(1)-11 because there is no disclosure of a renewal.

On a seven-year balloon loan, or on any loan that will be repaid in seven years, an APR that spreads costs over 30 years would be especially misleading because spreading the fees over 30 years makes them appear small. The estimated APR would be lower than the actual APR.

It is not clear how the consumer will use the information under "In 5 Years." The comparison would not be meaningful if the consumer is comparing different loan products. In this example, the consumer may be comparing the seven year balloon loan to, perhaps, a 7/1 ARM. The passage of five years seems irrelevant. If the intent is to show how fast the principal declines, the principal should be separated from the other payments. The "Total you will have paid" should exclude principal. The "Principal" should show the remaining principal.

In Round 1, the front page showed the projected payment at closing. In Round 2, this was expanded to "Cash Needed to Close," and it referred the reader to page two for details. In Round 3, it is "Cash Needed to Close, Includes estimated closing costs" and refers the reader to page two for details. At this early stage in the loan process, the consumer should be focusing on loan shopping. Effective loan shopping requires that the loan costs be *separate* from the purchase costs. The first page should show the loan costs, while the total cash to close should be on the second page.

It is not clear how the prototypes determine what is part of "estimated closing costs" and what is part of Cash Needed to Close. Loan costs should be in estimated closing costs while property purchase costs should be in Cash Needed to Close because this distinction would help the borrower compare different loans. Transfer Taxes and Recording Fees should be broken down, with the loan taxes and fees separated from the purchase taxes and fees. The borrower's attorney fee, which is not required by the creditor, should be in Cash to Close. Fees for inspections should vary based whether the lender requires them. The amount paid at closing for mortgage insurance should be included in estimated closing costs.

The amount of the monthly loan payment, among the most important items of information, is shown to the penny under "Monthly Loan Payment" and rounded to the nearest dollar under "Expect to make these payments." We are unclear why these are different, when rounding is permissible, and what the rounding rules would be.

Page Two

Round 3, as in Round 2, uses two very different designs for the second page, one with more detail than the other. In part, the appropriate level of detail depends on the underlying substantive rules, so our ability to comment meaningfully is limited.

The Camellia prototype does not comply with current RESPA rules. It separates the amounts to be paid into an escrow for future bills for homeowner's insurance, mortgage insurance, and for taxes. Under RESPA § 10(a) and its implementing § 3500.17, this is not permitted. Escrow accounts must use aggregate accounting. "The cushion must be no more than one sixth (1/6) of the estimated total annual disbursements form the escrow account."[1] A servicer cannot calculate and hold a cushion separately for each escrow item. Aggregate accounting is a consumer protection. The Azalea prototype is consistent with aggregate accounting. The total cost is the same, in this example $793, so the difference would likely not be significant to consumers.

Regardless of the RESPA aggregate accounting requirement, the cost of mortgage insurance should be clear because it varies by loan and is an important shopping item. Both Azalea and Camellia make the cost of mortgage insurance very clear on page one, with the loan payment, which we believe is important.

Azalea and Camellia both disclose a $400 fee for the borrower's attorney. We infer Azalea and Camellia reflect a purchase transaction because there is an initial payment, outside of the escrow, for homeowner's insurance. In a disclosure made within three days of an application, the only way the creditor will know whether the consumer will retain an attorney is if the consumer tells the creditor. The benefit of having the creditor ask the consumer a question so the creditor can parrot the information back to the consumer is not apparent, and an inaccurate disclosure could result because even the consumer may not know the cost this early. Any charge not required by the creditor that relates to the negotiations between the buyer and seller should be listed under Cash Needed to Close.

If optional items are to be included under Services You Can Shop For, it may be helpful to note that they are optional.

Camellia has a number of items broken down under Origination Charges. If the lender will guarantee these costs, it is unclear why itemizing them helps. If the consumer is comparing two Loan Estimates from two prospective lenders and they both have the same total origination charge, the consumer likely will not be concerned whether the wire transfer fee was $X and the verification fee was $Y or *vice versa*.

We are unclear about the rush fee on the Camellia prototype. Whether there will be rush fees may not be known within three days of an application, and if there are any, it is not

[1] 24 C.F.R. § 3500.17(c)(5).

clear that the lender will charge them to the consumer. A title agent may assess a rush fee, although at this early stage, the title agent is likely unknown.

On Camellia, under Services You Can Shop For, there appear to be two required disclosures, Lender's Title Policy and All Other Title Service Fees. Some, but not all, homeowners prefer to purchase owner's title insurance. Typically, they have not decided this early whether to do so or the amount of coverage to purchase. But the term "all other" title service fees implies that owner's title insurance is combined in that item. If it is not included, this could be misleading. If it is included, the cost is not disclosed but should be because the consumer needs to make a decision whether to purchase the insurance.

Conclusion

We are pleased that the CFPB continues to improve the Loan Estimates through an iterative process, and we will continue to provide feedback where we can.

Sincerely,

Anne C. Canfield
Executive Director

Consumer Mortgage Coalition

July 12, 2011

Professor Elizabeth Warren
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1801 L Street, N.W.
Washington, D.C. 20036

Re: Know Before You Owe Prototypes, Round 2

Dear Professor Warren:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its second round of "Know Before You Owe" prototype integrated mortgage disclosure forms.

This round of prototypes has two forms, both with the same first page. The second page, which primarily shows settlement service charges, differs. The Redbud prototype has charges broken down into more component parts than the Dogwood prototype. We gather the CFPB is testing to see whether more detail or more consolidation is preferable.

Part of the answer depends on how the CFPB will address substantive regulatory issues. Without knowing that, it is difficult to comment fully on the prototypes. Nevertheless, we realize this is early in the iterative process. We offer the following feedback and suggestions.

Improvements from Round 1

We note several helpful improvements from the Round 1 prototypes. The general Ficus layout is adopted in Round 2, which we believe is clearer than the Pecan layout. There is now space to name a co-applicant.

The Dogwood and Redbud prototypes do not contain the problematic, overbroad statement from Round 1 about appraisals. This is an improvement.

The statement about possible future servicing transfers is removed. Servicing transfers already have required disclosures, and we support avoiding overdisclosures.

The inclusion of a new cross-reference to Section D (Redbud) and F (Dogwood) under the Escrow Account section on page two is helpful.

The Important Dates section on page two is improved from Round 1 because it clarifies that the rate is unlocked. The Important Dates is an important item, so we recommend putting it on page one. It could fit on the top right of the form after the loan number, and the detail about the loan originator could be moved to the second page. We recommend a slight wording change to distinguish between rate changes before and after closing, an important distinction. "Your interest rate and points can change **before closing** unless you lock the rate."

Comments on Round 2

Placement is Not Necessarily Clear

Both prototypes are not necessarily clear about the placement of items. They include hazard insurance under Items Paid in Advance (Redbud) or Prepaid Insurance, Property Tax, and Related Services (Dogwood) rather than under Services You May Shop For (Redbud) or You Can Shop For These Services (Dogwood). Consumers do and should shop for hazard insurance.

Consumers Prefer Some Detail

The Redbud prototype has more itemization of closing costs on page two than Dogwood. Overall, Redbud is preferable. Dogwood has too little itemization, and with this form, consumers will ask questions about what the costs cover. This would lead lenders to create a separate disclosure to answer those questions. This would counter the integration effort, and we therefore recommend more itemization than Dogwood has.

Redbud breaks down insurance more than is necessary.

Showing Formula is Clear

Redbud page two, under Total Estimated Funds Needed to Close, shows the total cost is derived by A + B + C + E + F. This helpful because it is straightforward. It may be helpful to be clear when the items added are not in the same order as they are displayed on the page. For example, adding "but not D" might be helpful in this instance.

In addition to an origination fee, the lender may charge origination points in exchange for a lowered interest rate. Early in the transaction, this should be visible because the consumer has a decision to make about the tradeoff between points and the rate. The Dogwood prototype combines the two into one total dollar amount. It does state that the total includes one point, but it may be clearer to the consumer to show the amount, or state that it is one percent of the loan principal.

What is Estimated Should be Clear

Each prototype states at the top of page two that the amounts are estimates. This is important information.

The Redbud prototype is clearer about which charges are estimated. It is important to be clear about what is estimated. Redbud includes with subtotals on page two the word "estimated," several places on the page, which is important. We would recommend adding the word "estimate" to each estimated item. This includes the cash needed to close on both prototypes, as that amount is almost certain to vary before closing.

The two prototypes differ in their page two treatment of taxes and government fees. On Dogwood, taxes and recording fees are on line C. While uncertain, the amount apparently is an estimate because Line E is labeled as an estimate, and includes Line C.

On Redbud, Section B, taxes and other government fees, is not labeled as an estimate but should be. The lender does not know early in the transaction what the charges for taxes will be. Taxes are not a shoppable item, so using an estimate will not affect the consumer's shopping. The use of an estimate also would not affect the final cost, so there appears no harm to the consumer in using an estimate early in the transaction process. For these reasons, there appears no reason to burden creditors with disclosing the exact amount of taxes, early in the transaction.

We recommend distinguishing between taxes on the loan and taxes on the property purchase, as we explained in our June 28 letter. The buyer and seller may not yet have a final agreement on who will pay how much of the taxes on the purchase transaction, so the buyer is in a better position than the lender to know what the taxes on the purchase transaction will be.

Tolerances

The tolerances are not clear. We realize the CFPB may not be testing tolerances at this early point, but the tolerances will need clarity.

The two prototypes differ in their tolerances. Redbud has amounts in page two Section A that cannot change. These items are points, fees to originators, and charges for an appraisal, tax service, document preparation, and flood determination. It is not certain, but the document preparation fee appears to be only the lender's document preparation fee. If so, then we support having these fees not subject to change. The lender is in a reasonable position to predict these charges.

Dogwood would make the appraisal and tax service charge subject to ten percent tolerances, while Redbud would have lenders guarantee these costs. The lender is reasonably able to predict the costs of these services so we do not object to requiring lenders to guarantee them.

Both prototypes would apparently subject the lender to a ten percent tolerance for title services, survey and pest inspection charges, and the cost of owner's title insurance. The lender cannot either predict or control the title charges. Early in the transaction, these disclosures will necessarily be estimates. Owner's title would be little more than a guess because the lender does not know how much coverage or what deductibles the consumer may elect. We question the value of providing disclosures that are almost certain to be inaccurate. It would be better to make these disclosures closer to closing after there is a basis for making them.

We recommend including the survey and pest inspection fee in the guaranteed origination charge (Redbud Section A or Dogwood Section A top line), and removing the tolerances. For the cost of owner's title insurance, it would be more helpful to simply state, "Ask your title agent" than to have the lender select a number. Similarly, the lender does not know the cost of homeowner's insurance early in the transaction, so any disclosure will not be helpful.

Document Preparation Fee Should be Removed

Redbud has a document preparation fee included in page two Section A. It is not clear what this covers. It may cover just the lender's document preparation fee, in which case it can be removed and aggregated in the lender's origination charge. We are concerned, though, that it may tell consumers that it includes a title agent's documentation fee. The lender does not know what the title agent's document preparation fee will be, or even whether there will be one. For that reason, the item should be removed.

Fees to Originators is Unclear

Redbud has in page two Section A a $20 "Fees to Originators[.]" It is unclear what this or who the "originators" are. The use of the plural implies that it includes the lender and broker, but this loan appears not to have a broker. If it is a lender's fee, there is no reason to break it out.

Interest Rate Should Be Clear

The first page discloses an introductory interest rate of 2.75%, yet the second page shows the minimum interest rate is 3%. This contradiction would confuse consumers. As we detailed in our June 28 letter, the fully-indexed rate is necessary to understanding an ARM loan and should be included.

Both prototypes, under change frequency, show that the rate will certainly change at the beginning of the 61st month and every 12th month thereafter. This is not necessarily the case. We recommend adding, "if index changes."

Seller Credits

In Dogwood, page two Line Gc discloses the Seller Contribution. In Redbud, the same disclosure is on page two under Total Estimated Funds Needed to Close, called Seller Credits. For a disclosure immediately after a loan application, the lender will not know this amount. The seller and buyer negotiate that amount without the lender's participation or awareness. The only way the lender can know the amount is to ask the borrower or perhaps the borrower's real estate agent. There is no point in requiring creditors to ask a consumer for information the creditor includes in a disclosure to the same consumer. Including the dollar amount of seller credits early in the transaction would not be a helpful or workable disclosure.

It may be appropriate to leave a place for the disclosure so the consumer will see how seller credits or contributions affect the transaction, but not require the lender to include a number until after the lender receives a final copy of the purchase and sale agreement.

Suggested Name Changes

The Redbud prototype, in section B on page two, includes a line entitled Other Taxes and Fees. It would be clearer to label it Recording and Other Fees. This adds specificity without taking up extra room. Similarly, in Redbud's section C is labeled Items Paid in Advance. It would be clearer to call it Prepaid Items, or Prepaid Insurance, Property Tax and Related Services, as on Dogwood.

Page One Comparisons

The "Comparisons" on page one of both prototypes has expanded since Round 1. It retains the APR and an amount of principal paid in five years, which we believe is misleading and unhelpful as we explained in our June 28 letter. Now there is added an amount of interest, mortgage insurance, and fees paid in five years. We do not believe this is a good disclosure.

This in an adjustable rate mortgage (ARM) loan. It is most unhelpful to imply that the payments will not change, even if the payments are fixed for longer than five years. Further, the loan has no prepayment penalty, so the amount paid on the loan and for mortgage insurance over five years is unknowable.

As we explained in our June 28 letter, a static disclosure cannot demonstrate amortization. Amortization is a process, and a one-time snapshot at an arbitrary date cannot capture it. An interactive amortization application on the CFPB's website would be a far more helpful disclosure. The website can tell consumers which information from the Loan Estimate to enter into the website, and where, and an amortization schedule will appear. Consumers would see every month of the loan, not just one.

If the loan terms and costs are clearly disclosed, consumers will be very capable of comparing different loan products and terms. The five-year comparison seems not to be helpful.

Projected Payments Should be Consistent With Monthly Loan Payment

The Projected Payments on page one say, "Expect to make these payments" but do not include the monthly mortgage insurance premium. Under Loan Terms, the monthly payment amount includes principal, interest, and mortgage insurance premium. The amount the consumer should expect to pay is higher than the amount shown in Projected Payments, and we are concerned that this will cause confusion.

If the issue is that the duration of the mortgage insurance is too much to cover here, then it would be better to at least note under "expect to make these payments" that the payment will at least initially include the mortgage insurance premium.

Clarifying Descriptions

Some of the terminology is not necessarily clear. Where there is space to include descriptions, they may be helpful. There is space on page one to include a brief description of a prepayment penalty, such as "A fee for selling the home, refinancing, or paying the loan early." For a balloon, there is space for a brief description, such as, "A larger payment due at the end of the loan."

Conclusion

We are pleased to see the CFPB continue to work toward disclosures that clearly communicate to consumers the costs and terms of their mortgage loans. We will continue to provide feedback as the CFPB continues releasing additional prototypes.

Sincerely,

Anne C. Canfield
Executive Director

Consumer Mortgage Coalition

June 28, 2011

Professor Elizabeth Warren
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1801 L Street, N.W.
Washington, D.C. 20036

Re: Know Before You Owe Prototypes

Dear Professor Warren:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its first round of "Know Before You Owe" prototype integrated mortgage disclosure forms. The CFPB published the second round before we had time to comment on the first round. We will comment on the second round separately.

CMC has for many years advocated that mortgage disclosures be improved and streamlined. Mortgage disclosures required today are overly complicated, voluminous, and in many ways conflicting and confusing. Therefore, we strongly support your efforts to create mortgage disclosure forms that will give prospective mortgage borrowers the information they need to make informed decisions. We are pleased that you have made this important Know Before You Owe project a high priority.

We also very strongly support your iterative approach to this project because it is the best way to arrive at the most effective disclosures. As you know well, integrating disclosure forms is more complicated than it would appear because the provisions of the Real Estate Settlement Procedures Act (RESPA) and of the Truth in Lending Act (TILA) were enacted at different times for different reasons. Mortgage disclosures are especially complex because there are a great number of variables inherent in the transactions. By soliciting input from interested parties through multiple rounds of draft disclosures, you will receive the benefit of much careful consideration of the multiple, complicated issues that go into a mortgage disclosure.

We understand that the first two prototypes you have released are just the first of multiple rounds of forms you will explore. We also understand you have not resolved the important underlying regulatory issues, of which there are many. It is not possible to give robust feedback without knowing how the CFPB will address the underlying

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regulatory issues. Nevertheless, we provide feedback to the extent we can, with the understanding that the prototypes are going to be revised many times. We begin with an overview and a look at why some of the existing disclosures do not work well. We then discuss the content of the first prototypes. We follow by identifying some of the issues about tolerances, redisclosures, and waiting periods that will arise as the forms are integrated.

Overview

Generally, the two prototypes are clear and easy to read, and the language is in plain English. The most important information is up front and easy to find. There is a welcome reduction in clutter.

We understand the CFPB will provide educational materials online, which we have advocated for some time. *Before* a consumer approaches a lender about a potential loan application, the consumer should already understand the fundamentals of the mortgage loan process. The CFPB could play a helpful role by making educational materials widely available to consumers, including through online videos. Providing educational information before a consumer approaches a lender will help streamline the transaction-specific disclosures.

The prototypes also show, in the "Projected Payments" section, how the payment can change over time, reading from left to right. This is straightforward, and illustrates the future course of the loan. The prototypes appropriately show that future adjustable rate mortgage loan (ARM) payments are uncertain and illustrate the possible range in monthly payments. This is the type of information consumers need. It is appropriate to show the maximum amount of potential payments, but it is also appropriate to show the range within which payment amounts may adjust. This makes clear that the future payment amounts are not known, an important feature of ARM loans. This will let consumers know the limits of their risk in their ARM loans.

Existing Disclosure Rules Do Not Always Work Well

The RESPA and TILA rules in place today do not always work well, and one unnecessary result is overstated costs.

One area of weakness in the current rules arises because good faith estimates (GFEs) blur the distinction between costs that relate to a loan and costs that relate to homeownership. Today's GFE requires that some loan and homeownership costs be combined and disclosed as one cost:

- The "total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator."[1]

[1] 24 C.F.R. Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, Block 4.

- A single charge for "government fees for recording the loan and title documents that can be expected to be charged at settlement."[2]
- The total "government fees on mortgages and home sales that can be expected to be charged at settlement[.]"[3]

By combining the amounts as one dollar amount, the true cost of borrowing and of homeownership are unclear. We believe this is inappropriate. Just as consumers should, in the CFPB's words, "know before you owe," they should also know before they buy. The costs of homeownership can be significant, and they should be apparent. Some closing services, recording fees, and fees or taxes on home sales are costs of homeownership. The consumer would pay them when purchasing a home even in a cash transaction.

If the CFPB were to unmask the true costs of homeownership, it would make visible one unintended, inappropriate, and unauthorized aspect of the current RESPA rules. The current rules subject lenders to zero tolerances for transfer taxes, and in many cases to ten percent tolerances for third-party title services and recording charges. The GFE includes in these disclosures the portion related to a property purchase. This means that lenders are subject to tolerances on consumers' *purchase* costs – *i.e.*, costs that the lenders do not control, and that the consumer would pay even in a cash purchase.

This problem of third-party fees lenders cannot predict is not limited to the fees disclosed in the current GFE. For example, a lender often needs to pay a fee to verify an applicant's employment or asset account balances, or may need to pay a resubordination fee. The mortgage lender has no ability to select the employer or institution, and has no ability to negotiate these fees. The applicant does select its financial institution, and should have an incentive to select those with the lowest fees. Whatever the fees are, the lender must simply pay. It is inappropriate for lenders to be subject to tolerances in these cases.

Lenders also need to pay homeowners association fees to verify information such as the amount of dues, property insurance coverage, and financial reserves and controls. Again, the lender has no ability to predict, let alone control, these costs. The borrower chooses the homeowners' association, and participates to some extent in setting its fees. In this case, the lender should not be subject to liability for not being able to predict the fees.

The initial Loan Estimate will not be able to disclose the amount of the verification fees because the lender does not know them when it prepares the disclosure. Lenders, however, should still be able to pass on these required third-party charges.

Moreover, while well intended, the tolerances that the Department of Housing and Urban Development (HUD) recently put in place seem to be driving settlement costs higher,

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[2] 24 C.F.R. Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, Block 7.
[3] 24 C.F.R. Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, Block 8.

rather than lowering them as HUD originally envisioned. Lenders, to avoid paying consumers' costs, seem to be increasing the estimates for those costs so that they fall within the tolerance levels. HUD's RESPA tolerances are analogous to TILA tolerances, which in some cases explicitly permit overstated charges.[4] TILA tolerances also apply to some third-party charges, which is similarly inappropriate.

We urge the CFPB to make mortgage disclosures clearer, such as by distinguishing a loan from a home purchase. We also urge the CFPB to make the disclosures support lower costs by holding lenders liable only for costs they can predict.

Comments on the Content of the Prototypes

We comment below on the content of the prototypes. The first two items are general. The remaining items are arranged generally in the order the disclosures appear in the prototypes.

Separate Forms for Separate Loan Products Can be Helpful But Require Clarity

We note that the prototypes are designed for only one type of loan product, in this case an ARM loan. It may be useful to use separate forms for product types that differ significantly because information relevant to one product can be irrelevant to another. For example, for a fixed-rate loan, disclosures about potential interest rate changes could cause confusion.

Some products can be combined, as the prototypes demonstrate. Both prototypes cover ARM loans with and without negative amortization, balloon payments, and prepayment penalties.

The CFPB will need to be very clear about which form to use under which circumstances. Otherwise, different lenders would use different forms for the same loan type.

There will be a need for some flexibility for new products to enter the market. Suppose, for example, a future change in tax laws creates a beneficial loan product for a particular purpose. Lenders will want to get new products to the market quickly without having to wait a year for a rulemaking to revise an existing form. The lack of a federal agency's decision should not determine whether new loan products become available in the marketplace. The forms should have sufficient flexibility so that a rulemaking is not required for every market development.

It would be especially helpful if the CFPB were to provide examples of how the forms are to be completed for each of the common loan products. This would help establish both how to complete the forms and which to use under which circumstances. At a minimum, there should be an example for each of the standard Fannie Mae and Freddie Mac loan products.

[4] 12 C.F.R. §§ 226.18(d)(1)(ii); 226.23(h)(2)(ii).

Formatting

Consumer mortgage disclosures are produced by highly specialized technology systems. They vary from lender to lender, and even within individual lenders, there may be several technology systems. Using the technology systems is necessary because they are designed to prepare detailed, transaction-specific disclosures accurately and on schedule.

The prototypes use formatting methods that the industry does not have the technology to reproduce in consumer disclosures. For example, the Ficus Bank prototype contains a "YES" in a circle with an arrow, under "Key Loan Terms." Shading, circles, and arrows are beyond the capacity of much or all of the industry's technology systems to produce in transaction-specific disclosures. The prototypes also use font sizes and styles that many origination technology systems do not support. The prototypes are prepared on double-sided forms. Lenders and brokers nationwide will have difficulty printing these disclosures on two sides of a sheet of paper.

We recommend that the CFPB consider the enormous costs the industry would have to bear, and pass on to consumers, to use new, special layout and formatting. We can imagine no particular benefit to consumer understanding based on whether a disclosure form is printed on one or two sides of a piece of paper, if a disclosure is printed in a unique font, or if it has shading or other shapes. We urge the CFPB to avoid rigid formatting requirements.

Changes in the blocks from the current GFE blocks will require the industry to undertake massive reprogramming changes that will take substantial time to accomplish.

We urge permitting the inclusion of bar codes and other electronically readable information on the forms because these greatly improve records management quality and speed while reducing its cost. Electronic codes should be permitted in varying sizes, their location should not be fixed, and they should be permitted to change as technology advances.

We urge the CFPB to take into consideration the costs of implementing revised disclosure forms. We would be pleased to meet with you or your Implementation Team to help you understand the processes, resources, and time required to revise consumer disclosures.

Layout

The Ficus prototype has items laid out in a clear order, starting with a high-level overview and working down to more specific items. The loan amount, type, purpose, and program should be together with "Key Terms" in equal prominence because together they provide a high-level overview of the loan. On the Pecan prototype, the loan type, purpose, and program should likewise be included in the "Summary" and should be at the top of the disclosure because they provide a high-level overview of the loan. The second group of disclosures should be the "Cautions," followed by the "Projected Payments."

Multiple Applicants

The prototypes name only one applicant, while mortgage loans often have more than one borrower. When there are coapplicants, the disclosure forms should be the same for all applicants. We recommend permitting lenders to list all coapplicants, and expanding the space as necessary to do so.

Brokers

The prototypes do not mention mortgage brokers. The forms contain disclosures that brokers are not equipped today to provide. When a consumer works with a broker, does the CFPB intend that brokers will provide the Loan Estimate within three days of an application?

There should be a place to disclose whether the broker's compensation will be paid by the consumer or lender. Compensation to brokers from both the lender and consumer is now prohibited, so who will pay the broker should be apparent in the Loan Estimate.

Expiration Date and Rate Locks

The prototypes have an expiration date on the first page and, on the second page under "Important Dates," state the date through which the Loan Estimate is valid. The expiration date does not appear to apply to rate locks.

The ability to lock or float a rate is important to consumers. Some borrowers prefer to lock their interest rate early in the application process, especially if market rates are rising, while others prefer to let the rate float initially, especially if rates are falling. Loan Estimates will need to accommodate the possibility that the interest rate may initially be locked for a period of time that does not coincide with the life of the Loan Estimate, and the possibility that the rate may not be locked at all. We suggest including a disclosure of when a rate lock expires.

If the same form is to be used for redisclosures, there will need to be clarity on what an expiration date means.

Loan Type and Program

The prototypes contain a statement of the loan type, in this case a "30-year adjustable rate[.]" This is too vague because there are many types of 30-year ARMs. We suggest a more meaningful identification of the loan type would be "2/1 ARM with a 30-year term."

Is a step-rate loan a different loan type than an ARM? Is a 15-year loan a different loan type than a 30-year loan? It is also not clear what a loan program is.

Key Loan Terms or Summary – Fully Indexed-Rate

The "Key Loan Terms" (Ficus) and "Summary" (Pecan) disclose the initial interest rate and payment, and when it can adjust. The "Key Loan Terms" (Ficus) and "Cautions" (Pecan) also show the maximum rate and payment.

Neither, however, shows the fully-indexed, or expected, rate, the index at origination plus the margin. The initial rate is not necessarily set by the same index and margin that apply to future rate adjustments. Two different loans can have the same initial and maximum rates but very different fully-indexed rates.

For example, tow loans can have an initial rate of 2.5 percent and a lifetime cap of 10 percent. Future rate adjustments on one loan may be set by a different index, margin, or both, than on the other loan. The prototypes do not make this difference clear.

The fully-indexed rate is therefore an important disclosure. We suggest it be included in "Projected Payments" in each column that corresponds to a periodic payment, as well as under "Key Loan Terms" or "Summary" as discussed below. Under "Adjustable Interest Rate Information," it may help to state, "Your initial rate is not set by the index and margin that will be used for future adjustments. If your initial rate were set by the margin and index, your initial rate would be X%."

When preparing a pre-closing disclosure, the lender does not know what the index will be at origination. We suggest that the fully-indexed rate be set using any value of the index during the look-back period.

Key Loan Terms or Summary – Clarifying Adjustment Timing

The Ficus prototype under "Monthly Loan Payment" in "Key Loan Terms" states that the payment can go as high as $1,810, but it does not say when. The Pecan prototype, under "Cautions," similarly shows how high the "Increasing Monthly Payment" can go, but not when. Even under "Projected Payments" on both prototypes, this is not clear. The "Projected Payments" shows the maximum payment could be reached some time during years 3 to 8, a long period. How soon the maximum payment can be reached should be clearer.

The prototypes disclose, under "Adjustable Interest Rate Information" on the second page, the rate change frequency. The example states the first rate change is "2 years from loan date[.]" The Ficus prototype under "Key Loan Terms" and Pecan under "Summary" state that the rate starts adjusting yearly "in year 3[.]" We believe the timing of the first adjustment should be disclosed the same way in "Adjustable Interest Rate Information" as in the "Key Loan Terms" or "Summary" because each conveys the same information.

The phrase that the payment can adjust "in year X" is vague because it could mean any time during that year. Similarly, the statement that the rate can go as high as 10% "in year 5" on the Ficus Bank prototype, under "Key Terms," lacks specificity.

However, even the phrase "X years from loan date" is not specific enough because it does not specify whether it refers to the rate change date or the payment change date. The rate change date is typically a month earlier than the payment change date. We also suggest that the Loan Estimate use the payment change date, as it is very likely more important to consumers.

We suggest the disclosures of adjustment timing under "Key Loan Terms" or "Summary" state that the rate or payment "Adjusts starting in the 24th payment." This uses the payment change date, is specific and accurate, and does not get bogged down with an explanation of the difference between the rate and payment change dates.

Similarly, the fully-indexed rate could be included in "Interest Rate" under "Key Loan Terms" (Ficus) or "Summary" (Pecan), and in "Projected Payments," by stating, "Expected to go to X% in the 24th payment."

Projected Payments

The "Projected Payments" in the two prototypes differ in that Pecan shows the loan payment, the estimated taxes and insurance, and the total, while Ficus shows the total payment and the estimated taxes and insurance. The payment amount is very important, and it should be clear what it includes. The amount of the payment for principal and interest alone should be disclosed, as the Pecan Prototype does, without making the consumer subtract estimated taxes and insurance from the total payment. It should add that this amount is "for principal and interest" for clarity.

The example loan includes mortgage insurance, but the amount of the mortgage insurance premium is not disclosed. Consumers will not realize that the decrease in "taxes and insurance" after years 3 through 8 in the "Projected Payments" reflects the termination of mortgage insurance.

It is important for consumers to know how much mortgage insurance costs because it can vary by loan. It is therefore very important information for loan shopping purposes. It also affects consumers' decisions whether to buy or rent, and whether to come up with a bigger down payment.

It is not clear why there are three columns showing payments. The first payment column seems to represent the initial fixed rate, but what triggers another column after year 8?

The estimated taxes and hazard insurance should be disclosed without regard to whether the loan will have an escrow. This is important if a consumer will compare two loans, one that has an escrow and another without an escrow.

Down Payment and Estimated Closing Costs

The purpose of the Loan Estimate is to make it easy to shop for a suitable loan. The prototypes include on the first page "Estimated Closing Costs" and a down payment (Ficus) or "Closing Costs You Pay" and a down payment (Pecan). Many of the closing costs are related to the purchase transaction rather than to the loan terms. Disclosures related to the purchase transaction should be on the second page with the other settlement charges. These amounts need to be separate from the loan shopping information so as not to confuse loan shopping.

Especially likely to mislead or confuse is the combined down payment and closing costs, in the Pecan prototype, under "Projected Payments," very early in the disclosure, labeled "At Closing." The caveat that the amount "will be adjusted for credits and deposits" does not explain what the figure represents.

The amount, $10,060, for "Estimated Closing Costs" (Ficus, under "Projected Payments") and for "Closing Costs You Pay" (Pecan, under "Summary") is vague. The caveat in Ficus that the amount "will be adjusted for credits and deposits" again does not explain what the figure represents.

When viewed in relation to page two, what is included in the closing costs is unclear because page both Lines F and I on page two are the same in the example loan. Line F is total closing costs before deducting credits from the lender or seller, and before deducting closing costs that are financed. Line I is total closing costs after these items.

If there is to be a disclosure on page one about closing costs, it should be the amount on Line F rather than Line I. Otherwise, it would appear on page one that closing costs are reduced if they are financed.

If there is a disclosure of closing costs on page 1, its title should be the same as for its entry on page 2. It is an estimated amount at this stage, and that fact needs to be clear, rather than calling it "Closing Costs You Pay" as on Pecan under "Summary."

Cautions

The prototypes both disclose under "Cautions" whether the loan has certain provisions, with yes or no answers. The yes or no answers are clear and concise.

Both prototypes list under "Cautions" that the loan amount will not increase, and that it has no balloon or prepayment penalty. The Pecan Bank prototype also includes potential rate and payment increases under the heading. When a loan has none of the terms about which the "Cautions" warn, the term would be misleading. We suggest that "Loan Features" would be a more accurate term. The term "Loan Features" also corresponds better with the statement that "These features trigger higher or additional payments" (in Pecan) and "Can loan features trigger higher or additional payments?" (in Ficus).

It is not clear whether a step-rate feature needs to be listed. We suggest that lenders be permitted to include all the potential features, including step-rates, along with a yes or no answer. This would help consumers find the information they will expect to find, and would reduce compliance costs and implementation time.

Comparisons

The prototypes state the amount the consumer will have paid in five years, and the amount of the principal that will have been repaid in five years. Both are fixed dollar amounts. We are concerned that this will be highly misleading.

- Using fixed dollar amounts contradicts the important disclosures that the payment amount can adjust during the first five years, and that the amount paid after five years is uncertain.
- Stating how much the principal will reduce during the first five years would leave the incorrect impression that the loan balance decreases the same amount each month or every five years.
- A static disclosure would give the incorrect impression that prepayments are not permitted.

The idea may be that consumers need to understand how loans amortize over time. We agree this is important, but a static disclosure simply cannot convey the dynamic nature of the amortization process.

Consumers who do not understand the amortization process will be misled by a static amortization disclosure. Consumers who do understand amortization will realize that this disclosure is based on several assumptions that may be inaccurate, and that it relates only to one arbitrary date. They are likely to ignore the disclosure and run an amortization schedule themselves.

We suggest that the CFPB make available *interactive* amortization schedules on its website where consumers can test different loans types and different loan terms, and run "what if" scenarios. This would demonstrate the effects of amortization and how the loan balance declines over the life of the loan, rather than considering month 60 in isolation based on a number of assumptions.

The chance of an amortization disclosure in a Loan Estimate misleading consumers is so high, and the potential consumer benefit is so low, that we believe the disclosure should be eliminated. Consumers would be far better educated by using interactive amortizations on the CFPB's website.

APR

Both prototypes have, under the "Comparisons" heading, an APR disclosure. The description of the APR is not clear. The description is not poorly written, rather, the concept is too difficult to put into a short description because the APR is complex and counterintuitive by nature.

We doubt consumers find APR disclosures meaningful. APRs are opaque and difficult for consumers to calculate. They are also based on an unrealistic assumption that the consumer will keep the loan for its entire term, which, for mortgage loans, almost never happens. APRs are calculated assuming that the points and closing charges are spread over the full loan term, but they are almost always paid much faster. We question the value of providing unrealistic disclosures.

For long-term loans, such as a 30-year mortgage loan, spreading a closing cost over 30 years will increase the APR only very slightly. To the extent a consumer understands an APR, it would make the cost appear minor. This seems contrary to the intent of the prototype to make closing costs clear.

The new disclosures will make clear the loan amount and terms, when payments can change and by how much, floors and caps on payment changes, the range within which payment amounts will be, whether the initial rate is set independently of the index and margin used for future rate adjustments, closing cost details, and escrow information. With these disclosures in hand, and with CFPB consumer education, the APR seems not to add anything meaningful and could interfere with consumer understanding.

Eliminating the APR disclosure would greatly reduce compliance costs and regulatory burden, would help streamline the Loan Estimate, and would not impact consumers.

Origination Fee

CMC supports requiring lenders to guarantee their own loan origination costs. It appears that the origination fee, Line A on the second page, is the lender's total origination fee. Brokers' compensation will need to be broken out separately, as noted above. Discount points will also need to be broken out separately. The IRS permits a tax deduction for discount points on a home mortgage, but only if, among other things:

> The amount is clearly shown on the settlement statement (such as the Settlement Statement, Form HUD-1) as points charged for the mortgage.[5]

It will also be necessary to break out discount points to establish whether they are *bona fide* discount points for qualified mortgage purposes.[6]

The prototypes state that the origination charge may not change. We assume this means the lender's origination charge but not discount points. Consumers may want to change the number of discount points they pay, and they should have the flexibility to do so.

Required Service and Costs You Cannot Shop For

The prototypes list the required services in a narrative, but the form would be significantly less burdensome to prepare if the disclosures were included in a table. A table would also make it easier for consumer to compare different Loan Estimates.

The prototypes imply, but do not state, that there is a ten percent tolerance for these

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[5] *Home Mortgage Interest Deduction*, IRS Publication 936 For Use in Preparing 2010 Returns, p. 5, under Deduction Allowed in Year Paid, ¶ 9. http://www.irs.gov/pub/irs-pdf/p936.pdf
[6] Dodd-Frank § 1412, 124 Stat. at 2146-47, new TILA § 129C(b)(2)(C).

charges. It is important that government charges are not included within the tolerance because lenders cannot control government charges. It is possible government charges will increase after a lender delivers a Loan Estimate, without the lender having any way of predicting the increase when preparing the disclosure.

The language in the prototypes states that the services are "provided by lender-related companies[.]" This appears to be an integration of the current affiliated business arrangement disclosure. If shoppable services are available from an affiliate, would they appear on this form or a separate form? There does not appear to be a place on the prototypes for them.

The prototypes both have a disclosure of the cost of homeowner's insurance. When a mortgage is refinanced, the borrower already knows the cost of insurance because the insurance policy is already in place, while the lender does not know the cost. Additionally, the homeowner makes coverage and deductible decisions that affect the insurance premium, and the lender cannot predict future consumer elections. Requiring disclosure of the cost of homeowner's insurance early in the transaction is requiring a disclosure that can be inaccurate. We do not believe this is appropriate. Rather, a disclosure of the cost of homeowner's insurance should be required at or just before closing, after the lender is able to know what the amount is.

Required Services You Can Shop For

This disclosure states, "If you choose another provider, these amounts may vary." This seems to mean that the lender must select a provider unless the consumer indicates a desire to shop.

One reason existing RESPA rules do not work well for shoppable services is that the RESPA FAQs state that lenders should maintain lists of vendors who are likely available, a very burdensome undertaking. The FAQs state:

> The requirements for the new GFE form provide that "[w]here the loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers." The list should contain settlement service providers that are likely available to provide the settlement service for the borrower.[7]

The intent of the FAQ is to require lenders to maintain lists of all service providers, maintain awareness of their "likely availability" (an undefined term) for a consumer or an area, and update it continuously. The result is that lenders restrict shopping to avoid the extra cost and work, or restrict shopping to nationwide service providers. This rule restricts shopping although it was intended to promote shopping.

In the information age, there seems no point in requiring lenders to tell consumers which service provider is available. Typing a few keystrokes, or looking in the Yellow Pages,

[7] HUD's *RESPA Rule FAQs,* GFE – Written List of Providers, FAQ 7, p. 15 (April 2, 2010).

will readily retrieve vendors that serve an area.

Non-Required Services

The purchase and loan transactions need to be distinguished as to services the lender does not require – i.e., the prototypes list, in Line D, "Non-required services" for which the consumer may choose to shop or may elect not to purchase. The examples include owner's title insurance and a home warranty.

These items reflect the cost of homeownership, not the cost of borrowing. Both owners' title insurance and home warranties vary greatly in price depending on what they cover, what deductibles are included in the policy and, of course, whether a homeowner elects to purchase them. Any dollar amount the lender discloses will almost certainly be inaccurate and, therefore, not helpful to the consumer.

Owners' title insurance and home warranties are similar to the costs of maintaining a home in that they are largely influenced by a homeowner's elections, and they are not part of the mortgage transaction. It is true that owner's title insurance and a home warranty are roughly associated with a loan closing because they may be purchased at the time of closing. However, there are many costs associated with closing that are excluded. The cost of moving and the cost of selling a house are associated with a closing. They are not related to the mortgage transaction, however, and are appropriately omitted from mortgage loan disclosures.

There is no indication of which non-required services a lender would need to list. The estimated costs would be included in the total estimated closing costs, so lenders will have an incentive to provide as little information as possible. Moreover, when a service is not required in connection with a loan, the lender is not in the best position to provide information about the service.

For these reasons, services unrelated to the loan that are not required should be omitted.

Advance Charges You Pay at Closing

This item covers escrowed items and prepaid interest. The HUD-1 currently shows the amount paid at closing for property taxes, mortgage insurance, and hazard insurance. It separately shows the amount deposited into the escrow. The prototypes show the amount paid at closing for homeowner's insurance. They also show the amount for "Escrow and prepaid property taxes" and separately show the amount escrowed for insurance. It would be best to disclose each amount paid in advance for each type of insurance and for property taxes. It would also be preferable not to use the term "insurance" without specifying the insurance type.

The amount paid into escrow should not be itemized. It is possible that the intent is for the prototypes to show the total initial escrow deposit as the total of the initial escrow deposit for taxes and the initial escrow for insurance. However, escrow rules require the use of aggregate accounting, "by computing the sufficiency of the escrow account funds by analyzing the account as a whole."[8] Calculating the amount escrowed for one item separately from the amount escrowed for another is not permitted. The escrow deposit disclosure therefore needs to be combined.

This item is based on the HUD-1 900 series, which is entitled Items Required by Lender to be Paid in Advance. The prototypes entitle it "Advance charges you pay at closing." This new title is clearer and more concise because it uses the active voice rather than the passive voice. The term "advance" charges paid "at closing" seems confusing because in advance may imply before closing. We recommend removing the word advance and retaining "Charges you pay at closing" because this is clear and conveys when the payment is required. The description of the items that follows will convey what the charges are for.

Credits From Lender or Seller

The prototypes do not reflect any credits from either the lender or seller, so their treatment is not apparent. We believe it is important to clarify who provides credits. It may be the lender, the seller, or another, such as an employer for a relocation. The buyer and seller negotiate seller credits, and these have nothing to do with the loan terms or cost. Lender credits should be segregated from seller and other credits so consumers will be able to see the cost of borrowing as opposed to the cost of purchasing a home.

If this form is also to be used for redisclosures, there will need to be a place to show costs the consumer has already paid, such as fees for an application, appraisal, credit report, rate lock, commitment, or extension. Current RESPA rules use "P.O.C" disclosures (paid outside closing), but these are cumbersome disclosures, and consumers frequently have to ask what they are. It would be preferable to have a clean way to disclose the common fact that consumers pay some costs before closing.

Is An Escrow Required?

The prototypes disclose whether the loan will have an escrow, which is certainly appropriate. It should make clear which items will be escrowed.

The disclosure is preceded by the question, "Is an Escrow Account Required?" Consumers often prefer escrows even when they are not required. It would be more helpful to ask whether the loan will have an escrow. Prospective mortgage applicants should know what escrows are and whether they would like one before they approach a lender about obtaining a loan. At this point, the relevant question is whether the loan will have an escrow, not why.

The Dodd-Frank Act requires several escrow disclosures that will need to be reflected in the prototypes.[9] These will need to be incorporated into the Loan Estimate.

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[8] 24 C.F.R. §§ 3500.17(c)(4)(ii) and 3500.17(b).

[9] *See*, Dodd-Frank §§ 1461 and 1462, 124 Stat. at 2178-82, new TILA § 129D(a) – (j).

Is Mortgage Insurance Required?

We believe the cost of mortgage insurance should be reflected on the first page because it is a direct cost of borrowing, because it varies from loan to loan, and because it is important for loan shopping. If mortgage insurance premiums are to continue to be combined with items payable in a cash transaction, then under "Is Mortgage Insurance Required," if the answer is yes, there should be a statement that mortgage insurance premiums are included in taxes and insurance.

Will You Make Your Payments to Us?

In this disclosure, the question posed is not the same as the answers available. The answers relate to whether the lender "intends" to service the loan or transfer the servicing. If that is the information to be conveyed, the question may be clearer by asking "Will We Service This Loan?"

If the answer is yes, it is important to add that "We may transfer the servicing in the future."

If the servicing is transferred to an affiliate but there is no change that triggers a RESPA servicing transfer notice,[10] it is not clear that the required answer is to be yes or no. If it is to be no, should the lender state that the loan will initially be serviced by an affiliate?

With the new Loan Estimates in place, the current disclosure under Regulation X[11] should be eliminated. The language in the prototype is certainly more streamlined and clearer than that in Appendix MS-1.[12]

Appraisal

The first round of prototypes state, "We will promptly give you a free copy of any written property appraisals or valuations. You will receive the copy even if the loan does not close." While we understand the intent to ensure that consumers are aware that they will receive a copy of an appraisal, we have concerns about the draft wording of this statement.

First, it is not transaction-specific information. The CFPB's educational materials should therefore include consumers' ability to get a copy of appraisals so applicants will know this long before approaching a lender for a loan. In this event, it would be unnecessary in the Loan Estimate.

The statement that the consumer will receive a "free" appraisal is misleading and confusing because lenders charge applicants for appraisals. Lenders should not be required to provide free appraisals to consumers who have not paid for them.

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[10] *See* 24 C.F.R. § 3500.21(d)(1)(i).
[11] 24 C.F.R. § 3500.21(c).
[12] Appendix MS-1 to Regulation X.

Sometimes a lender orders and receives an appraisal but finds it is flawed, and therefore orders another. In no event should lenders be required to provide borrowers with appraisals that the lender knows are flawed. Lenders should only be required to provide a copy of one valuation, and it should be one on which the lender relies in underwriting a loan before closing.

Servicers may obtain property valuations after a loan closes. The draft language may imply that the servicer will provide a free copy of any valuations at any time during the life of the loan, which is not the case.

Taxes and Insurance

The prototypes state that property taxes and insurance amounts are estimated and that they could increase over time. We suggest it would be more realistic to say that they are likely to increase in the future.

Adjustable Interest Rate Information

The index disclosed in the prototypes says simply "Prime." This is far too vague. There should be enough information for the consumer to know how the index is determined.

The "Adjustable Rate Information" states that the first rate change is 2 years from the loan date. Rate changes are normally on the first of a month, while loan closings are usually on a date other than the first. We suggest the statement read "Adjusts starting in the 24th payment."

We also suggest including in the "Adjustable Rate Information" a statement of any rounding, such as, "Your rate will be rounded to the nearest one-eighth of a percentage point each time it changes."

Integrating Tolerances, Redisclosures, and Waiting Periods

The CFPB will need to address tolerances as it integrates the TILA and RESPA disclosures. Tolerances under Regulation Z are very different than tolerances under Regulation X, even though all tolerances serve the same purpose. We suggest rationally relating tolerances to their purpose. Tolerances exist because of the uncertainties during the origination process, so tolerances should vary *depending on* the degree of uncertainty.

Costs the lender can control directly, its own charges and the charge it pays a broker, do not need tolerances, either early in the transaction or later (assuming the consumer does not make a change to the loan, such as changing the loan amount or points). Charges for services for which the lender or broker selects the service provider need some tolerance early in the application process because lenders cannot control these costs. Charges for services for which the borrower selects the service provider will need wider tolerances early in the process because the lender cannot predict the costs. Charges that neither the lender nor the consumer control, such as government recording charges, should not result in lender liability for inaccuracy.

Limiting redisclosures to circumstances in which they will convey significant and helpful information to consumers would be an improvement over current rules.

It would also make sense for the CFPB to relate mandatory waiting periods after a redisclosure to the problem waiting periods are designed to address. Waiting periods can be costly to consumers. If new waiting periods were to be required for every redisclosed term, closings would be delayed repeatedly, and delays themselves would cause redisclosures as, for example, rate locks expire during mandatory waiting periods. A cycle of repeated redisclosures, as under today's RESPA rules, with resulting waiting periods, as under today's TILA rules, would be wholly unworkable. The standard for requiring a waiting period after a redisclosure should be higher than the standard for requiring a redisclosure.

Conclusion

We are pleased to see the CFPB tackling a difficult project early, and we are pleased that the CFPB's goal is to create disclosures that work. The early prototypes are an improvement from current disclosures. We encourage the CFPB to address the weaknesses in the current system of tolerances for costs lenders cannot predict, control, or select. We will continue to offer any input that would be helpful as you continue your progress on improving the consumer mortgage origination experience.

Sincerely,

Anne C. Canfield
Executive Director

Statement of Bill Cosgrove, CMB
President & CEO
Union National Mortgage Company

on behalf of the
Mortgage Bankers Association

House Financial Services Committee
Subcommittee on Insurance, Housing
& Community Opportunity

"Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses"

June 20, 2012

Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee, my name is Bill Cosgrove and I am a Certified Mortgage Banker. I currently serve as President and Chief Executive Officer of Union National Mortgage Company, headquartered in Strongsville, Ohio, and I also serve on the Board of Governors of the Mortgage Bankers Association.[1] My company employs 220 individuals and we are very proud that since 1999 we have helped more than 40,000 homebuyers finance and refinance their homes and achieve their dreams of homeownership.

We particularly appreciate you conducting this hearing at what is a pivotal time for the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) integration effort by the Bureau of Consumer Financial Protection (CFPB), known as "Know Before You Owe."

Dodd-Frank requires that by July 21, 2012, the CFPB issue proposed combined disclosures to be provided to borrowers at the time of application for a loan and at the time of settlement, as well as accompanying rules.

My testimony today will provide MBA's perspective on this effort so far and how we think Congress, the CFPB and stakeholders should move forward so that consumers can finally have a far more transparent and efficient mortgage process, with improvements they have long deserved.

Introduction

The Mortgage Bankers Association has long supported greater transparency in the mortgage process for consumers. For that reason, among others, we welcome Dodd-Frank's consolidation of RESPA and TILA authorities in the CFPB and strongly support Dodd-Frank's mandate to integrate RESPA and TILA disclosures. Our experience has shown that splitting RESPA and TILA authority between The Department of Housing and Urban Development (HUD) and the Federal Reserve did not result in the development of coordinated disclosures and rules to best serve consumers.

While we do not believe disclosures are all that is needed to help consumers, we firmly believe better disclosures would go a long way to empowering consumers to make prudent decisions to protect themselves.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Better disclosures will focus consumers on the costs and terms of their mortgage and home purchase transaction, help them discern that the mortgage, closing transaction and home purchase are as offered and as agreed, that the mortgage is sustainable, and that they will be able to afford their loan into the future.

True transparency also helps facilitate a level playing field for large and small lenders and other loan providers to compete on quality, cost and benefit of their service to consumers. Conversely, opaque disclosures, piled on top of each other, allow the rare abuser to hide in plain sight, harming consumers and undermining the efforts of reputable companies.

Finally, we would hope that effort to markedly improve federal loan disclosures will, in turn, spawn a national disclosure reform effort under the CFPB's leadership to address the myriad disclosures added by the states and obviate the need for additional disclosures by loan providers themselves.

As the CFPB prepares to issue its RESPA and TILA simplification rule, MBA urges Members of Congress to become involved in this effort to ensure its success. To that end, we make the following points to guide this effort and which we will explain in detail:

1. First and foremost, we believe all necessary resources should be applied to making certain this effort is done right and not hastily.
2. While the prototype forms have benefitted from public input through an iterative process, more work needs to be done to ensure they are as useful as possible to consumers.
3. The forms and rules resulting from this effort should not be finalized until the other Dodd-Frank rules having implications for these forms are finalized and appropriately taken into account.
4. The rules accompanying the forms, which have not benefitted from an iterative process, should be developed carefully so that they guard consumers against abuse but do not unwittingly harm the market and the consumers they are intended to serve.
5. Ultimately, when the forms and rules are finalized, they should be implemented in an orderly manner that is respectful of the considerable commitment of resources, including by small businesses, that will be needed to ensure efficient compliance.

Background

In 1968, Congress enacted TILA to ensure consumers are informed of the costs of credit and assigned the Federal Reserve regulatory responsibility. RESPA was enacted in 1974, delegating regulatory authority to HUD to ensure consumers are informed of their real estate settlement costs.

Since these laws were enacted, in part because of the divided responsibility for their implementation, RESPA and TILA disclosures have gone in different directions and are accompanied by differing rules with vastly different penalties for failing to comply.

Earlier Reform Efforts

HUD in 2008 proposed and in 2010 finalized rules overhauling the Good Faith Estimate (GFE) and HUD-1 Settlement Statement. Also in 2008, Congress added new timing requirements for redisclosures under TILA that differ from the timing requirements for redisclosure of the GFE under the new RESPA rule.

In the summer of 2009, the Federal Reserve proposed a complete overhaul of its TILA disclosures for most closed-end and open-end transactions and required comments by the end of that year. The following summer, the Board issued a second proposal covering transactions and topics not addressed in the previous year. Both proposals required extensive review and an enormous investment of time by stakeholders to provide meaningful comments. Ultimately, however, the Federal Reserve only finalized its loan officer compensation proposals and chose not to finalize its disclosure reforms so as not to interfere with the forthcoming CFPB simplification effort.

As a result of both legislative and regulatory requirements, consumers today receive a package of disclosures when they apply for a loan and then continue to receive a dizzying array of redisclosures until their loans close.

CFPB Takes Over – "Know Before You Owe"

Under Dodd-Frank, the CFPB formally took over responsibility for RESPA and TILA on the "transfer date," July 21, 2011. The law mandates that no later than one year after that date (by July 21, 2012) the CFPB issue a proposed regulation integrating and combining the TILA and RESPA disclosures at application and at settlement.

Dodd-Frank made the CFPB responsible for approximately 16 other consumer financial protection laws in addition to RESPA and TILA and assigned it the daunting task of implementing most of the new consumer financial protection provisions involving mortgages, under Title XIV, no later than January 21, 2013.

From May 2011 through February 2012, the CFPB conducted its RESPA and TILA reform effort, which it called "Know Before You Owe," by first issuing and refining prototypes of the early disclosure form or "Loan Estimate." The Loan Estimate was to take the place of the GFE provided to consumers at or within three days of application under RESPA and the early Truth in Lending (TIL) disclosure. In October 2011, the CFPB largely shifted its focus to developing a "Settlement Disclosure" combining the current HUD-1 settlement document and the final TIL.

In its development of the prototypes, the CFPB issued several iterations of forms and provided short turn-around times for comment from members of the public through the CFPB website. MBA and other stakeholders commented on each of the proposals resulting in improvements to the forms.

The current prototype of the Loan Estimate, to be provided at or within three days of loan application, is three pages long. The first page includes: identifying information for the borrower and loan; the terms of the specific loan including the loan amount, payments and rate; particular loan features that deserve the borrower's attention such as prepayment penalties and balloon payments; projected payments showing any increases to payment amounts; as well as the cost to close and total settlement fees. The second page includes some detail on settlement costs, escrows and down payment. The third page includes an array of disclosures concerning the availability of appraisals, whether the loan is assumable, the need for homeowner's insurance, policy on late payments, that refinancing cannot be guaranteed and whether servicing may be transferred.

The current prototype of the Settlement Disclosure to be provided at settlement (or possibly three days before settlement, see below) is five pages long. The first page is the same as the first page of early disclosure, the second and third pages detail the settlement costs and summarize the real estate transaction. The remaining pages also provide several loan disclosures, including the lender's late payment policy, whether the loan includes negative amortization and the Annual Percentage Rate (APR). The form also features a new disclosure of the "Total Interest Percentage" and "Lender Cost of Funds," which we believe will have little value for the consumer.

During the comment periods on the forms, MBA and other industry organizations urged the CFPB to provide a similarly iterative process to consider the rules that would apply to the forms.

Rules Under Consideration

On February 21, 2012, the Bureau issued a memorandum entitled "Outline of Proposals Under Consideration and Alternatives Considered" ("Outline") for its Small Business Review Panel. Dodd-Frank requires that the CFPB convene such panels for proposed rules to obtain the views of small businesses. This document for the first time provides an outline of rules the CFPB is considering to accompany the forms. The proposals under consideration are extensive and would have profound effects on the mortgage market. They include, among others:

- Limiting the information the lender may require from the borrower to provide GFEs to six items of information;
- Tightening the tolerances applicable to any changes in the charges of affiliated and unaffiliated settlement providers listed to the consumer by the lender;

- Changing the timing of disclosures including possibly imposing a new three day waiting period before consumers can close;
- Changing the entity charged with providing the settlement disclosure from the settlement agent to the lender or making both the lender and settlement agent responsible for TILA and RESPA disclosures respectively;
- Providing standard forms for certain transactions and model forms for other transactions;
- Removing many of the exclusions from the computation of the finance charge that is used to compute the APR;
- Facilitating average cost pricing;
- Establishment of clear disclaimers regarding shopping estimates, to name a few; and
- Permitting the use of an index to disclose the lender's cost of funds.

While some of these proposals are improvements, MBA has concerns about several others, some of which I will discuss.

While we look forward to providing detailed comments on the forthcoming proposed forms and rules, we respectfully urge that the following points guide the process going forward.

1. **First and foremost, we believe all necessary resources should be applied to make certain that this effort is done right and not hastily.**

Buying and financing a home remains the largest financial transaction in nearly all families' lives. In spite of this, the disclosures consumers are required to receive to guide the process remain confusing, voluminous and inconsistent.

Past efforts to improve the disclosures have been uncoordinated and ultimately failed to achieve their objectives. Untold sums have been spent and continue to be spent to implement the recent RESPA rule, which at this point is expected to be eclipsed by the CFPB's reforms. Significant amounts have also been spent implementing and simply reacting to TILA proposals.

Dodd-Frank requires proposed forms and rules for integrated RESPA and TILA disclosures by July 21, 2012. Unlike other provisions of the Act, Dodd-Frank does not require final forms and rules for this initiative by any specific date.

Considering that other rules under Dodd-Frank have implications for this final rule and the forms and rules deserve considerably more review, we believe the CFPB should build on the work to date as a starting point for a more protracted and more judicious rulemaking process. At this point, the issuance of a proposed rule and establishment of a mere 60- or 90-day comment period would be inadequate and unwise.

A better approach would be to issue an advance notice of proposed rulemaking (ANPR) in July 2012 instead of a typical proposed rule or a proposed rule that opens a process for additional comment on next steps and then subsequent period(s) of comment. Such an ANPR or proposal could open a process for comments on further testing, further refinement of rules and/or open a negotiated rulemaking where representatives of consumers, industry and other stakeholders could fully enter the process to help hammer out acceptable forms and rules.

Considerable resources have been spent on this effort so far, but actual implementation will be far costlier for businesses large and small. Considering that consumers will ultimately bear these costs, it is important that we get this right.

2. **While the forms have benefitted from public input through an iterative process, more work needs to be done to ensure that they are as useful as possible to consumers.**

As indicated, the current "Loan Estimate" to be provided at or shortly after application is three pages long and the current "Settlement Disclosure" to be provided at closing is now five pages.

While the prototypes have improved considerably, they still are very extensive. Although both enable the borrower to use the first page to compare the loan offered to the loan received, the other material on the forms might be counterproductive, considering that too much information might be ignored. In fact, the CFPB itself has admitted that: "These disclosures don't work if they give you too much information or if the information they provide isn't what you need."

The CFPB has indicated that it has not prepared a prototype for every possible set of loan terms but plans to provide extensive samples with the proposed and final rules. It also is considering requiring the use of a standard form for a transaction that is subject to both RESPA and TILA but a model form for a transaction subject only to TILA.

Today's mortgage market offers a range of loan products to address borrower's diverse needs. These include, for example, a variety of both fixed and adjustable products as well as loans to address particular needs such as construction to permanent financing. While prototypes do not need be developed for every possible loan, provisions relevant to all of the major loan products should be developed so they can be nested into a standard form.

Also, while the forms should continue to be tested on consumers, they must be carefully tested in conjunction with lenders and settlement service providers on real loans.

Clearly, standard forms are best and should result from all this effort. Lenders of all sizes and consumers are better served by standard forms that facilitate competition. To produce them, however, more forms development and testing will be needed.

3. **The forms and rules resulting from this effort should not be finalized until other Dodd-Frank rules having implications for these forms are finalized and appropriately taken into account.**

Title XIV of Dodd-Frank requires the CFPB to finalize several major rules no later than January 21, 2013. These include the Ability to Repay-Qualified Mortgage (QM), High Cost Loan (HOEPA), Mortgage Originator Compensation and Qualification as well as Servicing rules.

All of these rules have significant implications for any final disclosure requirements. For example, the Ability to Repay/QM rule requires that a lender make a reasonable determination of a borrower's ability to repay their loan. The extent of information that will be provided to facilitate a lender's determination has implications for how an "application" is defined for purposes of the RESPA-TILA integration effort.

Additionally, the CFPB has indicated that preventing borrower confusion is key to its thinking about providing a limited exemption to Dodd-Frank's restrictions against origination fees under the Mortgage Loan Originator rule. Ultimately, this issue may be resolved at least in part by better RESPA-TILA disclosures.

The CFPB itself noted in the Outline that it is considering using its TILA, RESPA and Dodd-Frank authority to exempt lenders from compliance with the many Title XIV disclosure requirements until the forms are finalized.

In a similar vein, industry representatives expressed concerns in a meeting with CFPB staff that the rule must work harmoniously with the rules under Title XIV. In response, staff indicated the rule would not be finalized until it did. We appreciate and strongly support this approach and believe that a unified set of rules is far preferable to piecemeal rulemaking, which leads only to confusion and higher costs.

Considering that the rules implementing Title XIV will not be finalized until January of next year, we urge that this rule await the completion and integration of any relevant portions of the related rulemakings before it is finalized and that any necessary delays in instituting disclosure provisions to ensure appropriate coordination are provided.

4. **The rules accompanying the forms, which have not benefitted from an iterative process, should be developed carefully so that they guard consumers against abuse but do not unwittingly harm the market and the consumers they are intended to serve.**

MBA's preliminary view is that several proposals for rule changes by the CFPB are problematic while others seem acceptable. Although we will not burden the subcommittee with a discussion of all of the rules under consideration at this point, we offer the following as examples of areas of concern:

a. **Application**

We do not agree, as the CFPB's Outline suggests, that the application information needed by lenders to issue a "Loan Estimate" should be reduced to six items without also allowing the lender to request "any other information it deems necessary," as is permitted under RESPA today.[2]

HUD allowed lenders to request additional information before providing a GFE because of its recognition that the GFE would be binding and subject to "tolerances" that required adherence to estimated amounts. The CFPB has indicated, however, that in order to get estimates into the hands of borrowers more easily, less information is preferable to more.

There is a clear tension between getting estimates early and getting them right. In our view, the rules should assure that getting a reliable estimate is the greater imperative.

Borrowers generally shop the market before they apply for a loan, not at the time of application. A misunderstanding of this fact threatens to hamper lenders' ability to obtain necessary information from borrowers.

Limiting a lender's ability to gather information will make it impossible for lenders to fill out the current Loan Estimate itself. For example, information on "Cash to Close" cannot be calculated without substantial information about the terms of a purchase transaction. Escrow disclosures cannot be provided without knowing whether or not the borrower wants to escrow all, part, or none of the escrow items. Transfer taxes cannot be disclosed without knowing the terms of contract between the borrower and the seller.

Most importantly, under the new Ability to Repay rule, lenders will face significant liability for failing to determine that a borrower has a reasonable ability to repay the loan. Constraining lenders from gaining relevant information not only brings an unreliable estimate but may put them in legal jeopardy. This would likely result in more conservative lending standards that would punish otherwise eligible consumers.

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[2] Under current RESPA rules, "application' is defined as the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include: (1) borrower's name, (2) borrower's monthly income; (3) borrower's social security number to obtain a credit report; (4) property address; (5) estimate of value of the property; (6) loan amount and (7) *any other information deemed necessary by the loan originator* [emphasis added].

Finally, while we do not support the suggested change to the definition of "application," we would urge as part of a comprehensive reform effort, a fresh look be given to whether differences in the definition of application under RESPA and TILA, the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and the Fair Credit Reporting Act (FCRA) are justified.

b. **Tolerances**

MBA disagrees with CFPB's proposal to extend the current "zero tolerance" limit on increases in estimated charges that is applicable to lender fees to fees for third-party services of companies owned, affiliated, selected by lenders or chosen from a list prepared by the lender.

While MBA disapproves of offering estimates and then varying from them unnecessarily, we do not believe there is sufficient data to necessitate a change in the tolerances that were imposed less than 18 months ago.

Lenders do not as a general matter control third party fees and a change of this kind also risks unintended consequences. New requirements for zero tolerance may spur increased affiliations and other arrangements that may have negative consequences for smaller, independent third-party providers.

c. **Timing of Settlement Disclosure**

MBA also disagrees with CFPB's proposal to require delivery of the integrated settlement disclosures three days before closing in all circumstances. Beyond our concern that such an approach is not authorized by RESPA or TILA, there are far better and less intrusive means of ensuring that borrowers get the loan they bargained for. Requiring the provision of Loan Estimates subject to the current tolerances at established times in the mortgage process, including a standard Loan Estimate within three days after application, a Loan Estimate after underwriting or loan approval, and a Loan Estimate three days before closing and then a Settlement Disclosure at settlement, would regularize disclosure requirements and protect borrowers. Such a process would not unduly delay closing.

We note the CFPB is also considering a provision delaying closing only when, after the Loan Estimate is given, the APR in the Loan Estimate increases by more than 0.125 percent or an adjustable rate feature is added to the loan. While this approach is better than simply requiring a three day delay in all cases, a final Loan Estimate three days before closing would be a better choice. If the tolerances and other protections for consumers in the final rule apply, borrowers will be sufficiently protected from abuse.

5. **Ultimately, when the forms and rules are finalized, they should be implemented in an orderly manner that is respectful of the very considerable commitment of resources, including by small businesses, needed to ensure efficient compliance.**

   Past implementation periods for the RESPA reforms and the loan officer compensation rule were difficult; far too many questions were raised and left unanswered while the implementation deadline loomed.

   We respectfully urge that when this final rule is published, the CFPB should embark on a process for implementation that includes a specific period of time -- we would suggest at least three months -- for stakeholders and the public to identify and submit questions and for the CFPB to respond in writing. Only after necessary guidance is provided should the actual implementation period begin.

   The implementation period should provide sufficient time for training, systems development and the many operational changes that the rule will necessitate. For larger lenders, very considerable time will be needed not only to integrate these changes but also for the programming and testing of a large number of complicated, often legacy systems and the data passed among them.

   Smaller lenders not only need time to train and make these same changes with fewer resources, but they must also await guidance and systems development by larger lenders, vendors and secondary market aggregators. Considering the number of other rules where compliance will also be expected of both large and small lenders, we respectfully urge that twelve months should be the minimum, not the maximum, time for compliance.

CONCLUSION

We appreciate the efforts of the subcommittee to examine these important regulations and consider our comments. No matter how well intentioned these rules may be, they cannot be allowed to harm American families, the mortgage market or the nation's still fragile economic recovery.

While MBA commends much of the CFPB's work on this project to date, we believe the next steps we take in this important effort are crucial to its ultimate success. To achieve this end, we believe the process must be judicious and more expansive.

In this process it is crucial that the CFPB draw on the experience of the mortgage industry as it further develops these proposals. Lenders work with consumers every day and have extensive experience in conveying information to consumers at optimal times, in the most useful manner.

Written Testimony of Raj Date
Deputy Director, Consumer Financial Protection Bureau

Before the House Financial Services Subcommittee on Insurance, Housing, aud Community Opportunity
Washiugtou, D.C.
June 20, 2012

Chairman Biggert, Ranking Member Gutierrez, and Members of the Subcommittee, thank you for this opportunity to testify. My name is Raj Date, and I am the Deputy Director of the Consumer Financial Protection Bureau ("Bureau"). I am honored to represent the Bureau here this afternoon.

Today's hearing is focused on the Bureau's efforts to combine the various federal disclosures that consumers receive when taking out a mortgage loan. For more than 30 years, federal law has required lenders to provide two different disclosure forms to consumers shortly after they apply for a mortgage loan.[1] The law also has generally required two different forms at or shortly before closing.[2] Two different federal agencies developed these forms separately under two different statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The information on these forms is overlapping and the language is inconsistent. Not surprisingly, consumers often find the forms to be confusing. It is also not surprising that lenders and settlement agents find the forms burdensome to provide and explain.

The recent mortgage crisis highlighted problems with consumers' understanding of their mortgages. These problems may be in part due to shortcomings in the current disclosures. For example, many consumers select a loan based on their ability to afford the monthly payments. But some consumers experienced "payment shock" because they did not understand that their payments could increase to unaffordable amounts a few years or even months after closing. The Board of Governors of the Federal Reserve System, which was responsible for the TILA disclosures, and the U.S. Department of Housing and Urban Development, which was responsible for the RESPA disclosures, each tried to address these problems. However, they were unable to arrive at a coordinated solution.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred authority for the TILA and RESPA mortgage disclosures to the Consumer Financial Protection Bureau in July 2011. The Dodd-Frank Act also directed the Bureau to propose rules and forms combining the disclosures by July 2012.[3]

The Dodd-Frank Act established two goals for the combined mortgage forms: (1) to improve consumer understanding of mortgage loan transactions; and (2) to facilitate industry compliance

[1] These disclosures are available at http://www.hud.gov/offices/hsg/rmra/res/gfestimate.pdf and http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.
[2] These disclosures are available at http://www.hud.gov/offices/adm/hudclips/forms/files/1.pdf and http://ecfr.gpoaccess.gov/graphics/pdfs/ec27se91.024.pdf.
[3] Dodd-Frank Act § 1032(f).

with TILA and RESPA.[4] To achieve these goals, the Bureau gathered information in a variety of ways and from a variety of sources. Some are time-tested, others novel. The Bureau tested draft forms, used interactive online tools and blog posts, hosted roundtable discussions, and held teleconferences and meetings. These activities included the public, consumer advocacy groups, industry stakeholders, and other government agencies. In particular:

- In September 2010, the Bureau began meeting with consumer advocates, other banking agencies, community banks, credit unions, settlement agents, and other industry representatives. This outreach helped the Bureau better understand the issues that consumers and industry face when they use the current TILA and RESPA disclosures.

- In December 2010, the Bureau organized a symposium titled "Communicating with Consumers: How to Improve Mortgage Loan Disclosures," which featured panel discussions with experts from academia, government, industry, and non-profits on development of disclosure forms and existing research on communicating complicated financial information to consumers.

- In May 2011, the Bureau launched its Know Before You Owe or "KBYO" project. The Bureau used its website to share prototypes of the combined disclosure forms with the public.[5] This project also used blog posts and e-mails to inform interested consumers, industry members, and other stakeholders of the Bureau's progress and to seek feedback on the prototypes. Individual consumers, loan officers, mortgage brokers, settlement agents, and others provided feedback based on their own experiences with the mortgage loan process.[6] Almost every month from May 2011 through February 2012, the Bureau posted prototype forms on the KBYO website and sought additional feedback. This allowed stakeholders to track the development of the forms. In total, the Bureau posted more than a dozen prototype forms and received more than 27,000 responses.

- In addition, from May 2011 through March 2012, the Bureau conducted extensive testing of the prototype forms. The Bureau conducted one-on-one structured interviews with more than 100 consumers, lenders, mortgage brokers, and settlement agents. These interviews were conducted in nine cities across the country.[7] In these interviews, consumers were asked a series of questions designed to assess whether the forms presented information in a format that enabled them to understand and compare different mortgage loans and to identify changes during the loan process. In contrast, industry participants were asked to use the prototype forms to explain loans as they would to a consumer and to identify areas for improvement. After each round of testing, Bureau

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[4] *Id.* §§ 1098, 1100A.
[5] *See* http://www.consumerfinance.gov/knowbeforeyouowe/.
[6] Examples of consumer and industry responses to the prototypes of the disclosures can be seen in the Bureau's blog, including at: www.consumerfinance.gov/know-before-you-owe-go; www.consumerfinance.gov/13000-lessons-learned; and www.consumerfinance.gov/know-before-you-owe-its-closing-time.
[7] Testing was conducted in Baltimore, Maryland; Los Angeles, California; Chicago, Illinois; Springfield, Massachusetts; Albuquerque, New Mexico; Des Moines, Iowa; Birmingham, Alabama; Philadelphia, Pennsylvania; and Austin, Texas.

staff carefully analyzed the results and the public feedback from the KBYO process. Using this information, the Bureau designed new and improved forms.

- In February 2012, the Bureau convened a Small Business Review Panel with the Chief Counsel for Advocacy of the Small Business Administration and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget. This panel gathered information from representatives of small lenders, mortgage brokers, settlement agents, and not-for-profit organizations about the costs of the proposals under consideration and potentially less burdensome alternatives. At the same time, the Bureau shared the panel materials with stakeholders and the public and invited them to provide more feedback.[8]

We are using all of this information to develop proposed forms that will make the mortgage process easier for consumers and industry. To further reduce paperwork burden, the forms will incorporate a number of additional federal disclosures, including some added by the Dodd-Frank Act. These forms will be issued for public comment by the statutory deadline of July 21, 2012.

At the same time, we will be issuing a proposed rule that provides detailed requirements and guidance for filling out the forms. During the Small Business Review Panel and our other outreach, industry identified several areas in which the current rules create uncertainty about how to comply. We plan to use the proposed rule as an opportunity to reduce unnecessary compliance burden by providing clear guidance that resolves those ambiguities.

We also plan to use the proposed rule to explore ways to strengthen protections for consumers. For example, during the Small Business Review Panel process, we discussed ways to encourage lenders to provide consumers with the initial disclosure earlier in the loan process. We also discussed ways to make the cost estimates in that disclosure more reliable for consumers by limiting subsequent changes. We look forward to gathering more information on these issues during the public comment process.

Finally, the proposed rule must reconcile several inconsistencies that currently exist between TILA and RESPA to create the combined forms. In particular, TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers and require different parties to provide the TILA and RESPA disclosure forms. During the Small Business Review Panel process, we discussed potential solutions to these inconsistencies. We sought feedback on whether the combined final disclosure could be provided three business days before closing so that consumers would have time to review the final terms and costs and resolve any questions or problems. We also sought feedback on whether the lender or the settlement agent was better equipped to provide the combined final disclosure or whether some sort of shared responsibility was appropriate. We will continue to explore these options in the proposed rule.

We are excited about this opportunity to develop a practical solution to what has been a long-standing problem for consumers and industry. Thank you for asking me to testify today. I would be happy to answer your questions.

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[8] The panel materials are available on the Bureau's website at http://www.consumerfinance.gov/blog/sbrefa-small-providers-and-mortgage-disclosure/.

Testimony of Chanelle P. Hardy, Esq.,
Senior Vice President and Executive Director
National Urban League Policy Institute

US House of Representatives Subcommittee on Insurance, Housing and Community Opportunity

"Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?"

June 20, 2012

Chairman Biggert, Ranking Member Gutierrez, and members of the Subcommittee, thank you for the opportunity to testify before the Subcommittee and for the leadership you have shown on this issue. I am Chanelle Hardy, Senior Vice President and Executive Director of the National Urban League Policy Institute. On behalf of the National Urban League, its President and CEO Marc Morial, and the 2.6 million Americans served by our 98 affiliates in 2010, I am pleased to share our views concerning the Consumer Finance Protection Bureau's (CFPB) efforts to create combined (TILA) Truth in Lending Act and (RESPA) Real Estate Settlement Procedures Act disclosures as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

With the help of HUD Housing Counseling Grants, the National Urban League acts as a direct provider of housing counseling services in 36 cities throughout the country. Last year alone National Urban League affiliates offered counseling to more than 10,000 families, with services ranging from pre-purchase workshops, to mortgage modification and the initiation of forbearance agreements. The goal of our housing counseling model is to break down barriers and obtain economic equality through education, self-reliance, and a greater understanding of financial tools and services.

Our counselors see firsthand the damage done by confusion at the point of loan origination on the part of well-intentioned and qualified borrowers confronted with hopelessly confusing documents, and sometimes deliberately abusive and malicious lending agents.

In our view, CFPB will help combat and limit such abuse and confusion by simplifying the information required by TILA and RESPA.

The broader context for these reforms must not be forgotten. The fact that between five and six million American homeowners are currently at risk of foreclosure makes it clear that a large share of homeowners lacked full awareness of the types of risks of certain types of mortgages before agreeing to their terms. Communities of color, and African American communities in particular have borne much of the brunt of this crisis, leading to loss of family and community wealth that can only be described as devastating. The Federal Reserve has recently pointed to a 40% plunge in the wealth of the average American family, from $126,400 in 2007, to $77,300 in 2007[1]. However, black average family wealth in America started at an astonishingly lower figure of $5,677 in 2009[2], before the worst of the crisis. The sudden evaporation of black wealth spells looming hardship not only for those families impacted, but for the greater American economy as a whole.

The heartbreaking stories that the Urban League has heard from many of our clients revealed that many of them didn't fully understand the potential of many mortgage terms to cause problems in the future, and many claim to have been unaware of those provisions at all. Better consumer education is a significant part of the solution to the recurrence of the current housing crisis, and streamlining RESPA and TILA disclosure forms are a critical component to that solution.

Now that CFPB has authority over RESPA and TILA, we believe the combination of those authorities will make it easier to unify the legal approach. And while some will certainly argue for an approach that reduces the regulatory burden on the

[1] Federal Reserve Bulletin, Changes in US Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances, June 2012, Vol. 98, No. 2.
[2] Pew Research Center tabulations of survey of income and program participation data from 2004 and 2008 panels.

mortgage industry, we strongly believe the central challenge of CFPB's focus must be on improving the ability of consumers to understand the disclosures.

However, many hurdles clearly remain, including differences in the laws themselves.

TILA, enacted in 1968, requires lenders to disclose the lending terms, including finance charges and the annual percentage rate, for mortgages. RESPA, enacted in 1974, focuses more on closing and settlement costs, including requiring a good faith estimate. We believe the biggest impediment for the CFPB is the inconsistency between the laws themselves; specifically with regard to content, coverage, timing and liability provisions. Settlement costs and finance costs are interdependent, and manipulation of the relationship between the two is a common way consumers have been tricked into abusive loans.

Timely, consistent, and clearer disclosures of all-important factors that affect mortgage financing decisions are needed. The magnitude of the current housing crisis and its tragic impact on the personal lives of millions of American homeowners, and the entire economy, argues for rules that place far more weight on assuring full consumer understanding of mortgage terms. This is more important than preventing minor additional paperwork and inconvenience for companies that play various roles in the mortgage financing process.

Timely, consistent and clearer disclosures will also reduce the frequency of poor financial decisions by consumers, many of whom lack the sophistication to "read between the lines." Consumers will benefit from clarity and reinforcement regarding elements of mortgage obligations that could create future risks. Disclosures will reduce deception by making it harder for lenders or brokers to skip over or minimize the significance of important terms and conditions, and may lower mortgage costs by fostering more competition.

Today, as the U.S. economy faces significant challenges, the need to ensure a transparent accounting of costs in real estate transactions has become clearer than ever. Right now, it is estimated that at least 20,000 foreclosures are taking place every single week. The negative spillover effects from these foreclosures are substantial: a single foreclosure causes neighborhood property values to drop, collectively adding up to billions of dollars of losses. Empty homes lead to higher crime rates. Lost property tax revenue hurts cities and counties that are already strapped. Millions of Americans who depend on a robust housing market are losing jobs and income.

Confusing, misleading, and inaccurate information has played a contributory role in the current mortgage crisis, and reforms to the current disclosure requirements are long overdue. We commend the CFPB staff for its diligent work in crafting this proposal. We also recognize that the home mortgage process is unique and complex and that developing a fair and reasonable method of ensuring early and accurate price disclosure is challenging. However, we cannot overemphasize the fact that poor disclosure has not been the driver of the foreclosure crisis. It has been only part of a broader system of skewed incentives that have encouraged mortgage originators to steer consumers into the riskiest, highest-cost loans available. Brokers could wash their hands clean of these loans as soon as they collected their origination fees, and lenders could do the same as soon as they sold them off into the secondary market.

Finally, it's also critical to understand that disclosures do little for those consumers who are not in fact shopping independently. Most victims of predatory lending did not go out shopping for loans; rather, loans were push-marketed to them by people marketing their expertise, but who were in fact promoting not a loan with the interest rate and terms the consumer qualified for, but the *most expensive* loan. The most expensive loan earned the broker the most in kickbacks from the lender – kickbacks that were allowed only because HUD did not use its authority under RESPA to ban them.

Unfortunately, whatever decisions are made with respect to the disclosures in this proposed rule will not prevent future predatory loans from being made. They will not fix the misaligned market incentives that created this mess. However, CFPB's efforts to fulfill its mandate to streamline the disclosure forms established under Dodd-Frank, is long overdue. On behalf of the National Urban League and its roster of HUD-certified housing counseling agencies across the country, we believe consumers should be able to evaluate all cost factors together in order to see the whole picture and make the most informed choice possible.

To that end, we strongly support the CFPB's proposal and rationale to consolidate TILA and RESPA disclosures, and we believe that streamlining information about the cost of credit and the cost of settlement are central to creating more informed consumers and achieving more sustainable outcomes.

I'd like to close by offering 3 recommendations to help ensure that the CFPB is successful in its efforts to eliminate red tape for qualified borrowers regardless of race, geography, or economic class, while also protecting their rights as consumers.

1) Require that all settlement and financing terms be communicated well in advance of settlement, with clear and consistent language. Allow for the corrective redress of violations including remedy to the affected borrower.
2) Require that client disclosure and acknowledgement forms be completed by the lender not unlike the 'Know Your Client' protection provisions mandated in the securities investing marketplace. This would give uniform structure to the TILA 'Ability to Repay' requirement.
3) Draft Qualified Residential Mortgage rules requiring all securitized residential loans, qualified and other, feature complete and valid 'Know Your Borrower' documentation in addition to other prescribed forms of risk retention.

Thank you members of the Subcommittee for your time today. I would like to answer any questions you might have.

June 20, 2012

Testimony of

Brenda K. Hughes

On behalf of the

American Bankers Association

before the

Subcommittee on Insurance, Housing and Community Opportunity

of the

Committee on Financial Services

United States House of Representatives

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Chairman Biggert, Ranking Member Gutierrez, and members of the Subcommittee, my name is Brenda K. Hughes, Senior Vice President and Retail Lending Administrator at First Federal Savings Bank . Our bank is a 96-year old community bank, headquartered in Twin Falls, Idaho. We have assets of $482 million, and serve the Southern Idaho region. I also serve as Co-Vice Chairman of the Mortgage Markets Committee at the American Bankers Association. ABA represents banks of all sizes and charters and is the voice of the nation's $14 trillion banking industry and its two million employees.

We commend the Subcommittee for holding this hearing on the reform of mortgage disclosures. We support the efforts of Congress and the Bureau of Consumer Financial Protection (Bureau) to make these important reforms and we believe it is critical that all stakeholders work towards an improved mortgage disclosure system.

I work closely with our Chief Compliance Officer and with the bank's Compliance Committee, a committee made up of senior officers responsible for lending, deposits, operations, human resources, and our controller. Together we work to understand the requirements of applicable regulations and to implement policies, procedures, and controls to ensure that our operations comply with supervisory expectations. Thus, I am well aware of our compliance obligations. I understand the time and effort required to implement regulatory changes—the changes to forms, systems, policies, and procedures necessary to comply with new or modified regulatory requirements as well as the employee training, monitoring and auditing required to ensure the bank has successfully navigated the change.

I appreciate how each regulatory change siphons time and resources from lending and deposit operations, impeding our ability to serve our customers and to help our community recover from the recession. In addition, I have concerns about the impact of change on my employees. We choose our employees carefully at First Federal Savings Bank so that we identify people who want to work with customers to help them meet their financial needs and goals. I see that our staff is increasingly frustrated by the time they must spend studying new regulations and determining how each one will impact our products, services, and operations.

My loan officers and loan administrative staff are the most discouraged. They have struggled since 2008 to keep pace with a stream of poorly-coordinated and often conflicting mortgage-related regulatory proposals. On top of integrating new rules, the staff must also anticipate even more change as the Bureau implements the requirements of Title XIV of the Dodd-Frank Act. Today's regulatory uncertainty and the fear of making a mistake have changed the focus from helping the consumer understand and navigate the process to a fixation on rules, forms and procedures.

Nonetheless, we have some hope to minimize at least a small portion of these forms, and to improve their clarity, with the integration of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). This effort is an important one, and ABA has long supported reforming the RESPA and TILA disclosures. We have often stressed that inadequate consumer understanding is a primary factor that enables abusive practices to persist. We believe that clarity in cost disclosures will contribute to an optimal mortgage marketplace by imposing certainty in pricing and enabling consumers to compare among loan offers using factors that are of real importance. If this process goes off track, however, it will muddle the settlement process, confuse homebuyers, add wasted compliance burdens to banks, and stimulate counterproductive litigation across all jurisdictions.

Our advice in this process is for the Bureau to take it slow and get it right. The Bureau must tackle the important task of RESPA-TILA integration through a more inclusive process that fully considers all other changes being imposed under Dodd-Frank. The integration or merger must be done with a forward perspective that accommodates all the reforms brought about by this massive statutory reform. The Bureau must, therefore, continue to get input from consumers, lenders, and servicers, and take the time necessary to come up with a solution that will really make things easier to understand and at the same time simplify the process for all involved.

ABA's threshold recommendation is that Congress remain engaged in monitoring the direction of this reform initiative, and that the Bureau be granted a longer time latitude to ensure the agency is able to carefully consider all issues and alternatives surrounding the regulatory integration process.

The real goal for all stakeholders must be to ensure that we achieve a lasting set of clearer and more efficient mortgage disclosures. ABA understands that this is an extremely difficult task, as the mortgage process is complex and the interests are diverse. We believe it essential that Congress maintain oversight of this regulatory process and ensure the Bureau take the time necessary to weigh all the options, consider the consequences, and ultimately, get this right.

Although America's banks support reforms that will improve consumer mortgage disclosures, they are also increasingly concerned about a rulemaking process that appears to be leading once again to unwieldy results. We note that the comprehensive reforms brought about by Dodd-Frank will require a large number of ancillary implementing regulations, including ability-to-repay rules under TILA, risk retention requirements, and "high-cost" trigger amendments under the Home Ownership and Equity Protection Act (HOEPA). These other mortgage-related changes are in various stages of the rulemaking pipeline, some being at the "pre-rule" stage. Since these significant regulatory proposals aim at the mortgage origination process, they will significantly affect the disclosure-related rules being considered under RESPA-TILA reform. It would be cumbersome, expensive, inefficient and confusing to finalize a merger rule without taking into account the myriad of other rules that must still be crafted and implemented. Such an incongruent approach would necessitate erratic and intermittent amendments to the RESPA-TILA merged regulations, to properly incorporate whatever other rule is enacted. We think such a result is unwarranted and entirely avoidable.

In addition, we also note the rules being crafted will have to work in every jurisdiction and across all states. State and local disclosure mandates are often in variance with federal disclosures, and are specific in terms of mandating the fees that must be disclosed. State forms are generally required to be issued separately from the RESPA and TILA forms. These disclosure variations cause considerable complexity and risk when constructing compliance systems, and more importantly, they add an overlay of disparate shopping figures that expand the intimidating disclosure packages that consumers receive and should have a reasonable opportunity to consider.

These two important issues command that the Bureau adopt a conscious and very deliberative approach to this "merger" rulemaking. We understand that the Dodd-Frank legislation imposed a

July 2012 deadline for the issuance of proposed integrated disclosures. Congress should, however, place emphasis on completeness and thoroughness, and not on inflexible timeliness. To this end, the Bureau should be allowed to satisfy the statutory deadline through the issuance of an advance notice of proposed rulemaking (ANPR). An ANPR approach would allow Congress to assess the Bureau's thinking on the progression and course of this reform, and would help to ensure that the agency is advancing the Congressional objectives established in the statute. An ANPR would allow more flexibility for the Bureau to accommodate changes in the RESPA-TILA framework that are being demanded by other parts of the mortgage reform process. We also think that industry stakeholders would benefit by being able to monitor the rule's development, and therefore properly consider and plan for the coming changes.

ABA deems this process to be crucial in the overall reform initiatives under Dodd-Frank. Our recommendation for an ANPR aims at ensuring that these regulatory reforms are properly and efficiently considered.

With regard to the rule-writing process currently underway at the Bureau, ABA offers four principles that should guide the process.

- New rules should in fact simplify a complicated process;
- New rules should recognize the interactions and reconcile the conflicts inherent in the mortgage regulatory structure;
- The integration process should not be abused by adding rules that go beyond RESPA and TILA's congressional intent; and
- Implementation time frames should be ample and adequate to accommodate industry need.

We discuss these items in detail below.

I. New Rules Should in Fact Simplify a Complicated Process

Mortgage lending is complicated, and much more so with each new rule, which brings with it an additional paragraph of text to read or an additional form to fill out. For consumers, the current maze of disclosures is complex and confusing, and for lenders, the rules are often undecipherable and legally risky. The endless difficulty that banks—and consumers—have with the mortgage process is well illustrated by the recent experience with the 2008 regulatory reforms to RESPA.

Unfortunately, the 2008 RESPA reforms, while well-intended, did not fully achieve the goal of either simplifying or clarifying mortgage disclosures for consumers. The provisions of the 2008 proposed rules increased the length of the good faith estimate (GFE) disclosure from 1 to 3 pages, and the settlement form from 2 to 3 pages. The 2008 amendments added tolerance provisions and rigid requirements that increased liabilities and forced redisclosures every time any variance occurred in the origination process. In addition, the reform regulations entirely altered the structure and appearance of the required forms and the novel configurations obscured many elements of credit and cost calculations. All in all, the 2008 HUD rule greatly increased complexity, legal risk and paperwork for lenders and settlement service providers alike.

Most importantly, there is widespread agreement that the new 2008 forms introduced disclosure elements and configurations that actually increased consumer confusion. Our members unanimously report that the 2008 form amendments befuddle consumers as the "improved" forms fail to reflect lender credits or total costs, and do not help consumers to really understand the bottom line number needed to shop for a loan. In many instances, lenders have had to craft auxiliary or explanatory work-sheets that are handed to the consumer in conjunction with the federally-mandated forms so that the consumer understands the numbers they are being shown. The reward banks receive for this customer assistance is an increase in litigation and compliance risk, because this information is adjunct to the obscure "sanctioned" forms.

Nor did the 2008 changes make it easier on lenders. Compliance with RESPA regulations require that banks rely upon a wide compendium of rules that come from various sources. Some stem from written and formally enacted regulations; others come from formal statements of policy issued by HUD over the years; additional guidance may be found in HUD's website containing Q&As for Industry and Consumers. With regard to the 2008 regulatory reforms, industry must still rely on interpretive advice that can be found in HUD's website in the form of iterative FAQ postings. Finally, HUD staff issued a series of RESPA updates entitled "Roundups" that offered regulatory guidance to banks. While most of these varying sources supplement each other, some actually contradict others, causing great confusion for compliance officers.

To assist members with these increased compliance burdens, ABA was forced to issue comprehensive RESPA Guides with step-by-step instructions on how to fill out the forms. Further, we sought review of these Guides by regulators, and the few suggestions received have quickly been incorporated. Still, the Guides remain unofficial. Bankers should not have to rely on unofficial guidance to understand complex compliance requirements.

Finally, the final rule overlaps with, and at times replicates, disclosures mandated under other federal laws. The agencies that engaged in issuing these important consumer protection regulations did not coordinate efforts and therefore created a confusing web of duplicative and disjointed rules and disclosures.

Compliance with TILA is no less clear, with three official sources for compliance—the statute, the regulations, and the commentaries. These have recently been supplemented by oral advice from Federal Reserve staff that provides the only real resource for a number of difficult issues.

Because of these difficulties, banking industry participants have made independent judgments on key regulatory issues absent the availability of sufficient and timely guidance, exposing themselves to legal risk.

ABA believes and has long advocated that to achieve truly effective reforms that benefit consumers, the ameliorative changes to RESPA must be undertaken in conjunction with TILA disclosures to harmonize the two disclosure laws that guide consumers in the mortgage shopping process. That is what this process is all about—we must achieve greater simplicity and intelligibility.

II. New Rules Should Recognize and Reconcile Conflicts Within the Statutory Structure

RESPA and TILA each come from separate and unique sets of law. The Dodd-Frank reforms now add new legal structures onto existing forms and requirements. And most of these overlap with, and at times replicate, disclosures mandated under other federal laws. As the Bureau moves forward, it must do so carefully, taking into account all the disparate legal structures that support the rules it is trying to harmonize.

Two examples serve to illustrate this point. Section 1419 of Dodd-Frank adds a new disclosure requirement for residential mortgage loans. There must be a disclosure of "the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan." Under the Act, these new items appear to be ***in addition to existing RESPA-TILA items.*** It is unclear whether the draft disclosures being prepared by the Bureau incorporate, or will be deemed to satisfy, this new addition. It must be noted that this provision was inserted as an addition to Section 128(a) of TILA. If the new forms do not address these additional disclosure requirements, they cannot be deemed to be complete.

Also, Sections 1471 and 1474 of Dodd-Frank require that the consumer be provided with a free copy of the property appraisal at least three days before closing. However this mandate is ultimately interpreted, the requirement intersects with important disclosures being considered under the RESPA-TILA merger. Their interaction and timing triggers could greatly complicate the flow of information to consumers if they are considered and implemented separately. Disclosures such as this are logically integrated with existing RESPA-TILA items, and must therefore be considered holistically with the RESPA-TILA reform process.

An additional consideration is that, quite simply, the new disclosure regime must work.

One good example of a workability complications the Bureau will encounter are the unique legal responsibilities of lenders and settlement agents. Under current law, the HUD-1 settlement statement must be prepared by the settlement agent, while the TILA disclosures must be prepared by the lender or creditor. Logically, the integrated good faith estimate disclosure will still be prepared by the creditor, but real questions arise regarding who is to prepare the settlement statement. Since this integration process will blend the final TILA and the HUD-1 settlement statement, there is a vital logistical problem that the rules will have to confront.

Moreover, although their disclosures are to be integrated, RESPA and TILA remain separate statutes. Both the RESPA and TILA statutes and implementing regulations provide liability and remedies respecting their respective disclosures, but the liabilities and remedies are not the same. There is no basis under these statutes or Dodd-Frank to apply RESPA liability to TILA disclosures or vice versa. The Bureau should specify in its proposal which liabilities and remedies flow from each disclosure. If this is not clear, years of expensive and unnecessary litigation will ensue.

III. The Integration Process Should Not Be Misused to Add Rules That Go Beyond Congressional Intent

In recent draft rule outlines that have been circulated, the Bureau proposes to revise and add several new substantive provisions, such as: establishing tighter cost tolerances; establishing additional waiting periods for existing disclosures; changing the definition of application; and changing the basic definition of "Finance Charge" and "APR." We are disturbed about these intentions. As set forth by Dodd-Frank, the RESPA-TILA reform process should be focused upon integrating and combining the disclosures required under RESPA and TILA. The Dodd-Frank mandate is to ensure that the new integrated forms can apply to transactions "subject to both or either provision of law." (See Section 1098).

We are very concerned that the Bureau is expanding beyond this mandate, and altering the statutory substance of RESPA and TILA in significant ways. The RESPA and TILA statute remain separate statutes, and it is important that the substance of those laws not be distorted as the Bureau reworks the forms. Any attempt to alter the guiding provisions of the underlying statutes would exceed the Congressional order under Dodd-Frank. The legislative balances and accommodations contained in the RESPA and TILA statutes are important to the needs and requirements of the lending and settlement service industries. In addition, both of these statutes provide significant liability and remedies respecting their respective disclosures, and such liabilities and remedies vary in each statute. There is no legal basis under Dodd-Frank to vary the basic statutory requirements that explicitly apply under each law, nor is there permission to intermingle RESPA and TILA liabilities that apply differently and uniquely to each specific statute.

A clear example, is the Bureau's plan to use the RESPA-TILA merger process to amend related annual percentage rate (APR) calculations. Such intentions must be thought through in the context of the seven new APR comparisons to the average prime offer rate (APOR) required by Dodd-Frank. All of these disclosures are interrelated. For example, if the Bureau were to include more items in the APR, it would presumably want to include the same items in its definition of APOR so that the comparisons will measure what they are intended to measure – the amount by which the rate on a particular loan exceeds the market rate, the APOR.

The Bureau acknowledges that a more inclusive finance charge could result in increased APRs for many loans, thereby making more loans exceed federal and state high-cost loan thresholds. Unless lenders alter observed preferences to avoid making loans that are classified as high cost, such APR increases in isolation would have the effect of reducing credit availability because the costs of making certain loans being underwritten in today's already restrictive market would not be recovered. The definition of finance charge could also affect the calculation of points and fees in the QM and QRM rules, causing more to hit the cap on points and fees. In short, these issues could have a substantial impact on mortgage lending practices and credit availability, even though parts of the Bureau's potential plan are not in any way mandated or authorized by existing law.

Such expansions should not form part of the current effort, which simply mandates that there be a proposal to merge the forms under these regulations. ABA believes the Bureau would greatly overstep its boundaries if it decides to substantively amend explicit statutory provisions.

IV. Adequate Time Should be Allowed for Guidance and Implementation

Once the final rule is published, the Bureau should embark on a process for implementation that commits to providing timely guidance for the questions that will inevitably arise, and then adequate time for implementation.

Commentary developed and issued with the final rule is unlikely to address all of the issues that will arise as a result of such a massive and complicated overhaul of the disclosure rules. We recommend continuing on a similar path to that which the Bureau has often adopted, using an iterative process. For example, the Bureau can issue written guidance on both disclosures and other substantive issues, solicit comment, and then clarify and expand guidance prior to implementation of the final rule. This would allow both consumers and industry to see the major substantive decisions that the Bureau will be making, and identify areas where additional guidance is needed and where loopholes need to be closed.

After the rules and guidance are available, institutions and the firms that support them must be given adequate time for system changes and training. Coming into compliance with a rulemaking this far-reacbing entails an extremely complex and demanding set of interconnected actions. The implementation time frame should reflect the real work that must be done by institutions that either provide credit or services to credit-providers.

First, every lender, mortgage broker, settlement services provider, and their third-party vendors must understand the revised rules, and then identify and measure the new provisions' impact on every aspect of their business lines and overall operations. Then each entity must design methods to ensure full compliance while controlling for any negative consequences, if possible. For example, the new rules govern the timing of the disclosures the industry makes, so creditors need to design lending practices accordingly.

Affected entities must determine whether to employ vendors for specified activities and, if so, which ones, at what cost, and at what level of service. This is not merely a cost issue—the determination requires a thorough assessment of whether each firm has the capacity to manage the revisions to the rule either in-house or through a service provider.

After having identified general compliance needs, the actual implementation work begins. The new disclosures require modifications to several data systems so that each and every line and block on the new good faith estimate and settlement statement (HUD-1/HUD-1-A) is correctly populated. To assure this outcome, lenders and service providers must identify which data elements must be accessed, when, where the data must be delivered, and in which form.

Lenders in particular must go through extensive implementation processes because RESPA affects lenders during the entire loan origination process, from before a borrower applies for a loan, through underwriting and terms negotiation, approval, preparing for closing, closing, and post-closing checks for RESPA compliance. Also, because data must be communicated between the various industry participants (e.g., lender and broker or title company), communication protocols must be compatible even when the sender and recipient use different data technology.

Every data transfer must be complete, accurate, timely, and secure. Every change requires programming redesign and development, validation testing, error correction, and retesting. Information security protections must be expanded to cover changes to data transfers. Staff must be trained in loan production, customer service, compliance, and information technology.

Conclusion

We believe that the objective of this reform process is not the mere issuance of a regulation. The real goal for all stakeholders is to ensure that we achieve a balanced and efficient set of rules to guide mortgage disclosures for the next generation. The true objective, as mandated by the Dodd-Frank Act, is to craft a solid and clear regulatory system that accompanies a combination of two laws' disclosures so they properly inform and protect consumers, and do not unnecessarily add to complexity and costs or establish barriers to credit availability.

The underlying legal and procedural issues that the Bureau must still consider are significant and they deserve at least the same attention as the forms. We urge that the Bureau be allowed sufficient time to fully review the critical elements raised by this important reform.

Thank you for the opportunity to testify today. I am happy to answer any questions.

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TESTIMONY OF

MOE VEISSI, 2012 PRESIDENT

NATIONAL ASSOCIATION OF REALTORS®

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES
SUBCOMMITTEE ON INSURANCE, HOUSING AND COMMUNITY OPPORTUNITY

HEARING ENTITLED

"MORTGAGE DISCLOSURES: HOW DO WE CUT THE RED TAPE FOR CONSUMERS AND SMALL BUSINESS"

JUNE 20, 2012

Introduction

Madam Chairwoman, Ranking Member Gutierrez, and members of the Subcommittee, I am Moe Veissi, 2012 President of the National Association of REALTORS® (NAR,) from Miami, Florida. I have more than 40 years' experience in the real estate business and I am the Broker/Owner of Veissi and Associates. In 2002, I served as president of the Florida Association of REALTORS® and have had the honor of serving in numerous positions at NAR. I thank you for the opportunity to participate in this hearing on behalf of the more than one million members of NAR. NAR represents a wide variety of housing industry professionals committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers.

In my testimony today, I would like to discuss proposed changes to the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending (TILA) Act disclosures and regulations. But before I begin, I would like to thank the Chair and the Financial Services Committee for all of their hard work on extending the National Flood Insurance Program. As you know, the flood insurance program is vital to home owners and the housing industry in general. We strongly support your efforts to secure a long-term extension to this vital program.

Initial Effort on GFE/TIL

The Consumer Financial Protection Bureau (CFPB) is currently working to combine the Truth in Lending Act (TILA) Disclosure with the RESPA Good Faith Estimate (GFE). NAR has participated in that effort and is a strong supporter of reducing duplicative paperwork and combining these two forms provided the combined document includes the statutorily required elements of both laws. The CFPB's proposed initial disclosure or "loan estimate" does a fair job of combining the GFE and the TILA disclosures but still requires some additional work and testing. However, we have developed several concerns as the CFPB's task has expanded beyond simply improving the initial disclosures.

Closing Disclosure and Underlying Regulations

The process undertaken by the CFPB focused on the development of initial disclosures for several months, implying this was going to be their main focus. However by the early winter of 2012, it could be ascertained by evaluating the draft forms that CFPB intended to extensively rework in the underlying regulations.

To date, however, the underlying RESPA/TILA regulations that spell out how the new form will be used have yet to be released or discussed in any comprehensive form other than a limited outline and questions distributed to a Small Business Regulatory Fairness review panel. Even this limited release raised many questions and indicated the CFPB was considering going in problematic directions with several items. NAR joined several other stakeholders in sending a list of concerns to the CFPB and asking that the Bureau expand the comment process to cover the proposed changes to the underlying regulations. NAR also asked that the CFPB follow an Advanced Notice of Proposed Rulemaking (ANPR) process to give the public, industry, and other stakeholders two chances to provide formal commentary and ensure that this effort is successful, does not impose undue costs and burdens on both industry and consumers, and achieves the desired result of simplification and clarity.

Furthermore, implementation of the RESPA/TILA disclosures needs to be considered in conjunction with the implementation of other Dodd-Frank Act amendments that are closely related, particularly the Qualified Mortgage/Ability to Repay (QM) rule. Not doing so will cause massive confusion and impose significant costs on the industry and consumers. Since the QM rule is not expected until later this year and the RESPA/TILA proposal is expected in July, this alone is reason to split the RESPA/TILA process and only release an ANPR in July. It will be hard to provide meaningful or informed comment with several key rules such as the QM, Qualified Residential Mortgage (QRM), Loan Officer Compensation and Fees and Points rules still outstanding since all of them factor into the RESPA/TILA process in significant ways.

Other Specific Concerns

The CFPB has indicated that it may require delivery of a Settlement Disclosure three days before closing. The CFPB is also considering requiring re-disclosure and an additional three-day waiting period if certain charges change beyond a specified tolerance during the three days before a scheduled closing. Waiting periods can be very costly and disruptive to consumers, such as, for example, when a rate-lock will expire during the waiting period, or if the consumer would be in breach of a contract to purchase or sell real estate by a date during the waiting period. These costs need to be considered as a factor in the decision whether an additional waiting period should be required. Furthermore, any waiting period should allow for a broad waiver and only be limited to significant changes to loan terms.

A related concern is that it is not clear who will provide the required Settlement Disclosure. Lenders have information about the loan, while settlement agents have information on settlement charges. If the lender were required to prepare and deliver the disclosures, what duty would lenders have to verify information from settlement agents? If lenders prepare the Settlement Disclosures, they will need final closing cost charges typically determined by the settlement agent well before closing and longer if they have a duty to investigate the accuracy of the information. If a lender were to find some information has become inaccurate, a closing may be significantly delayed. In short, neither the settlement agent nor the lender is well positioned to complete the document. Thus a fundamental change in settlement responsibilities and competencies would be required in order to transform the final TILA disclosure and the HUD-1 into a single document. At the very least, this would be a costly and complicated transition and may very well be unworkable because of the differing legal and regulatory responsibilities and obligations of lenders and settlement agents. The CFPB should seriously consider abandoning the effort to combine to the two documents.

Finally, the attempt to merge the HUD-1 with the final TILA disclosure may need to be severely limited as the two documents serve different purposes. It might still be possible to provide RESPA related information along with the final TILA disclosure information but all parties in the transaction need additional time and flexibility when it comes to the final closing information not associated with loan terms. The fact is numerous issue scenarios can arise in the final days before closing unrelated to the mortgage that need to be handled up to and until closing. The settlement statement is often where these adjustments are made or issues rectified; the closing should not be needlessly held hostage to inflexible rules. Therefore, we recommend the TILA disclosure and RESPA settlement disclosures maintain significant levels of distinction. It may make sense to repeat TILA information on the final settlement statement, but it does not make sense to hold the settlement statement to the kind of three day waiting period the TILA requires.

Tolerances Still Problematic

The CFPB proposes to implement tolerances similar to those currently in Regulation X (RESPA) and developed by the 2008-2009 RESPA reforms implemented in January of 2010. First, we would note that these existing tolerances were instituted under questionable legal authority as RESPA only requires a good faith estimate be made of the closing costs. The CFPB is suggesting that more charges be subject to zero tolerances (especially for firms with affiliates in the transaction) that cannot change from initial estimates. This will create a need to overestimate settlement charges in Loan Estimates in order to stay within the required tolerances. Many believed the tolerances themselves would lead to increase borrower closing costs as GFE estimates are often carried over to closing; as anticipated, closing cost have gone up since the HUD RESPA reforms were instituted. CFPB should instead consider liberalizing the tolerance system by making lenders responsible only for the charges they control. Absent that, charges that are inherently variable, such as recording fees, should be removed from the tolerance calculation as should charges related to state and local taxes and fees.

In addition to keeping and perhaps tightening the tolerances, the CFPB has indicated that it is considering revising the Regulation X (RESPA) definition of "application" to eliminate the inclusion of "any other information" the lender deems necessary. This change would make preparation of an accurate Loan Estimate impossible. It would be inconsistent with Regulation B, which recognizes that underwriting takes time, and run counter to Regulation C, which requires lenders to collect information that is covered by the phrase "any other information." The six items required under the application definition are inadequate in and of themselves to constitute a meaningful application. This was borne out during the RESPA implementation when numerous lenders were misled into thinking that had to issue GFEs with just the six items and found it impossible to do so and stand behind the information in them.

Furthermore, the effort to turn the GFE into a "shopping" document has proven unrealistic. Half of the ills the revised GFE was supposed to address no longer exist, as exotic loan products have left the market and are all but banned for the future by other regulations such as QM. Even were they not to be banned, rules such as the Federal Reserve's Loan Officer Compensation rule remove any incentive to steer consumers to these products even if they still exist. In the already tight and growingly complex mortgage market, borrowers are just happy to qualify for a loan at a rate they shopped for that is agreeable to them. The current definition for application serves the purpose of providing borrowers with a GFE or Loan Estimate that informs them of related closing charges (the purpose of RESPA). It does not need to be changed.

Conclusion

The housing industry is recovering but still faces headwinds. NAR opposed risky lending in 2004 when it issued its subprime lending policy that called for strong underwriting on mortgages and measuring a person's ability to repay. We feel now that the pendulum has swung too far. With numerous new regulations on the horizon, fewer and fewer otherwise qualified people will be able to get a loan and there will be fewer lenders to lend. Congress and the Administration need to seriously re-examine the many well-meaning laws and regulations that have come out of the financial and mortgage crisis, including the RESPA/TILA harmonization efforts. Some have merit and need minor fixes; others may have been well-intentioned but are proving problematic at best. They deserve a second look to ensure that the still fragile recovery stays on track and to protect the long-term value of homeownership in the U.S.

The CFPB should carefully tailor its efforts to harmonize RESPA and TILA disclosures to ensure that consumers truly benefit, the process is truly simplified, and the associated costs of implementation are cost effective for the benefit provided. There is danger if these core goals are being overlooked to the detriment of all involved.

NAR thanks the Subcommittee members for their attention to this issue. We look forward to working with Congress and the Administration on efforts to address the challenges still facing the nation's housing markets.

Written Statement

Of

Tim Wilson
President of Affiliated Businesses
Long and Foster Companies

On Behalf of

The Real Estate Services Providers Council, Inc. (RESPRO®)

Before the
U.S. House of Representatives

Subcommittee on Insurance, Housing and Community Opportunity
Of the
Committee on Financial Services

On

"Mortgage Disclosures:
How Do We Cut Red Tape for Consumers and Small Businesses?"

June 20, 2012

Good morning, Chairwoman Biggert, Ranking Member Gutierrez, and Members of the Subcommittee. My name is Tim Wilson and I am President of Affiliated Businesses for Long and Foster Companies and immediate past Chairman of the Real Estate Services Providers Council, Inc. (RESPRO®).

Long and Foster Companies is the third largest independent residential real estate brokerage firm in the nation, with 185 residential real estate brokerage offices and 12,000 real estate sales associates that engage in real estate sales and leasing in Virginia, Washington, D.C., Maryland, West Virginia, Delaware, Pennsylvania, North Carolina, and New Jersey.

Long and Foster offers mortgage services through Prosperity Mortgage, a joint venture co-owned by Long and Foster and Wells Fargo Home Mortgage with 311 employees that originated over 11,000 residential mortgage loans in 2011. Another wholly-owned company, Mid-States Title, runs several joint ventures with 200 employees that issued approximately 26,000 title policies and conducted over 14,000 settlements in 2011. We issued 4,400 homeowners insurance policies in 2011 through Long and Foster Insurance, a wholly-owned insurance agency.

RESPRO® is a national non-profit trade association of almost 200 residential real estate brokerage, mortgage, home building, title, and other settlement service companies (see Attachment 1) that offer diversified services for home buyers through affiliated business arrangements that are regulated at the federal level under the Real Estate Settlement Procedures Act (RESPA).[1]

My testimony today will focus on three issues in the Consumer Financial Protection Agency's (CFPB) rulemaking initiative to combine RESPA and Truth in Lending Act (TILA) disclosures (RESPA-TILA Rulemaking) that are particularly relevant for affiliated business arrangements: (1) the potential proposed "zero tolerance" for fees charged by a mortgage lender's affiliated settlement service companies; (2) the need for the CFPB to integrate its RESPA-TILA Rulemaking with its pending rulemakings under the new Dodd-Frank Ability to Repay and Home Owners Equity Protection Act (HOEPA) standards, particularly with their "points and fees" threshold provisions; and (3) the potential proposed requirement to deliver the Settlement Disclosure (the combined HUD-1 Settlement Statement and TILA disclosure) to the consumer three days before closing.

I. An Overview of Affiliated Businesses in the Home Buying and Financing Industry

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[1] RESPA and RESPA regulations require any person who refers a home buyer to an affiliated settlement service company to:

- Disclose in writing that it may benefit from the referral.
- Disclose an estimate of the range of charges to of the referred service.
- Advise the consumer that there may be lower prices available and that he/she should shop around
- Obtain a written acknowledgment from the home buyer that he/she has reviewed these disclosures.
- Not require the use of the affiliated service.
- Limit payments received from the affiliated business arrangement to payments representing returns on ownership interest (e.g., dividends), franchise interest (e.g., royalties), or other payments that do not otherwise violate RESPA).

Affiliated businesses are not new in the home buying and financing industry. According to the independent real estate research firm REALTrends, Inc., the nation's 500 largest residential real estate brokerage firms closed 119,174 mortgage loans and conducted 336,148 closings in 2011 through affiliated companies.

In today's challenging housing market, firms like Long and Foster use affiliated mortgage, title, and other settlement service companies to help assure that our real estate customers close on time and move into their new homes as scheduled. Because we own or partially own other companies needed to close the home purchase transaction, we can better ensure that they communicate promptly with each other about any service issues and, as a result, resolve those issues more efficiently than we could with independent companies. While our affiliated businesses are independently-run companies under Real Estate Settlement Procedures Act (RESPA) guidelines, they help us reduce the cost of the entire mortgage transaction through cost efficiencies achieved from the sharing of facilities, technology, equipment, and marketing expenditures.

Since real estate brokerage firms began to offer mortgage, title, and other settlement services almost 30 years ago, there have been several consumer surveys and economic studies to assess their impact on the home buyer. The economic studies have shown that affiliated businesses are competitive in cost,[2] and consumer surveys consistently have shown that consumers who use their real estate brokerage firms' affiliated businesses have a more satisfactory home buying experience.[3]

II. Zero Tolerances for Affiliated Fees

In a February 21, 2012 Outline of Alternatives (CFPB Outline) that was presented to representatives in the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel Session on March 6, 2012, the CFPB announced that it is considering proposing a "zero tolerance" for fees charged by settlement service affiliates of mortgage originators.[4]

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[2] A 2006 economic study on the costs of affiliated services vs. unaffiliated services involved an independent analysis of over 2200 HUD-1 Settlement Statements from transactions conducted in nine states (Alabama, Illinois, Maryland, Michigan, Minnesota, North Carolina, Ohio, South Carolina and Virginia) in 2003 and 2005. The study concluded that title premiums and title-related settlement closing charges are not higher when affiliated business arrangements are involved compared to when they are not. "Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs" (2006), The CapAnalysis Group LLC. The CapAnalysis study conclusions were consistent with a 1994 study performed by the national economic research firm of Lexecon, Inc., which found that title and title-related services for transactions performed by affiliated title companies in seven states – Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania, and California – were competitive with those provided by unaffiliated title companies. "Economic Analysis of Restrictions on Diversified Real Estate Services Providers", by Lexecon, Inc., January 3, 1995.

[3] In a December 2010 Harris Interactive survey, home buyers said that using affiliates saves them money (78%), makes the home buying process more manageable and efficient (75%), prevent things from "falling through the cracks" (73%), and is more convenient (73%) than using separate services. "One-Stop Shopping Preferences 2010", Harris Interactive and the National Association of Realtors (NAR).

[4] "Outline of Proposals Under Consideration and Alternatives Considered", the Consumer Financial Protection Agency, February 21, 2012, page 9.

Current RESPA regulations provide for a zero tolerance only for lenders' charges, meaning that lenders' charges at closing cannot exceed those disclosed in the Good Faith Estimate. They provide for a 10% tolerance for affiliated and unaffiliated third party charges (appraisal, title, escrow, hazard and flood insurance, etc.) unless the borrower requests a change, the GFE expires, or a valid change in circumstance occurs.

The CFPB Outline stated that the CFPB is considering imposing a new zero tolerance for settlement services provided by a company owned or affiliated with a lender. It justified its consideration of this zero tolerance on affiliated services as follows:

> "Lenders should be better able to estimate the cost of services provided by an affiliated company because of their knowledge of the company's business. In addition, the lender couldn't profit directly or indirectly from an unjustified 10% cost increase."[5]

RESPRO® believes that this justification does not take into account the independent manner in which affiliated businesses are operated under RESPA, the fact that lenders can no more precisely determine the final cost of many affiliated third party services at the time the Loan Estimate is provided than they can for unaffiliated services, or the competitiveness of affiliated businesses in the mortgage marketplace that would prevent them from arbitrarily increasing the price of their services.

A. The independent structure of affiliated businesses

Most affiliated settlement service businesses obtain their business and customers not only from their affiliates but also from independent sources. In addition, they are independently managed and have their own employees and work force performing the tasks of whatever settlement service business they have chosen to engage. Indeed, it is HUD's 1996-2 Policy Statement on Sham Controlled Business Arrangements that encouraged affiliated business to operate very much like independently-owned businesses.[6] Thus, the existence of an affiliated relationship does not mean that the lender will necessarily know what its affiliate's prices will be at the time the Loan Estimate is provided.[7]

B. Lenders can no more determine the cost of many affiliated services at the time the Loan Estimate is provided than they can for unaffiliated services

In addition, the cost of most third party services are unknown by <u>both</u> affiliated and unaffiliated lenders at the time the Loan Estimate is provided because of the very nature of the service.

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[5] *Id* at 11.

[6] HUD Statement of Policy 1996-2, Regarding Sham Controlled Business Arrangements; 61 Fed. Reg. 29,258 (June 7, 1996).

[7] Congress recognized this when it authorized the RESPA-required Affiliated Business Disclosure in 1983, which allowed the referrer of business to a settlement service provider to provide a <u>range of charges</u> that may be assessed by the affiliated provider, not a precise charge.

For example, the costs of most title services often are influenced by factors that are unknown to an unaffiliated or affiliated lender at the time the Loan Estimate would be provided. There often is a need for additional title searches, name searches, and/or endorsements.[8] In addition, at the time of the Loan Estimate, it is unclear whether the lender would want standard coverage or enhanced coverage and whether the owner will want any coverage, not to mention which type.

The cost of homeowners insurance also is extremely difficult to estimate regardless of whether the insurance company is affiliated or unaffiliated because the variables that go into a quote are numerous and complex. Simplifying the quote process to a considerable degree, a homeowner's quote -- at a minimum -- will depend upon the home's location, its value, its age, the type of home (brick vs. siding), replacement coverage versus traditional, the type of deductible desired, and a myriad of other variables that are not generally known when providing a loan estimate or even an affiliated business disclosure.[9] In addition, the consumer may elect to revise the deductible on the homeowner's insurance policy or change the nature of the coverage and thereby change the premium.

Other apparently simple settlement services are often equally as complicated. For example, credit report vendors typically impose multiple charges in connection with sale of consumer credit reports to residential mortgage lenders, brokers, and other consumer credit grantors. According to one credit reporting company that is attempting to develop a guaranteed price for all services that could be demanded, the current and most common industry practice is for a basic credit report fee to be charged by a credit-reporting agency to the credit grantor with additional fees and credit report surcharges to be imposed during the course of the lending process, usually over a three or four week period. It is also common for additional fees to be added to the basic credit report price for "backend processing," which usually includes data updating or data correction of erroneous or disputed information in the consumer's report. In addition to the fee for the actual credit report, vendors may assess charges for (1) reissuing reports later in the loan applicant's applications process; (2) confirming the loan applicant has not been identified by the U.S. Office of Foreign Assets Control as a possible terrorist or other person of concern to the federal government; (3) providing other applicant identification confirmation, (4) providing certain information required by secondary market investors such as Fannie Mae and Freddie Mac; (5) one or more credit scoring or valuations, (6) sending credit reports to multiple lenders, Fannie Mae or Freddie Mac that may be viewing a loan application; (7) sending the credit report to multiple parties entitled to "joint user" treatment under the Fair Credit Reporting Act, 12 U.S.C. 1681; FRRS 6.924; (8) compliance and technology related fees; (9) fraud research fees; (10) update fees related to issuing reports following the initial "pull" of a report; (11) fees for responding to inquiries from potential loan purchasers or investors; and/or (12) other services and

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[8] While title policies generally provide two different forms of coverage (e.g. standard or enhanced), most companies offer a series of endorsements over and above the coverage offered by the policy that carry an additional cost.

[9] For this reason, companies who make referrals to affiliated hazard insurers where the only requirement is to estimate the range of charges typically utilize a fairly large range and note that their estimate is based on a particular set of assumptions (e.g. a $500,000 brick house, less than 30 years old, in standard location, seeking replacement coverage could cost more if different variables are utilized).

processing associated with consumer credit report sales. It would be impossible for a lender to estimate these charges at the time of the Loan Estimate whether or not the service is provided by an affiliate.

In addition, the CFPB Outline also states that the CFPB is considering proposing that the lender no longer be able to collect "any other information deemed necessary by the lender" to provide an accurate estimate of charges in the Loan Estimate.[10] If this proposal is adopted in addition to a zero tolerance for affiliated third party services, lenders would potentially be subject to substantial penalties[11] for even unintentional or minor deviations from costs in the Loan Estimate that must be estimated after only being allowed to obtain (1) the borrower's name; (2) the borrower's monthly income; (3) the borrower's social security number; (4) the property address; (5) an estimate of the value of the property; and (6) the loan amount sought.

C. Affiliated businesses cannot be competitive if they charge unjustified fees

The CFPB's justification that "the lender couldn't profit directly or indirectly from an unjustified 10% cost increase" if there is a zero tolerance for a lender's affiliated services incorrectly assumes that the owner of a mortgage lender and affiliated settlement service provider could increase the costs of an affiliated settlement services solely based on a desire to profit, and still remain competitive in the marketplace. This is not the case. Under RESPA, a mortgage lender cannot require that a consumer use its affiliated settlement service companies; therefore, its affiliated companies must compete against unaffiliated providers of those services.[12] In reality, an affiliated service provider that is not competitive in price and service would not be able to compete as effectively. This is particularly true in the case of real estate companies like Long and Foster where real estate agents, which are independent contractors, are the primary referral source of settlement services. Studies have shown that real estate agents are disinclined to

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[10] "Outline of Proposals Under Consideration and Alternatives Considered", the Consumer Financial Protection Agency, February 21, 2012, page 7.

[11] The penalties that the CFPB can impose under the authority given to it under Title X of Dodd-Frank are broad, including rescission, refunds, restitution, damages, unjust enrichment, public notification, and civil money penalties. Under TILA, where the true finance charge or APR exceeds the disclosed value by more than the applicable tolerance, TILA authorizes the regulator to award restitution to the consumer--even for unintentional errors and isolated violations. (In some circumstances, such as where there is evidence of a pattern or practice of disclosure violations or willful noncompliance, TILA *requires* the regulator to order financial institutions to reimburse consumers). TILA also provides that for certain transactions secured by the consumer's principal dwelling (namely, certain refinances), a consumer has 3 business days after becoming obligated on the debt to rescind the transaction (this period is longer for higher-cost loans). If a transaction is rescindable, the customer's rescission period does not expire until the third business day after the latest of three events: consummation of the transaction, delivery of material TILA disclosures, or receipt of the required notice of the right to rescind.

[12] As an example of the competitiveness of the marketplace, the latest economic study of affiliated businesses found that over 73.7% of home buyers purchase their title services from unaffiliated title companies and that 26.3% of home buyers purchase their title services from affiliated title companies. . "Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs" (2006), The CapAnalysis Group LLC.

recommend their clients to affiliated settlement services of the real estate brokerage company that are not competitive in price and service, since their buyer or seller clients would hold them responsible it the ultimate cost of the transaction is too high or the services provided are poor.[13]

Given the cost-competitiveness and consumer benefits of affiliated businesses in the residential mortgage marketplace, RESPRO® believes that the CFPB should reconsider placing them at a competitive disadvantage by imposing standards that will be difficult and often impossible to achieve and that are not justified by any public policy reason.

III. The Need to Integrate the RESPA-TILA Rulemaking With the Dodd-Frank/HOEPA "Points and Fees" Thresholds

RESPRO® also believes that the CFPB needs to integrate its RESPA-TILA Rulemaking with its pending rulemakings to implement Dodd-Frank's new Ability to Repay standards and new standards for Home Owners Equity Protection Act (HOEPA) loans.

It is particularly important for the CFPB to integrate the development of its RESPA-TILA Rulemaking with its development of rules implementing the "points and fees" thresholds that determine whether a loan is a Qualified Mortgage (QM) under the Ability to Repay standards or a HOEPA "high cost" loan.

A mortgage loan cannot be a Qualified Mortgage (QM) if the total "points and fees" paid by the consumer exceed 3% of the loan amount. Recently the CFPB announced its intention to publish a final Ability to Repay/QM rule – which will provide specific guidelines on which fees are included in this "points and fees" threshold -- by the end of 2012.

Under HOEPA, a loan in which the total "points and fees" paid by the consumer exceed 5% becomes a "high cost" loan and is subject to substantial restrictions and potential penalties. Before enactment of Dodd-Frank, the HOEPA "points and fees" threshold was 8%. The CFPB plans to publish a proposed rule to implement this new standard by July 21, 2012.

Most mortgage lenders will not be willing to make non-QM loans or HOEPA "high cost" loans due to the high potential liabilities associated with such loans. Yet, the CFPB Outline states that the CFPB is considering including a myriad of fees towards the "points and fees" thresholds <u>beyond</u> to those specifically authorized by Dodd-Frank, which would have a significant impact on mortgage availability and affordability. In addition, If the term "points and fees" is not defined in these other CFPB regulations before its RESPA-TILA Rulemaking is finalized, mortgage lenders will not be able to identify the "points and fees" associated with any individual loan at the time the Loan Estimate is provided and perform the calculations necessary to determine whether or not a loan meets the QM standards or is a HOEPA "high cost" loan.

A. The Impact of the "Points and Fees" Definition on Mortgage Availability and Costs

[13] "Significant Changes Found and Expected in the Way Houses are Bought and Sold", by Weston Edwards & Associates (March 2004).

Under Dodd-Frank, the following charges are counted towards the 3% "points and fees" threshold that determines whether a loan is a QM and the 5% "points and fees" threshold that determines whether a loan is a HOEPA "high cost" loan:

- All items included in the "finance charge" except interest or the time price differential
- All compensation paid to a mortgage originator from any source
- Charges for credit life, credit disability, credit unemployment, or credit property insurance
- Charges for any accident, loss-of-income, life or health insurance
- Payments for debt cancellation or suspension agreements unless paid in full on a monthly basis
- Maximum prepayment fees and penalties

1. The Unjustified Discrimination Against Affiliated Mortgage Lenders

Affiliated mortgage lenders are subject to an <u>additional</u> burden over unaffiliated lenders under the current QM and HOEPA "points and fees" thresholds in that the following fees must be counted towards the thresholds if the service provider is affiliated with the lender, <u>even if the affiliated title charges are equal to or less than the unaffiliated title charges</u>.

- Fees for title examination, title insurance, or similar purposes
- Document preparation fees
- Notary fees
- Appraisal/Inspection fees
- Credit report fees

If this discrimination against affiliated businesses in the "points and fees" thresholds remains, companies with affiliated mortgage and title businesses like Long and Foster would need to (1) discontinue offering title services in conjunction with loans that potentially would exceed the threshold, or (2) discontinue offering mortgage services but continue to offer title services in conjunction with loans that potentially would exceed the threshold.

While I cannot predict the decision of each company faced with this choice, I believe that there would be legitimate reasons for a company with an affiliated mortgage and title company to discontinue offering mortgages but to continue to offer title services if it believes that the cost of both services could exceed 3% of the loan amount. Because of the negative consequences of originating a non-QM or a HOEPA "high cost" loan, it would be important to have certainty as to which loans would exceed the applicable thresholds. The cost of mortgage origination services is highly dependent on the customer's individual decisions and is more difficult to predict on an aggregate basis, while title fees and premiums are either regulated or filed in the majority of states.

Regardless of the decision each affiliated business would make, the overall result would be less competition and consumer choice, particularly in low-income and middle-income marketplaces and among first time-homebuyers. There is no justifiable reason for this. The economic studies I discussed earlier have shown that affiliated title providers, which currently comprise more than 26% of the market, offer services that are competitive in cost with those of unaffiliated providers. Where affiliates have been excluded from the market, title charges have risen appreciably. Moreover, national surveys I discussed earlier have shown that consumers who take advantage of the one-stop shopping that affiliated businesses provide are satisfied with their home buying experience.

For this reason, RESPRO® urges Congress to pass the Consumer Mortgage Choice Act (H.R. 4323), which excludes from the definition of "points and fees" charges for title services regardless of affiliation, in recognition of the fact that title insurance is highly regulated. Forty-four states and the District of Columbia require that title premiums be set by the state, approved by the state, or filed with the state (23 states also include title examinations and searches). Of the remaining six states, one state (Iowa) does not recognize title insurance. Even in the few states where title rates are not filed, states exercise jurisdiction over title insurance practices. Virginia, for example, requires all forms and endorsements to be filed with the Department of Insurance and requires title insurance rates to be reasonable and limited to provide a reasonable margin of profit.

By amending the definition of points and fees to exclude all title charges provided they are bona fide and reasonable, Congress will (1) maintain a competitive marketplace, (2) prevent higher prices resulting from the withdrawal of affiliated title service providers in low- and moderate-income marketplaces; and (3) preserve the ability of consumers to choose the benefits of one-stop shopping when they purchase or refinance their home.

2. The CFPB's Intent to Include More Fees in the "Points and Fees" Thresholds

The CFPB's Outline of Alternatives in its RESPA-TILA Rulemaking that was presented to the SBREFA Panel also states that the CFPB is considering proposing that additional fees be included in the "finance charge".[14] Since fees included in the "finance charge" are counted towards the 3% QM and 5% HOEPA "points and fees" thresholds, the inclusion of additional fees in the "finance charge" could have a dramatic impact on the number of loans that qualify as QM or HOEPA "high cost" loans.

The CFPB Outline stated that the CFPB is considering including the following fees in the "finance charge" and consequently towards the "points and fees" thresholds whether affiliated <u>or</u> unaffiliated (those fees in *italics* are fees that are now counted towards the "points and fees" thresholds only if they are affiliated):

- Security interest related charges

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[14] The standard disclosure of the cost of credit under TILA is the APR, which is the finance charge expressed as a yearly rate. The CFPB Outline states that it is considering including additional fees in the "finance charge" because "concerns have been raised that [current] exclusions undermine the potential usefulness of the APR as a simple tool to compare the total cost of one loan to another, a basic purpose of TILA."

- *Fees for title search or title exam*
- *Document preparation fees*
- Escrows for taxes and insurance[15]
- *Notary fees*
- *Appraisal/inspection fees*
- *Credit report fees*
- Closing agent charges
- Voluntary credit insurance premiums
- Charges for paying items that overdraw an account
- Application fees
- Late fees
- Forfeited interest

If the CFPB includes these additional fees in the "finance charge", a greater percentage of affiliated loans would exceed the 3%-5% "points and fees" thresholds and not qualify as a QM or qualify as a HOEPA loan. In addition, a greater amount of unaffiliated loans would exceed the thresholds. Given lenders' unwillingness to make non-QM or HOEPA "high cost" loans, the inclusion of these fees in the "points and fees" thresholds would have a substantial negative impact on mortgage availability and affordability for all but the wealthiest consumers buying high-priced homes.

The CFPB Outline failed to mention the potential impact of these potential changes on the number of affiliated and unaffiliated loans that would not qualify as QMs or qualify as HOEPA loans due to the new Dodd-Frank "points and fees" thresholds and the resulting impact on mortgage affordability and availability. RESPRO® believes that it is essential that the CFPB research this potential impact and disclose it to the public for comment before proceeding with such a change.

B. The Need for the Lender to Identify "Points and Fees" at the Time of the Loan Estimate

Regardless of what affiliated and unaffiliated fees are included in the "finance charge" and the "points and fees" thresholds, mortgage lenders that are reluctant to face the significant liability triggered by non-QM and HOEPA loans will need to use the Loan Estimate to determine whether a loan is a QM or HOEPA loan. Lenders also will need to know while the consumer is shopping whether a preexisting loan is a QM loan because they are prohibited from steering a consumer who is qualified for a QM loan to a non-QM loan.

The CFPB Outline does not discuss the definition of "points and fees", and its prototype Loan Estimate does not identify which charges are included within the "points and fees" thresholds. RESPRO® believes that the Loan Estimate should be modified to identify these fees one they are promulgated by regulation.

[15] Due to what may be a drafting error in Dodd-Frank, escrows for taxes and insurance could currently be interpreted as being included in the "points and fees" thresholds in the QM and HOEPA standards. The Consumer Mortgage Choice Act (H.R. 4323) would clarify that escrows are not included.

IV. The 3-Day Settlement Disclosure Requirement

The CFPB Outline also states that the CFPB is considering proposing a requirement that the Settlement Disclosure be provided to the consumer three days before closing. Limited changes would be permitted to reflect common adjustments such as changes to recording fees, and reissuance of the Settlement Disclosure and an additional three-day waiting period would be required if:

- The APR increases by more than 1/8% (the current TILA threshold for disclosure);
- An adjustable rate feature, prepayment penalty, negative amortization feature, interest-only feature, balloon payment, or demand feature is added to the loan; or
- The cash needed to close increases beyond a certain tolerance that would be determined.

Long and Foster's affiliated mortgage company, Prosperity Mortgage, has some experience with the issues involved in providing the current HUD-1 Settlement Statement (HUD-1) in advance of the closing. Under its "Target Date" Program, Prosperity Mortgage pays an incentive bonus to its operation team members when the HUD-1 is delivered to the consumer two (2) days in advance of their closing date. So far in 2012, we have achieved that goal in 56% of our transactions. Consumers who received their HUD-1 two days in advance of their closing date have had a higher documented customer satisfaction score based on independent third party evaluations.

RESPRO® supports the concept of a three-day requirement in principle, since it can make consumers more aware of the final costs and terms of their loans more in advance of the closing. As affiliated businesses, RESPRO® member companies could be more capable of complying with this requirement <u>because</u> of the efficiencies associated with many of the services needed to close the loan transaction under one corporate entity.

The ultimate viability of such a concept and the ultimate value to the consumer, however, lies in the specifics of the proposal. RESPRO® member representatives representing the real estate brokerage, homebuilding, mortgage and title industry have met over the last few months to assess the feasibility of this 3-day requirement in an effort to be able to work in good faith with the CFPB as it develops these specifics and have identified the following issues that will need to be identified in the proposed RESPA-TILA rule and resolved before any final rule:

- As the CFPB Outline recognizes, many loan transactions have last-minute adjustments to the Current HUD-1 Settlement Statement that are requested by or agreed to by the buyer and/or seller. Therefore, it is essential that there be a reasonable, well-defined tolerance for additional costs that may occur within the three days between the delivery of the Settlement Disclosure and closing. Because of the difference in loan and closing costs throughout the country, the tolerance should be the higher of a percentage amount or specific dollar amount.

- The CFPB needs to carefully consider the impact of its requirements on <u>both</u> the buyer and the seller in real estate transactions as it further develops this proposal. As an example, the current HUD-1 Settlement Statement is used as a disbursement summary of what the seller pays and what the buyer pays in the transaction, but the current prototype Settlement Disclosure lacks this information. In addition, the Settlement Disclosure has information about the loan (e.g., the buyer's interest rate) that wouldn't normally be delivered to the seller.

- The responsibilities of the mortgage lender, settlement agent, and/or escrow company need to be well-defined and consistent with their capability of complying with the defined responsibilities. In addition, the CFPB needs to clearly identify in its proposed rule what the penalties are for non-compliance for all parties.

- State laws need to be thoroughly researched to identify potential conflicts and inconsistencies.

- The contract or community custom currently determines whether a closing is a round table closing, where the parties meet face to face to exchange documents and transfer money, and escrow closings or an escrow closing,, in which the parties may never meet and documents may be executed at different times and at different places. The CFPB needs to assess the potential impact of the 3-day requirement on both round table and escrow closings.

- The borrower and seller should have the option to waive the 3-day waiting period after the Settlement Disclosure is provided; however, the circumstances identifying when a waiver can occur should be clearly identified in any final regulation.

As a representative of affiliated providers that perform multiple roles in the home buying and financing process, RESPRO® looks forward to providing additional input to the CFPB as they develop this proposal.

Thank you for the opportunity to testify before you today, and I will be glad to answer any questions.

ATTACHMENT 1

RESPRO Membership List
2012

BOARD MEMBERS

Alliant National Title Insurance Company
Longmont, CO
American Home Shield
Memphis, TN
Baird & Warner, Inc.
Chicago, IL
Citibank
O'Fallon, MO
Cornerstone Mortgage Company
Houstan, TX
F.C. Tucker Company, Inc.
Indianapolis, IN
HMS National
Fort Lauderdale, FL
HomeServices of America, Inc.
Edina, MN
Howard Hanna Financial Services
Pittsburgh, PA
Howard Perry & Walston Realty, Inc.
Raleigh, NC
Hunt Real Estate Carporation
Williamsville, NY
Investors Title Insurance Company
Chapel Hill, NC
Latter & Blum/CJ Brawn
New Orleans, LA
Long & Foster Companies
Chantilly, VA
National Real Estate Information Services
Pittsburgh, PA
North American Title Group
Miami, FL
Old Republic Home Protection Co., Inc.
San Ramon, CA
Old Republic National Title Insurance
Minneapolis, MN
Orange Coast Title Company
Santa Ana, CA
Prospect Mortgage, LLC
Sherman, CA
Prudential HomeSale Services Group
Lancaster, PA
Prudential Real Estate & Relocation Services
Valhalla, NY
Pulte Financial Services
Bloomfield Hills, MI
Quicken Loans
Detroit, MI
Radian Guaranty
Philadelphia, PA
RE/MAX Advantage Realty
Columbia, MD
Realogy Corporation
Washington, DC
Residential Mortgage, LLC
Mount Pleasant, SC
Rylond Mortgage Compony
Westlake Village, CA
Shelter Mortgage Company, LLC
Brown Deer, WI
Shorewest Realtors
Brookfield, WI
Sibcy-Cline Realtors
Cincinnati, OH
Stewart Title Guaranty Company
Houston, TX
Tenura Holdings, Inc.
Austin, TX
The Trident Group/Prudential Fax & Roach
Devon, PA
Title Alliance, Ltd.
Media, PA
Watson Realty Corporation
Jacksonville, FL
Weichert Companies
Morris Plains, NJ
Wells Fargo Hame Mortgage
Des Moines, IA
WFG National Title Insurance Co
Cincinnati, OH
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American Financial Services Association

House Committee on Financial Services
Subcommittee on Insurance, Housing and Community Opportunity

Hearing entitled:

"Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?"

Wednesday, June 20, 2012

Statement of the American Financial Services Association

* * *

The American Financial Services Association (AFSA) is pleased to provide its comments to the Subcommittee on Insurance, Housing and Community Opportunity for today's hearing entitled "Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?"

Founded in 1916, AFSA is the national trade association for the consumer credit industry protecting access to credit and consumer choice. Our 350 members include consumer and commercial finance companies, auto finance and leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers.

General Comments on Mortgage Reform

Most economists and housing market analysts in government and in the private sector agree that today's underwriting standards are tight and are contributing to a slow housing recovery. AFSA believes that unnecessarily narrow definitions of "qualified mortgage" (QM) and "qualified residential mortgage" (QRM) that cover only a modest proportion of loan products and underwriting standards and serve only a small proportion of borrowers would undermine prospects for a housing recovery and threaten the redevelopment of a sound mortgage market.

We also believe that the QM rule should include a safe harbor. AFSA believes that a broad QM rule with a safe harbor is the only way to help the economy and at the same time ensure that the largest number of credit worthy borrowers are able to access safe, quality loan products for all housing types, as Congress intended in enacting the Dodd-Frank Act.

Additionally, the mortgage servicing rule outline proposed by the CFPB also may limit the growth of small servicers or drive them from the business altogether, particularly if the CFPB imposes mandates that exceed those required by the Dodd-Frank Act. For example, the existing items the CFPB wants to add to the closed-end mortgage periodic statement may be very onerous for smaller mortgage servicers.

Rollout of Various Mortgage Reforms should Occur Deliberately

Perhaps as important as the substance of the new rules is the need to synchronize all of the forthcoming reforms that will impact mortgage origination. In addition to the aforementioned QM, QRM and mortgage servicing rules, lenders face new disclosures as well as restrictions on product characteristics and origination practices under the Mortgage Reform and Anti-Predatory Lending Act (Title IV of the Dodd-Frank Act).

Regarding the subject of this hearing, the Consumer Financial Protection Bureau (Bureau) is currently revising the prescribed documentation to combine the overlapping and conflicting disclosures required at the shopping and settlement stages under the Real Estate Settlement Procedures Act and the Truth in Lending Act. Were the Bureau to issue new model forms and compel their implementation by lenders prior to the completion of other major changes in the pipeline, the forms might need to be revised a second time. This would impose substantial costs on industry, as it would have to repeat the implementation process. This hardship can be avoided if regulators take a coordinated, deliberate approach to rolling out the aforementioned interrelated reforms.

Use of Prescribed Model Forms should Provide Safe Harbor to Lenders

AFSA appreciates that the Bureau seeks to make the residential mortgage disclosures simpler and more comprehensible by conveying information on key loan terms clearly, while potentially deemphasizing or even eliminating information that is not relevant or useful to the consumer's ability to shop for and compare mortgage terms across loan offers and make an informed decision.

However, AFSA remains concerned that the Bureau may set aside requirements of existing statute or regulations that require disclosure of certain pieces of information without offering express protection to lenders. As it improves the disclosure process, the Bureau must provide a safe harbor to lenders who use the Bureau's prescribed forms. If that safe harbor is not absolutely certain, lenders will be compelled to provide both the streamlined disclosures proposed by the Bureau, as well as all of the traditional disclosures that are given today. This unnecessary duplication of complicated disclosures runs counter to the congressional objectives of achieving greater simplicity and clarity for mortgage shoppers while reducing the overall paper load.

Use of Model Forms should be Optional for Lenders

In its memorandum of February 21, 2012, "Outline of Proposals under Consideration and Alternatives Considered" ("Outline"), the Bureau notes:

> TILA authorizes the CFPB to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the CFPB to require the use of standard forms (e.g., the prescribed GFE and HUD-1 settlement statement forms).

The Outline then makes a key observation:

> Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders but provide consistency for both consumers and lenders. In light of these considerations, the CFPB is considering whether to propose a rule that requires use of standard forms under RESPA for the Loan Estimate and Settlement Disclosure for mortgage loan transactions that are subject to RESPA. Transactions that are subject only to TILA would not be required to use the model forms, consistent with the provisions of that statute.

AFSA believes that it is important that the Bureau provide safe harbor for compliance with the provisions of the two statutes so long as lenders use model forms, but should avoid the absolute requirement of standard forms. The standard forms may turn out to be less relevant to nontraditional lenders such as the consumer finance companies AFSA represents, who often focus their business on unsecured personal loans and secured, retail installment sales contracts on vehicles and other purchases. Some of these companies make mortgage loans only occasionally, typically in the form of home equity loans to finance home improvements or other needs. Too rigid requirements threaten to drive these lenders out of the marketplace, depriving their regular customers of the option of borrowing on their real estate from a trusted source.

* * *

AFSA thanks the committee for its consideration of these views. Please feel free to contact Bill Himpler, Executive Vice President, with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.

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June 20, 2012

The Honorable Judy Biggert
Chairwoman
Subcommittee on Insurance, Housing and Community Opportunity
House Committee on Financial Services
2128 Rayburn House Office Building
Washington, DC 20515

The Honorable Luis Gutierrez
Ranking Member
Subcommittee on Insurance, Housing and Community Opportunity
House Committee on Financial Services
2128 Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Biggert and Ranking Member Gutierrez:

On behalf of the more than 25,000 members of our professional appraisal organizations, thank you for the opportunity to testify on real estate appraisal issues relating to "Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?"

As you know, Section 1475 of the Dodd-Frank Act authorized separation of appraisal and appraisal management fees. We support this provision and believe separate disclosure should be required to fully inform borrowers of actual costs paid with regard to the residential appraisal process. This includes both the performance of the appraisal and any administrative and review functions performed by an appraisal management company. We see no consumer benefit with continuing to bundle two separate services, as is current practice today.

<u>Background on Appraisal and AMC Fees</u>
As background, recent consumer research indicates that consumers are paying higher costs for appraisal fees as reported on the Appraisal line of the HUD-1 statement[1]. At the same time, our members report significant reductions in appraisal fees, by as much 40 percent. How can this be explained? The explanation for this is simple – consumers are now paying for *appraisal management company* fees through the Appraisal line of the HUD-1.

Traditionally, appraisal management fees were allocated as part of *loan processing or administration* fees or through the interest rate. However this has changed over the years as more lenders have outsourced appraisal functions to third party management companies. This is enabled by interpretations of the Real Estate Settlements Procedures Act, the foundation of which date back to the origins of the HUD-1 in 1974, long before the current appraisal management business model was established. This allows the bundling of appraisal and appraisal management expenses when appraisal management companies are used.

However, the Consumer Financial Protection Bureau (CFPB), through the establishment of a new Consumer Disclosure Form (CDF) and as authorized by the Dodd-Frank Act, has a unique opportunity to improve transparency for borrowers by requiring full disclosure of costs incurred for appraisal services and costs for appraisal management services. The CFPB has issued several drafts of the proposed Consumer Disclosure Form. We applauded a recent draft that was posted to the CPFB website for review in February, which includes clear disclosure of any fee paid to a "Local Appraisal Company" and to an "Appraisal Management Company" (found in both the "Hemlock" and "Butternut" versions in "Chart 1" below).

<u>AMC – "Origination" Charge</u>
Under the draft released in February, the fee paid to the AMC is listed under "Services You Cannot Shop For." We believe that the AMC service is actually best suited for the "Origination" section of the proposed form. This would help alleviate any concern that consumers may be confused by the AMC and appraisal fee, and for *what* (administration and

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1 See "*NAR Survey Shows HVCC Impacting Housing Markets*," available at http://www.realtor.org/wps/wcm/connect/b83165804ef0b3338f18af2db4a1e62f/government_affairs_hvcc_research_results.pdf?MOD=AJPERES&CACHEID=b83165804ef0b3338f18af2db4a1e62f

"Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?"
June 20, 2012

Chart 1 – Draft Consumer Disclosure Form (February 2012)

Calculating Settlement Fees

A. Origination Charges	$2,769
.875 Points (% of Loan Amount)	$919
Underwriting Fee	$675
Processing Fee	$300
Verification Fee	$200
Rate Lock Fee	$525
Desk Review Fee	$150

B. Services You Cannot Shop For	$865
Flood Determination Fee	$35
Tax Status Research Fee	$50
Appraisal Fee	$275
Credit Report Fee	$30
Lender's Attorney	$300
Title – Closing Protection Letter	$75
Appraisal Management Company Fee	$100

Calculating Settlement Costs

D. Taxes and Other Government Fees	$2,840
Transfer Taxes	$2,470
Recording Fees	$370
Other Taxes and Government Fees	$0

E. Prepaids	$464
Property Taxes (0 months)	$0
Homeowner's Insurance Premium (12 months)	$375
Mortgage Insurance Premium (0 months)	$0
Prepaid Interest ($12.76 per day for 7 days @ 4.375%)	$89

F. Initial Escrow Payment at Closing		$902
Property Taxes	$269.44 per month for 3 mo.	$808
Homeowner's Insurance	$31.25 per month for 3 mo.	$94
Mortgage Insurance	$0 per month for 0 mo.	$0
Flood Insurance	$0 per month for 0 mo.	$0
HOA/Condo/Co-op	$0 per month for 0 mo.	$0

processing) or *whom* (the financial institution) the service is provided. Appraisal management functions are those conducted by lenders as part of loan origination. Under traditional lending models, internal appraisal departments were employed to manage appraisal administration. Such services can still be performed internally by a lender today, and when they are, they typically are paid for through interest rate or loan origination charges. However, the same functions can also be outsourced to an AMC.

As such, we believe listing the AMC under Origination would be consistent with how these functions have been paid for in the past. Additionally, we believe that this would be consistent with recent Frequently Asked Questions issued by the Department of Housing and Urban Development, which classifies such services as processing and administrative functions[2].

Should the CFPB opt not to include AMC fees in the Origination section of the new form, we suggest that the AMC fee be listed directly below the line for the fee paid for the Appraisal to enhance the flow and readability of the document. While we see some benefit to having some distance between the two fees, we believe that it makes more sense for the two lines to be adjacent to one another.

Fee Caps

One complicating factor in separating appraisal and appraisal management company fees on the CDF is the "3 percent points and fees cap" also established by the Dodd-Frank Act. Known as the "Merkley-Klobuchar Amendment," this provision caps fees paid to banks to 3 percent of the loan amount. How this affects appraisal is that several large, national banks own appraisal management companies. When the appraisal management fees are bundled with appraisal fees on the CDF, the fees fall *outside* of the Merkley-Klobuchar Amendment requirements. However, if they are separated on the

[2] See 9) Q: What charges are part of the charge in Block 1 of the GFE, "Our origination charge"?
A: Block 1, "Our origination charge" on the GFE contains all charges for origination services performed by or on behalf of a lender and/or a mortgage broker. Origination services includes, but is not limited to, the following: taking of the loan application, loan processing, underwriting of the loan, funding of the loan, acting as an intermediary between a borrower and lender, obtaining verifications and appraisals, and any processing and administrative services required to perform these functions, and
8) **Q:** Where should fees for processing and administrative services be listed on the HUD-1 Settlement Statement?
A: Processing and administrative services are services to perform origination and title services functions. For the loan origination function, charges for such services are included in the total on Line 801. For the title services function, charges for such services must be included in the title underwriter's or title agent's charge and are shown in the total on Line 1101. Examples of processing and administrative services include, but are not limited to, the following: document delivery, document preparation, copying, wiring, preparing endorsements, document handling, and notarization. Available at http://www.hud.gov/offices/hsg/ramh/res/resparulefaqs.pdf

CDF, the appraisal management company fees (for those owned by banks) would fall *within* the 3 percent cap, constricting the amount available to other areas of the loan transaction. Obviously, banks that own appraisal management companies and receive AMC fees are concerned about adverse effects this may have on their operations.

On this point, the Dodd-Frank Act authorizes the CFPB to exempt fees from the 3 percent points and fees cap. We have urged the CFPB to exempt appraisal management company fees from the Merkley-Klobuchar Amendment in support of fully disclosing fees and payees to consumers.

Conclusion

In sum, the CFPB has expressed the desire "to help make the costs and risks clear at all stages of the mortgage process – from shopping for a mortgage to signing on the dotted line." This is not occurring today with regard to appraisal fees; however, it is within reach should the CFPB follow through on the Congressional authorization to separate appraisal and appraisal management fees to consumers.

Thank you again for the opportunity to testify. Please contact Bill Garber, Director of Government and External Relations at 202-298-5586 or bgarber@appraisalinstitute.org or Brian Rodgers, Manager of Federal Affairs at 202-298-5597 or brodgers@appraisalinstitute.org if you would like more information or to arrange a meeting.

Sincerely,

Appraisal Institute
American Society of Farm Managers and Rural Appraisers

CBA | CONSUMER BANKERS ASSOCIATION

June 19, 2012

The Honorable Judy Biggert
Chairman
Insurance, Housing and Community
Opportunity Subcommittee
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Luis V. Gutierrez
Ranking Member
Insurance, Housing and Community
Opportunity Subcommittee
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Re: Mortgage Disclosure TILA/RESPA Rules

Dear Chairman Biggert and Ranking Member Gutierrez:

The Consumer Bankers Association (CBA) would like to thank Chairman Biggert and Ranking Member Gutierrez for holding this important hearing on mortgage disclosures. We appreciate the opportunity to submit this statement in connection with the upcoming proposal that will combine and streamline the current disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and make other possible changes to the TILA/RESPA rules. CBA supports clear and easy to understand disclosures that are meaningful for consumers. However, we have concerns with the process of combining the TILA/RESPA disclosures, as well as concerns on possible substantive changes to the TILA/RESPA rules that the Consumer Financial Protection Board (CFPB or Bureau) may propose as part of this initiative.

It is our understanding that the proposal the agency will issue in July will include a number of other changes to the TILA and RESPA rules in addition to combining the disclosure forms. We have specific concerns with many of these proposed regulatory changes. However, our overriding concern is whether it is necessary or advisable to propose certain of these regulatory changes as part of the July proposal, specifically those not directly related to the design of the new TILA/RESPA disclosures. We believe these changes can be addressed at a later date as the Bureau implements the other mortgage loan provisions of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

We are also concerned the CFPB may mandate the use of these new TILA/RESPA disclosures exactly as developed by the agency, as opposed to offering them as a safe harbor for compliance. We believe banks should have some flexibility to make modest changes to these forms, especially in order to accommodate the various types of mortgage loan products currently offered by the industry.

The Dodd-Frank Act requires certain disclosures on these new forms, which includes the Total Interest Percentage and Lender Cost of Funds disclosures. This information is completely

Consumer Bankers Association | 1225 Eye Street, NW, Suite 550 | Washington, DC 20005 | 202-552-6380

CBA | CONSUMER BANKERS ASSOCIATION

unnecessary and will prove very confusing for consumers. The Dodd-Frank Act allows the CFPB to exercise authority to exempt or modify disclosure requirements, and we have asked the Bureau to exercise this authority to eliminate these two disclosures.

The CFPB may propose that a zero tolerance apply to certain charges that would be disclosed on the new "Loan Estimate" disclosure, which would be for charges imposed by settlement providers chosen by the lender or those provided by lender affiliates. Even though this zero tolerance would only apply to these types of charges that are under some type of control by the lender, we are still concerned lenders will not be able to estimate certain of these variable costs with exact precision. Imposing a zero tolerance will certainly result in more instances of redisclosure of settlements costs during the loan process as costs change, which will result in more instances of delay. This will not only be costly for lenders, but will impose more costs and inconveniences for borrowers.

Currently, lenders must provide the Good Faith Estimate (GFE) or early disclosures when the borrower provides six specific pieces of information, as well as "any other information deemed necessary by the lender." We are concerned that the CFPB is considering the deletion of this "other information" requirement in order to expedite the delivery of these disclosures as lenders may need additional information before providing the GFE disclosures with the accurate estimate of the settlement charges.

We understand the CFPB is considering a change in which additional fees and charges would be incorporated into the Annual Percentage Rate (APR) calculation. As with the other specific changes discussed above, we believe this issue should be analyzed in conjunction with the other mortgage issues the CFPB will address later this year. These changes also need to be considered in light of other federal and state laws and regulations in which loans are subject to these requirements if the APR exceeds certain thresholds. The incorporation of additional fees and charges will result in higher APRs, which may result in more loans being subject to these other federal and state requirements. We are also concerned about this possible change because there is no indication that consumers actually use the APR to shop for mortgage loans, in which case it would make little sense to impose these additional burdens on the industry.

The CFPB has also raised the issue as to the responsibilities of both the lender and settlement agents with regard to providing the combined TILA/RESPA settlement disclosure. To the extent the CFPB imposes additional requirements on lenders for providing settlement cost information on the new settlement disclosure, it is critical that the CFPB impose responsibilities on the settlement provider to both provide accurate information and to provide it in a timely manner so the lender may then provide this disclosure to the borrower within the required time-frame. Unless these responsibilities are imposed on the settlement providers, lenders will simply not be able to provide all of this cost information to consumers within the required time-frame.

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Finally, if the CFPB moves forward with proposing substantive changes to the TILA/RESPA rules, in addition to the changes in the forms, we have urged the Bureau to provide a sufficient comment period. This is critical in order for the industry to thoroughly analyze the impact of these complex changes and to provide constructive feedback.

CBA would like to continue working with The Committee on Financial Services to create an environment where consumers are able to get the product they need and is best suited for their financial interest. CBA and our member institutions need to be provided with clarity in the market where the focus is consumer driven and not burdened by newly crafted rules and regulations that limit credit or create delays. We look forward to working with Congress and our regulators to create an environment that benefits all parties involved.

Sincerely,

Rich Hunt

Richard Hunt
President

CUNA
Credit Union National Association
cuna.org
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June 20, 2012

The Honorable Judy Biggert
Chairman
Subcommittee on Insurance, Housing and Community Opportunity
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Biggert:

On behalf of the Credit Union National Association (CUNA), I am writing regarding the upcoming hearing concerning the Consumer Financial Protection Bureau's (CFPB) Know Before You Owe Real Estate Settlement Procedures Act (RESPA)/Truth In Lending Act (TILA) Combination rulemaking, required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). CUNA is the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,200 state and federally chartered credit unions and their 95 million members. We appreciate your continued work on this important issue, and for seeking our input for today's hearing, and also for the opportunity to submit this letter for the record of the hearing.

CUNA supports providing consumer disclosures that are meaningful and clear for borrowers to understand the important terms of a financial transaction, yet not overly burdensome for credit unions to properly complete, generate, deliver and explain to mortgage loan applicants. When the Dodd-Frank Act was being considered by Congress, CUNA strongly supported combining certain RESPA/TILA forms to improve efficiencies in disclosures and minimize disclosure burdens on credit unions as well as on consumers, who are overloaded with financial information that is not practical or useful. However, there are several aspects of the proposals under consideration and alternatives considered by the CFPB with which we would like to voice concern. We have raised these concerns with the CFPB as well.

Model Forms vs. Standard Forms

With respect to the proposals presently under consideration by the CFPB, TILA authorizes the CFPB to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the CFPB to require the use of standard forms. Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders, but provide consistency for both consumers and lenders. We have urged the CFPB to propose a rule that would require the use of standard forms under RESPA for the Loan Estimate and Settlement Disclosure for mortgage loan transactions that are subject to RESPA, but would allow lenders to use model forms for the TILA disclosures. We believes that such an approach would yield less opportunity for unscrupulous lenders to present "bait and switch" scenarios to consumers, and believes that this approach would contribute overall to better consumer protection.

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The Honorable Judy Biggert
June 20, 2012
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Again, recognizing that the RESAP/TILA form combination is a requirement of the Dodd-Frank Act, we continue to urge the CFPB to provide consumers with efficient and complete disclosures. Not only is the prospect of too many disclosures daunting to and unwelcomed by most consumers, the cost to generate, deliver and explain the disclosures to consumers has become extremely burdensome to lenders.

Potential Costs of Compliance

Assigning a dollar figure on the cost of compliance for these regulatory changes is extremely difficult. When a regulation is changed, there are certain upfront costs that must be incurred: staff time and credit union resources must be applied in determining what is necessary in order to comply with the change; forms and disclosures must be changed; data processing systems must be reprogrammed; and staff must be retrained. It also takes time to discuss these changes with credit union members, and at times, members get frustrated because of the change. The ongoing costs of doing business in a manner that complies with the new regulation, compared to how it was conducted previously, is more challenging to measure.

CUNA encourages the subcommittee to closely monitor the rules that the CFPB has under consideration, including the proposals relating to the RESPA/TILA rulemaking.

Consider Repeal of Specific Disclosure Requirements

With respect to disclosures specifically mandated by the Dodd-Frank Act, we recognize that section 1419 of the Dodd-Frank Act amends TILA to require, in the case of residential mortgage loans, "the disclosure of the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan," ("Total Interest Percentage"). The extent to which this disclosure would actually help consumers has not been documented and we encourage the subcommittee to repeal this requirement or make it more meaningful to consumers by further clarifying or explaining this figure with respect to its different meaning than the annual percentage rate the interest rate, etc..

In this same light, section 1419 also amends TILA to require the disclosure of the "approximate amount of the wholesale rate of funds in connection with the loan," in the case of residential mortgage loans. CUNA strongly encourages the subcommittee to consider repeal of this requirement or make it more meaningful. For those credit unions that intend to sell mortgage originations to the secondary market, this disclosure provides absolutely no benefit or value to the consumer, as we believe it is the investor's cost of funds rather than the lender's that should be measured. Secondly, for those credit unions that intend to portfolio their mortgage originations, CUNA believes that a more appropriate measure of the cost of funds in this context would be the credit union's cost of funds as measured over the life of the loan, rather than solely at the point of origination.

Settlement Disclosure Delivery Timing

CUNA is also concerned with a proposal being considered by the CFPB which would require delivery of an integrated Settlement Disclosure three business days before closing in all circumstances. We have urged the CFPB to not proceed with such a proposal. It is difficult, at

The Honorable Judy Biggert
June 20, 2012
Page Three

best, for credit union lenders to coordinate with title companies and others 24 hours in advance of a real estate closing. To increase the period to three days prior to closing would be very problematic for credit unions, and likely very frustrating for consumers who usually want to close on their home loan as soon as possible. CUNA encourages the subcommittee to help ensure additional regulatory burden regarding this requirement is not placed on credit unions in any future rulemaking.

Conclusion

We hope the subcommittee will work to ensure that the Congressional mandates within the Dodd-Frank Act relating to the RESPA/TILA integration are effectively implemented through the CFPB's rulemaking process, while ensuring that additional regulatory burdens and costs to credit unions are minimized where appropriate and permissible. Credit unions did not cause the financial crisis, and continue to serve their members well with financial products and services that are in the best interests of the consumer.

On behalf of America's credit unions and their 95 million members, thank you very much for your consideration of our views.

Best regards,

Bill Cheney
President & CEO

HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE

Housing Policy Council

Statement for the Record
For the House Financial Services Committee
Subcommittee on
Insurance, Housing and Community Opportunity
Hearing:
"Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?"

Wednesday, June 20, 2012

The Housing Policy Council (HPC) of The Financial Services Roundtable appreciates the opportunity to submit a statement for the record for the Subcommittee's June 20 hearing on mortgage disclosures – a topic that is a high priority for the Housing Policy Council and our member companies.

The Housing Policy Council of The Financial Services Roundtable consists of thirty of the leading national mortgage finance companies. HPC members originate, service, and insure mortgages. We estimate that HPC member companies originate approximately 75% and service two-thirds of mortgages in the United States. HPC's mission is to represent the mortgage and housing marketplace interests of member companies in legislative, regulatory, and judicial forums.

The Housing Policy Council has long supported simplifying and harmonizing mortgage disclosures to help ensure that consumers understand the terms of their mortgage loan. The forms and disclosures under the Truth in Lending Act (TILA) and its implementing regulation (Regulation Z) and the Real Estate Settlement Procedures Act (RESPA) and its implementing regulation (Regulation X) constitutes pages and pages of information that is, at times, confusing, contradictory, or duplicative.

It is critical that consumers understand the terms of a mortgage loan before reaching the settlement table. We applaud the Consumer Financial Protection Bureau (Bureau or CFPB) in undertaking the important task of creating unified disclosures that are effective for borrowers and lenders alike. We share the Bureau's goal to reduce the regulatory complexity and improve clarity in mortgage disclosures.

HPC has been active in responding to the CFPB's process of harmonizing TILA and RESPA. For each round of the Bureau's Know Before You Owe effort on merging these disclosures, HPC has provided either written or oral suggestions, or both to CFPB staff. In addition, we have worked cooperatively with other financial services trade associations to communicate shared views and concerns about the substance and process of the CFPB's disclosure effort.[1]

As the Committee examines the Bureau's efforts to revise mortgage disclosures, we would like to highlight some of the suggestions we have made to the Bureau.

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[1] Please contact Joan Gregory of HPC (joan@fsround.org) if you would like copies of our comments to the CFPB.

1) **Keep the forms simple and concise.** The purpose of the merged forms should be to disclose critical information to consumers in a clear and concise manner. The forms need to disclose information that the consumer should know in a format the consumer can understand. In addition, the Bureau must ensure that the model forms are flexible enough to effectively disclose terms for different products. To this end, the Bureau should issue model forms as called for in TILA and section 1032(b), not required forms as mandated in HUD's 2008 amendments to Regulation X. In addition, these model forms should provide a safe harbor when utilized correctly, as provided for in section 1032(d) of the Dodd-Frank Act. This step will ensure consistency in the information provided to borrowers and enhance comparison shopping.

2) **Consider what information is most critical to borrowers.** In addition to requiring the Bureau to merge the disclosures under TILA and RESPA, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added some additional disclosure requirements. Some of these seem to be at odds with the purpose of merging TILA and RESPA disclosures – namely to simplify the disclosures and make sure the forms disclose to the consumer key information about the mortgage.

   For example, the cost of funds provision (section 1419 of the Dodd-Frank Act) does not assist the borrower in understanding the mortgage or comparing the mortgage to another. We understand that this disclosure led to consumer confusion in the Bureau's qualitative testing. We urge the Bureau to use its exception authority under TILA and not include this information on the disclosure forms as it would not help inform the consumer. We understand the Bureau may be hesitant to use its exception authority for brand new requirements mandated by Congress, and to that end we would appreciate the Committee's help in explaining the purpose of this disclosure and whether there is a better way to inform the consumer. If the Bureau declines to use this exemption authority, we suggest that the Bureau require an average costs of funds based on a national average that is publicly available.

   Information that may change if the loan is sold or if state law is amended (e.g. the disclosures around whether partial payments will be accepted and liability after foreclosure) should either be reviewed to determine the utility of the information and if retained, then additional language to alert the borrower that the information may change.

3) **Merging TILA and RESPA requirements.** We appreciate the Bureau's efforts to design clear and concise forms; however, much work remains to be done in terms of harmonizing the requirements under TILA, RESPA.

   For example, the timing of the disclosures and who is responsible for the forms is different, and the Bureau will need to harmonize this in the proposed regulations.

   Clear guidance is needed regarding requirements to re-disclose loan terms and settlement costs when facts change after an application is taken. We support keeping consumers informed about changes to key items, but current regulations have resulted in over-disclosure that is confusing to consumers. We ask the Bureau to consider the implications when making these changes and to engage with the industry to understand potential consequences and possible unintended effects of these changes. In order for us to provide the Bureau with informed comment, the Bureau should explain which liability scheme (TILA's or RESPA's) will apply to the revised disclosures.

   Finally, the two statutes also provide for different liability rules. The rules supporting the combined disclosures should clearly define the liability rules that would attach to information required to be provided on the disclosure.

4) **A pilot program should be utilized prior to final implementation.** Under section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau may permit institutions "to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed improve upon any model form" the CFPB issues. In addition, during this trial period, the Bureau must provide a safe harbor from pertinent rules and enumerated consumer laws to institutions engaged in the program during the trial period.

   After the Bureau issues proposed rules and forms but before they are finalized, we continue to urge the Bureau to establish a trial program with a few lenders using the new forms in real world transactions. This will provide an opportunity for the Bureau to make any necessary clarifications or modifications, and eliminate unnecessary confusion amongst consumers, lenders, and other participants in the mortgage process.

5) **Effective Dates and Implementation Period.** We understand the Bureau plans to meet the July 21, 2012 deadline for issuing a proposed regulation. As this requirement is under Title X and not Title XIV, the final rules do not need to be issued before January 21, 2013. We ask the Bureau to take the time necessary to create a rule that will usefully continue for years unamended and not be rushed into final promulgation before the rule and forms are tested and ready. To ensure that, we urge the Bureau to provide for a lengthy comment period and other opportunities for interested parties to discuss the forms and regulations with the Bureau's staff.

   Additionally, a lengthy implementation period is needed. Combining these mortgage disclosures will take a considerable amount of time due to the necessary changes in systems and staff training. We ask that the Bureau allow at least 18 months for the implementation of the final regulations.

   Finally, as noted above, some pieces of the new forms are new disclosure requirements mandated under Title XIV (cost of funds, escrow account disclosures, aggregate settlement charges, and negative amortization). Under Title XIV, these disclosures become self-effectuating on January 21, 2013 if a final regulation is not issued. We ask the Bureau to use its exception authority under TILA to postpone the effective date for the new disclosures under Title XIV that will be included in these forms and have these disclosures become effective when the TILA-RESPA final rule is implemented. Otherwise, lenders will be faced with additional disclosure requirements without the final TILA-RESPA forms, which will lead to confusion amongst the industry and consumers.

6) **Continue the dialogue.** We appreciate the Bureau's efforts to engage the industry and consumers as it has developed and tested these forms. In addition, we appreciate that the CFPB provided interested parties with an opportunity to provide feedback on the information contained in the SBREFA panel documents. We ask that the Bureau continue this open dialogue.

Thank you for the opportunity to provide the committee with an official statement on the CFPB mortgage disclosure harmonization process. HPC would be happy to further brief the committee at any time. Please contact Paul Leonard (**paul@fsround.org**) or Joan Gregory (**joan@fsround.org**) with questions.

ICBA
INDEPENDENT COMMUNITY BANKERS *of* AMERICA®

June 20, 2012

Streamlined RESPA-TILA Rules Will Boost Mortgage Lending

On behalf of its nearly 5,000 community bank members, ICBA is pleased to submit this statement for the record for the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity's June 20 hearing titled: "Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses." We appreciate the opportunity to share our perspective on this issue.

ICBA is supportive of Congress's and the Consumer Financial Protection Bureau's efforts to clarify and streamline both the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) regulations to make them clearer and easier to comply with while providing consumers with easy-to-read, clear and meaningful disclosures that help them better understand the costs of a mortgage loan transaction. We believe it's critically important to get the forms and procedures right so they will yield the greatest potential benefits to consumers and lenders alike. To help facilitate that process, we suggest the CFPB engage in an Advance Notice of Proposed Rulemaking (ANPR), which would allow all stakeholders to comment on the proposed forms and provide feedback on potential policies that would govern their use.

Below we highlight our principal concerns with draft rules recently circulated by the CFPB:

CFPB should drop the property address as a required item in the initial loan estimate for purchase transactions. HUD intended the current Good Faith Estimate (GFE) to be used as a tool for borrowers to shop and compare mortgage loan offers between lenders. This works relatively well for refinance loans, however, it does not work for purchase transactions. In order to issue a GFE, the lender must have the address of the property to be financed. In order to issue a GFE to a borrower who wishes to "go shopping" for a home and home loan, the lender must issue a preapplication estimate, and would then issue the GFE once a property is selected. This preapplication estimate is not regulated and not standardized in regards to what information is provided and in what format. This frequently can cause confusion with the borrower. CFPB is considering requiring a disclaimer be printed on any preapplication estimate notifying the borrower that "this is not a Loan Estimate required by TILA and RESPA". ICBA feels this would further confuse the borrower and not solve the problem while perpetuating a flawed policy from HUD.

We recommend that "property address" become an optional application item for the initial Loan Estimate for ***purchase*** transactions. This would enable the borrower to shop for a mortgage loan, compare costs and make an informed decision based on a Loan Estimate that is regulated. The lender would then provide a revised Loan Estimate once a property has been selected. While the final information on the Loan Estimate may change, the borrower can clearly see what costs are different and the lender can better explain those differences which would reduce confusion on the part of the borrower.

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CFPB should maintain the current 10 percent tolerance for changes in required third party settlement costs. The CFPB is considering eliminating the current 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. In addition the CFPB is considering requiring the bank to retain documentation supporting any charge that exceeds the amount provided on the GFE so the bank can explain to their supervisory agency why the cost exceeded the estimate and defend itself against any concerns that the lender may have directly profited from an "unjustified increase." As written, this would apply to charges from companies that are affiliated with the bank such as a title company or appraisal management company. However, it is unclear if a lender would be subject to this zero tolerance by using an appraiser from the bank's approved appraiser list, which is required by regulation.

The elimination of the 10 percent tolerance will cause prices for services to increase from the outset, in order to compensate for unforeseen developments that may occur during the processing of the loan. For example, an appraiser may charge a base fee for an appraisal. That fee assumes a typical type of property for that area in terms of lot size, type of dwelling, etc. However, if once on site the appraiser discovers there are out-buildings, unique site issues, atypical construction or design, the fee for the appraisal will increase, as it will require more time from the appraiser to complete the appraisal. The same can apply to title work, especially in outlying areas that are not platted, as well as for property inspections as a result of deferred maintenance. These items are not known at the time the bank would issue a GFE, and only reveal themselves during the processing of the loan. Under the current 10 percent tolerance, even minor increases can cause an out of tolerance condition when there is a small loan amount. Banks do not control these third party charges, even in the case of affiliated companies which are operated separately. These companies have to ensure that all transactions are "arms-length" in nature and that charges are bona fide. As proposed by CFPB, the zero tolerance would in some ways force price collusion among parties, which will not benefit consumers. The current 10 percent tolerance works well, and unless the CFPB has documented evidence of abuse, ICBA believes changing the tolerance is unnecessary and would result in higher settlement costs overall.

Timing of Settlement Disclosures. Requiring the customer to wait three business days to close after receiving their Settlement Disclosure will lead to more consumer complaints. Consumers want to close sooner, not later. With the safeguards provided by the changes in Regulation Z on mortgage loan officer compensation and the requirements regarding what can and cannot change on the settlement disclosure, consumers should not experience the "bait and switch" tactics that were used by some unscrupulous lenders in the past. For refinance loans, the additional three business days when combined with the three-day right of rescission period will now stretch the closing process to at least a week or more. Purchase money loans have other parties to the transaction such as the property seller or builder and moving companies for both the borrower and property seller, which will be delayed as well. Additionally, real estate purchase and sales contracts all contain penalties if the borrower fails to act in good faith to complete the transaction. It is likely that if a borrower were to decide to cancel the transaction during the three business days prior to settlement, they would face loss of their deposit and possible additional financial penalties from the property seller. This is not a right of rescission, so the borrower has no right to cancel at that point. However, allowing the three business days could infer that right, thereby adding to confusion on the borrower's part. Further extending the timeline by adding the additional three business days will lead to increased costs and frustration to purchase and move into a home. Providing the customer 24 hours to review the settlement statement and obtain the funds needed for closing is more than adequate.

Finally, ICBA is concerned that the scope of the changes being considered by the CFPB have the potential to cause significant costly IT upgrades and changes to bank loan origination, document preparation, and core operating systems. These costs could drive many small banks to exit the mortgage lending business, even for loans held in portfolios, which will severely restrict credit in many rural areas. Those community banks that do remain in the business will likely have to increase their prices to cover these costs. These costs for items that add no value or protection to the consumer will end up increasing the cost of credit and reducing the availably of credit. To minimize the disruption created by any new rules, in whatever form they take, we urge the CFPB to provide an implementation period of at least one year following the adoption of final rules.

Thank you for convening this hearing and for the opportunity to submit this statement for the record. We are attaching our April 13, 2012 comment letter to the CFPB which describes our concerns in greater detail.

Attachment

INDEPENDENT COMMUNITY BANKERS *of* AMERICA®

April 13, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Dear Director Cordray:

The Independent Community Bankers of America (ICBA) represents 5,000 community banks nationwide. Many of our member banks are located in small towns and rural communities and are the primary source of mortgage lending in their communities. Our member banks are local lenders and generally know their customers personally. They take great pride in providing their borrowers with good, safe, lending products that the borrower can afford. They are small businesses that do not have large staffs. Their employees wear multiple hats to provide banking services. Loans are originated locally and generally serviced locally.

ICBA is supportive of the CFPB's efforts to clarify and streamline both the TILA and RESPA regulations making them clearer and easier to comply with while providing consumers with an easy to read, clear and meaningful set of disclosures that help them better understand the costs of a mortgage loan transaction. We appreciate the opportunity to work with the CFPB to achieve that goal. Listed below are our comments and suggestions to the Outline of Proposals Under Consideration and Alternatives Considered as presented to the Small Business Review Panel for TILA/RESPA Integration Rulemaking.

1. **Definition of Loan Application –Drop property address as a required item.** HUD intended the current Good Faith Estimate (GFE) to be used as a tool for borrowers to shop and compare mortgage loan offers between lenders. This works relatively well for refinance loans, however, it does not work for purchase transactions. In order to issue a GFE, the lender must have the address of the property to be financed. In order to issue a GFE to a borrower who wishes to "go shopping" for a home and home loan, the lender must issue a preapplication estimate, and would then issue the GFE once a property is selected. This

preapplication estimate is not regulated and not standardized in regards to what information is provided and in what format. This frequently can cause confusion with the borrower. CFPB is considering requiring a disclaimer be printed on any preapplication estimate notifying the borrower that "this is not a Loan Estimate required by TILA and RESPA." ICBA feels this would further confuse the borrower and not solve the problem while perpetuating a flawed policy from HUD.

We recommend that "property address" become an optional application item for the initial Loan Estimate for ***purchase*** transactions. This would enable the borrower to shop for a mortgage loan, compare costs and make an informed decision based on a Loan Estimate that is regulated. The lender would then provide a revised Loan Estimate once a property has been selected. While the final information on the Loan Estimate may change, tbe borrower can clearly see what costs are different and the lender can better explain those differences which would reduce confusion on the part of the borrower.

2. **Tolerance for Changes—Maintain the current 10 percent tolerance for changes in required third party settlement costs.** The CFPB is considering eliminating the current 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. In addition the CFPB is considering requiring the bank to retain documentation supporting any charge that exceeds the amount provided on the GFE so the bank can explain to their supervisory agency why the cost exceeded the estimate and defend itself against any concerns that the lender may have directly profited from an "unjustified increase." As written, this would apply to charges from companies that are affiliated with the bank such as a title company or appraisal management company. However, it is unclear if a lender would be subject to this zero tolerance by using an appraiser from the bank's approved appraiser list, which is required by regulation.

   The elimination of the 10 percent tolerance will cause prices for services to increase from the outset, in order to compensate for unforeseen developments that may occur during the processing of the loan. For example, an appraiser may charge a base fee for an appraisal. That fee assumes a typical type of property for that area in terms of lot size, type of dwelling, etc. However, if once on site the appraiser discovers there are out-buildings, unique site issues, atypical construction or design, the fee for the appraisal will increase, as it will require more time from the appraiser to complete the appraisal. The same can apply to title work, especially in outlying areas that are not platted, as well as for property inspections as a result of deferred maintenance. These items are not known at the time the bank would issue a GFE, and only reveal themselves during the processing of the loan. Under the current 10 percent tolerance, even minor increases can cause an out of tolerance condition when there is a small loan amount. Banks do not control these third party charges, even in the case of affiliated companies which are operated separately. These companies have to ensure that all transactions are "arms-length" in nature and that charges are bona fide. As proposed by CFPB, the zero tolerance would in some ways force price collusion among parties, which will not benefit consumers. The current 10 percent tolerance works well, and unless the CFPB has documented evidence of abuse, ICBA believes changing the tolerance is unnecessary and would result in higher settlement costs overall.

3. **Timing of Settlement Disclosures- Do not require delivery to the borrower three business days prior to closing.** Requiring the customer to wait three business days to close after receiving their Settlement Disclosure will lead to more consumer complaints. Consumers want to close sooner, not later. With the safeguards provided by the changes in Regulation Z on mortgage loan officer compensation and the requirements regarding what can and cannot change on the settlement disclosure, consumers should not experience the "bait and switch" tactics that were used by some unscrupulous lenders in the past. For refinance loans, the additional three business days when combined with the three-day right of rescission period will now stretch the closing process to at least a week or more. Purchase money loans have other parties to the transaction such as the property seller or builder and moving companies for both the borrower and property seller, which will be delayed as well. Additionally, real estate purchase and sales contracts all contain penalties if the borrower fails to act in good faith to complete the transaction. It is likely that if a borrower were to decide to cancel the transaction during the three business days prior to settlement, they would face loss of their deposit and possible additional financial penalties from the property seller. This is not a right of rescission, so the borrower has no right to cancel at that point. However, allowing the three business days could infer that right, thereby adding to confusion on the borrower's part. Further extending the timeline by adding the additional three business days will lead to increased costs and frustration to purchase and move into a home. Providing the customer 24 hours to review the settlement statement and obtain the funds needed for closing is more than adequate.

4. **Providing Settlement Disclosures- Allow the lender flexibility to determine who provides the settlement disclosure.** Many banks currently close refinance loans at the bank's offices and as such they prepare and provide the settlement statement. This is done to save consumers money by not having to pay attorneys fees and speeds the process up. However, purchase money loans are usually closed at the title company. Having this flexibility helps community banks to

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deliver the best service at the lowest possible cost. ICBA would urge the CFPB to continue to permit this type of flexibility by allowing the lender to choose the best way to provide the settlement disclosures.

5. **Record Keeping and Data Collection- Permit lenders the choice of paper or electronic format.** While many community banks keep imaged (PDF) copies of loan files including all disclosure forms, many community banks also still keep paper loan files. Few keep loan files in a "machine readable format" which would permit the CFPB or other regulator to obtain or extract certain data from the disclosure forms. Imposing this type of requirement on the industry will require major system upgrades costing thousands of dollars, which would be hard for a small bank to justify. We request that the CFPB permit lenders the choice of using paper or imaged (PDF) format for record keeping and data collection purposes rather than requiring data to be maintained in a "machine readable format."

6. **Annual Percentage Rate calculation- Do not change the components used to calculate APR.** The APR calculation is embedded in every loan processing and core banking system currently in use today. Any changes to the components that comprise APR would require additional upgrades to that system which will be very costly, and changes would also require a massive retraining of all staff. There is additional concern that inclusion of additional items into the APR calculations would drive the APRs higher causing more loans to be higher-priced mortgage loans which require escrows for taxes and insurance. This would pose problems for many community banks, which do not have the ability to escrow for taxes and insurance. Many community banks today will not make loans that fall into the higher priced mortgage loan category because of their inability to escrow. If more loans fall into that category due to the inclusion of additional fees, lending by community banks will be curtailed further. This condition could be further exasperated by small balance mortgage loans which are common in many rural areas. The APR, while intended as a way for consumers to measure the "true cost of credit" they are seeking, is confusing for many consumers. Changing the components that comprise the calculation will only add to that confusion while imposing an enormous burden on the community banking industry to update systems, train staff, revise materials and change mortgage loan advertisements for compliance.

7. **The Forms- Drop the "average cost of funds" and the "total interest percentage" from the Loan Estimate and Settlement Disclosure.** As discussed in several previous comment letters on the forms themselves, ICBA strongly urges that the "Average Cost of Funds" and the "Total Interest

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Percentage" categories be dropped from the Loan Estimate and Settlement Disclosure. Neither of these items provides any value to the consumer, and will likely cause additional confusion. Further, since these are completely new data fields, all loan origination document preparation systems will have to be changed to support these two items, which will be very costly. Developing the cost of funds rate for the lender creates an additional set of issues for lenders. What rate does a lender use - deposit rates, warehouse line cost, Freddie Mac or Fannie Mae posted rates, correspondent investor rate? Will this result in additional record keeping on the part of the lender to retain and store all those various rate sheets? Will the lender be penalized based on how much spread there is between the stated cost of funds and the interest rate on the loan? We would hope the CFPB can provide clarity around the need for these items and work with the industry to find a better solution than what's currently proposed.

8. **Costs and Implementation- will reduce availability of credit and increase consumer costs.** The costs to implement these changes are difficult to estimate. Community banks rely on their IT and data processing vendors to support these changes, some of which will be covered by maintenance agreements. There are also staff costs to retrain the entire industry which are measured not only in terms of dollars, but also in lost productivity and delays while the industry transitions from the current forms and rules to the new forms and rules. We are concerned that given the scope of the changes as outlined in paragraphs 2, 5, 6, and 7 above, they have the potential to cause significant costly upgrades and changes to most hank loan origination, document preparation, and core operating systems. These costs could drive many small banks to exit the mortgage lending business, even for loans held in portfolios, which will severely restrict credit in many rural areas. Those community banks that do remain in the business will likely have to increase their prices to cover these costs. These costs for items that add no value or protection to the consumer will end up increasing the cost of credit and reducing the availably of credit. ICBA strongly urges the CFPB to reconsider these provisions in the rule making. Finally, ICBA recommends that the CFPB conduct a BETA test of the finalized forms and proposed TILA/RESPA rules on real loan transactions done by community banks, large banks, and small and large mortgage bankers. This will enable the CFPB and the industry to see how these new forms and the revised TILA/RESPA policy work and will be valuable in crafting a successful industry wide implementation.

The ICBA appreciates the opportunity to work with the CFPB on this very important initiative. We believe it's important to "get this right" so it will yield greater benefits to consumers and lenders alike. To help facilitate that process, we suggest the CFPB engage in an Advance Notice of Proposed Rulemaking (ANPR), which would allow all stakeholders to comment on the proposed forms and provide feedback on potential policies that would govern their use. We look forward to participating in the rule making process with the CFPB staff. If you have any questions, please contact me at 202-821-4436, or ron.haynie@icba.org

Sincerely,

Ron Haynie
Vice President- Mortgage Finance Policy
Independent Community Bankers of America

Cc: Benjamin Olsen, Consumer Finance Protection Bureau
Bart Shapiro, Consumer Finance Protection Bureau
Jennifer Smith, Small Business Administration

NAFCU

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B. Dan Berger
Executive Vice President
Government Affairs

June 19, 2012

The Honorable Judy Biggert
Chairman
Subcommittee on Insurance, Housing & Community Opportunity
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

The Honorable Luis Gutierrez
Ranking Member
Subcommittee on Insurance, Housing & Community Opportunity
House Financial Services Committee
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Biggert and Ranking Member Gutierrez:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nations federal credit unions, I write with respect to tomorrow's hearing, "Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?" NAFCU member credit unions appreciate the timeliness of the hearing given the work the Consumer Financial Protection Bureau (CFPB) has undertaken to consolidate the disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). As members of the Subcommittee are aware, July 21 is the statutory deadline for the CFPB to publish a proposed form and accompanying rule on this issue.

As households regain economic footing since the worst financial crisis since the Great Depression, it is critical that no adverse actions are taken resulting in a prolonged recovery of the fragile housing market. As community-based financial service providers, our nation's credit unions play an important role in meeting the mortgage lending needs of nearly 94 million Americans. NAFCU appreciates the CFPB's recognition of the importance of credit unions operating mortgage lending portfolios by including credit union representation on the Bureau's Small Business Review Panel in advance of the rule making aimed at streamlining the residential mortgage loan origination process.

Consolidating disclosures relating to both the lending transaction and purchase transaction aspects of home buying is a major undertaking that must be done right from the onset. Statutory requirements prescribed by Congress to review and combine parts of two statutes with differing, and often times competing, policy rationales is a very difficult starting point. While NAFCU believes that draft TILA/RESPA forms produced by the CFPB to-date represent an improvement from the current cumbersome process, concerns remain about some aspects of the project. In addition to participating in the Small Business Review Panel, NAFCU has communicated directly with the CFPB on the RESPA-TILA integration process on a number of occasions.

The Honorable Judy Biggert
The Honorable Luis Gutierrez
June 19, 2012
Page 2 of 2

Among NAFCU's chief concerns about the streamlining of these forms is the shear pace at which the CFPB is simultaneously working on other Dodd-Frank prescribed mortgage lending rules. A comprehensive and coordinated effort in rulemakings, including those pertaining to Qualified Mortgage (QM) and Qualified Residential Mortgage (QRM), is critical. Smaller entities such as credit unions simply do not have the economies of scale to come into compliance with one rule, and then as others are finalized, reconfigure their internal processes, potentially several times, to again accommodate rules they have already come into compliance with once. As an issue of fairness, Congress should address the ordering and pace of CFPB rulemaking where appropriate.

In addition, the draft TILA/RESPA combination proposal seems to be asking lenders to do considerably more with considerably less information. For example, currently under the definition of "application" lenders are permitted to ask for a certain set of criteria plus any other information the lender deems necessary. The CFPB is considering eliminating this open-ended question, which currently helps lenders inquire about the borrower's assets and liabilities. Yet at the very same time, the CFPB expects that lenders will be able to provide early cost disclosures to consumers. Altering the definition of "application" as described above, will be a major stumbling block for credit unions and their member-owners.

NAFCU is also concerned with the potential for the CFPB to lower the tolerances for certain settlement costs currently included in the Good Faith Estimate (GFE), which are expected to be included in the new early disclosure form under the new rule. NAFCU questions the wisdom of holding lenders to even tighter standards, especially with respect to third party settlement service providers, while also reducing the amount of time and information lenders have to review applications. Community-based financial institutions would be particularly impacted by this considering many do not have the affiliated outside settlement service providers that banks often times have at their disposal.

Lastly, I would like to mention NAFCU's concerns about the potential for the CFPB to require the settlement disclosures three days before closing on a home. This could result in the borrower having two similar yet slightly different sets of documents – one provided three days before closing and a second provided some time shortly after closing. The conflicting set of disclosures could be confusing for consumers. The three day requirement also accentuates the problems credit unions could face providing settlement documents as third party providers may fail to supply the lender necessary information in time to meet the three day turn around.

It is with the above concerns in mind that NAFCU would again like to thank the Subcommittee for holding this important hearing on mortgage disclosures. NAFCU is fully engaged with Congress and the Consumer Financial Protection Bureau on this issue and welcomes any questions that you might have moving forward. Should you have any questions or require additional information, please do not hesitate to contact myself or NAFCU's Vice President of Legislative Affairs, Brad Thaler, at (703) 842-2204.

Sincerely,

B. Dan Berger
Executive Vice President, Government Affairs

cc: Members of the House Financial Services Subcommittee on Insurance, Housing, and Community Opportunity

The Association of Mortgage Professionals

Written Statement of
The National Association of Mortgage Brokers

House Financial Services Committee
Subcommittee on Insurance, Housing
& Community Opportunity
"Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses"
June 20, 2012

Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee, thank you for this opportunity to share our mortgage industry viewpoints and small business experiences with the Subcommittee in order to reduce consumer confusion and costs in the mortgage origination and closing process.

NAMB appreciates and supports the CFPB's process to help the consumers understand the loan origination process and costs by combining the mortgage disclosures under TILA and RESPA, and furthermore clarifying the specific guidelines for all industry professionals. The following are comments with regard to major topics raised in the Consumer Financial Protection Bureau (CFPB) in the recent SBA Panel process.

For more than 35 years, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) have required lenders and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. The Dodd-Frank Act requires the CFPB to solve this problem by combining the disclosures to improve consumer understanding of mortgage loan transactions, and facilitate industry compliance with TILA and RESPA. Our concern is not the specific merger and TILA and RESPA but the mosaic of ALL the regulations the CFPB is attempting to finalize within the time-frames required in the Dodd-Frank Act. Qualified Mortgage, Qualified Residential Mortgage, Loan Originator Compensation, and others must be issued in final within a very short time window. The ability of industry to examine all proposals and respond to the CFPB and the CFPB to examine all comments and coordinate these rules without significant probability of unintended consequences is next to impossible. The CFPB should ask for the obvious; Industry and the CFPB need more time to coordinate the various changes coming from an a timeline created by Congress. <u>All Dodd-Frank rules relating to mortgage market should be delayed for at least 18 months for the good of the economy and the market.</u> If this is done wrong, the damage to the recovering housing market could take years to correct.

1. INTEGRATED INITIAL AND CLOSING DISCLOSURES

There is consumer confusion with regard to the TILA and RESPA forms that result in increased costs. Past studies have been performed by HUD and the Federal Reserve confirming the confusion. It is imperative that the loan originator deliver the Loan Estimate to the consumer to help them understand the forms and the costs in order to make an informed decision. The goal is for the consumer to begin the shopping process immediately, therefore the mortgage broker originator should continue to be able to provide the Loan Estimate.

Consumers shop mortgages for loan amount, monthly payment, closing costs, interest rate and product, which include loan type and down payment. The new streamlined disclosures show the loan features with more clarification, detail, and less duplication.

Currently consumers often choose the higher costs loan during comparison shopping due to the originator charges and credit section of the Good Faith Estimate. The same form for the same loan is completed differently depending on the type of originator: a broker, a mortgage banker or a bank.

It is important that specific guidelines be generated on the new disclosures to eliminate confusion and create more consistency. The goal should be to avoid the 2010 GFE confusion, which to this day, has different lenders with different interpretations on how to complete the GFE.

The training that goes with a TILA/ RESPA form change is significant. A small broker shop, one with few employees, training entails closing the office for days to ensure proper training. NAMB surveys indicate on average, a typical small mortgage brokerage shop has 5-7 employees. Loan origination stops for many offices until training is complete and understood causing burdens to small market participants. Clear, specific guidelines, with no need for interpretation need to be given to all parties at the beginning of this change to eliminate excessive training and inconsistencies throughout the industry.

Disclosures are printed by computerized loan origination software. Changes must be made with the software companies and all lender, wholesale and broker computer systems. All wholesale lenders will have to reprogram their systems, which is a time consuming and costly process. Software changes and training will result in higher costs to the consumer as evidenced by the 2010 GFE changes which cost industry (and indirectly the consumer) a considerable amount of money not only in system changes but the larger cost, training.

Increase compliance costs will also occur with this implementation. RESPA and TILA are complex laws. Lenders must ensure compliance and employ attorneys and auditors. With every change, compliance must be monitored. HUD has provided FAQs in an attempt to help originators comply with their RESPA regulations, however there is still a lack of consistency throughout the mortgage lending industry.

It is very difficult to know how much time will be required to re-educate originators and staff, however it will significantly impact the consumer and small business. Depending on the position held in the brokerage shop, it is likely that the mortgage staff needed at least 50 to 100 hours of education with the 2010 GFE change.

2. DEFINITION OF LOAN APPLICATION

Under TILA and RESPA, a lender is not required to provide the early TILA disclosure and GFE until it has received an application. The CFPB is considering a proposal that would amend the current definition of loan application to constitute receipt of:

1)the borrower's name;
2)monthly income;
3)social security number to obtain a credit report;
4)property address;
5)property value estimate; and
6)loan amount.

The proposal, however, would eliminate the current seventh element of the definition, which reads "any other information deemed necessary by the [lender or mortgage broker]."

Mortgage Broker shops would be able to issue an accurate Loan Estimate with 6 elements, however we do believe that 7 elements create more flexibility and accuracy for the consumer. For example, it is also important to know the loan product and the down payment for comparison shopping purposes, which would be included in the 7th element.

3. CHANGES IN SETTLEMENT COSTS/RE-DISCLOSURES

The CFPB is considering rule revisions to improve the reliability of the estimates lenders give consumers shortly after application, while largely preserving lenders' flexibility to respond to unanticipated changes during underwriting. Under the current RESPA rules, when a lender provides a consumer with an estimate of the cost of its own services, the actual cost cannot be higher than the estimate unless there is a valid change of circumstances. We are considering a proposal to apply the same limitation to estimates of services provided by the lender's affiliates or by companies the lender requires the consumer to use. In contrast, for services provided by a company over which the lender has less control, the proposed rule would leave in place the current 10% tolerance requirements.

A change of circumstance happens on every loan when you lock your loan. Most mortgage brokers see about 4-5 additional changes consistently. Examples include: lock extensions, loan amount changes, sales contract renegotiation, loan to value, product change and appraisal issues. With every change the loan must go back through re-disclosure and underwriting. This process may result in a lock extension that is paid by the consumer. The additional time frames could also result in missed closing dates further resulting in expenses directly to the consumer such as: moving, rent, storage, child care and time off work.

Services that the originator selects, are subject to a 10% tolerance. This process is currently working with minimal costs to the broker and the lender. The title company charges the broker and lender through the cost to cure process. An example of a tolerance violation could be when a lender requires a title policy endorsement, a survey, or a 2nd appraisal. If the CFPB were to issue "no tolerance" rule this would create a burden on brokers, lenders and providers that would increase costs to consumers.

It is difficult to count the cost of re-disclosure since it is handled very differently at all companies. Some companies have a staff dedicated to disclosure review and re-disclosure. In smaller companies it may be handled by the originator. If a typical re-disclosure takes an hour to prepare and review, with wages in the $30 to $40/hour range for specialized staff with benefits, it can easily cost several hundred more dollars on each loan to prepare and review the changes.

4. PROVIDING SETTLEMENT DISCLOSURES

TILA's MDIA has built in a time frame for the consumer to review fees prior to going to closing. This process created additional staff and procedures for wholesalers and additional costs to consumers. With the safeguards provided by the current and proposed TILA, RESPA and MDIA, there should be no reason to delay settlement for an additional 3 days.

Completing a settlement disclosure 3 days prior to closing will create additional costs, staffing and training. The costs could be significant to the consumer. The increased costs include, but are not limited to: lock extension fees, additional credit report pulls, moving delays and contract extensions.

In addition to consumer costs, there are also other parties involved in purchase transactions. When a consumer is buying a house and the seller is buying another house on the same day, our delays will create their expenses. Unless the exact date of settlement is absolutely known, the exact settlement figures cannot be determined.

The change in terminology and the numbering of the Settlement Statement to the Settlement Disclosure will cause a major reprogramming for lenders, brokers and title companies. This process will be a major undertaking for all parties.

The Settlement Disclosure proposed by the CFPB seems be proposing a form that could be confusing to consumers. Their is double disclosure of the commission paid by consumer to those entities brokering loans. The commission amount is disclosed in the Settlement Disclosure document and reflected in the rate (by the consumer picking a higher rate in order to pay for costs and fees) and disclosing that commission amount on the Settlement Disclosure. In addition, the CFPB should be vigilant in requiring lenders, credit unions and banks, which act in the capacity of brokering a loan, follow the loan origination and other rules applicable to any entity that brokers a loan. We believe the CFPB should increase market understanding of this legal requirement. We would like to emphasize the importance of giving specific direction to the industry professionals with very little room for interpretation to eliminate inconsistencies.

5. RECORDKEEPING AND DATA COLLECTION

The CFPB is considering requiring that copies of all Loan Estimates and Settlement Disclosures provided to the borrower be maintained in a standard, machine-readable, electronic format. The retention period for any new requirements is to be determined. To reduce the burden on small entities, the CFPB is considering exempting small entities from these requirements.

Most small business's keep their files in paper and PDF format. There would be a significant cost to store files into a machine readable format if that means, for CFPB's purposes, a paper document that is scanned into a computer system. It is not clear from the CFPB's description of their proposal what machine readable requires. Everyone that has interest in the transaction should maintain supporting business records. The CFPB should work with the state regulatory agencies to ensure a uniform record keeping process.

6. ANNUAL PERCENTAGE RATE

The CFPB is considering including in the calculation of the Annual Percentage Rate (APR) some common loan charges that are currently excluded from the calculation. The standard disclosure of the cost of credit under TILA is the APR, which is the finance charge expressed as a yearly rate. TILA defines the finance charge broadly to include "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit" and "does not include charges of a type payable in a comparable cash transaction." Despite this broad definition, the regulations exclude many types of charges from the finance charge, especially for mortgage transactions. Concerns have been raised that these exclusions undermine the potential usefulness of the APR as a simple tool to compare the total cost of one loan to another, a basic purpose of TILA.

Very few consumers understand what APR means. Many have mistakenly seen the figure on the TIL disclosure and assumed it was their interest rate. Others assume it is the actual interest rate rather than the Note rate. Most simply ignore it. Consumers do not realize that they are being presented different loan terms that produce a different APR. It is very common to see APRs on different loan-to-value ratios that have dramatic variances since lower loan-to-values do not have mortgage insurance. Consumers are not aware of how this affects the APR. Consumers hear an advertisement for a low APR and don't realize that a shorter term produces a lower APR. Adjustable-rate mortgages can produce an APR that does not align to what borrowers may eventually pay. Even loan size can affect the APR. Low loan amounts can easily trigger HOEPA violations. If CFPB removes exclusions, more loans will fall into the violation category, which could affect state law. For example inclusion of escrows in high closing costs states could have an impact on consumers applying for smaller loan amount mortgages.

The majority of small mortgage broker offices utilize software to operate and comply with the various legal parameters required by state and Federal law. The change of APR fees will cause the wholesale lenders to reprogram and retrain which will take time, money and staff, which will ultimately be passed on to the consumer.

NAMB looks forward to continuing to work with the Consumer Financial Protection Bureau in its mission to protect the consumer and support small business. We suggest again to the Subcommittee, the Dodd-Frank Act rules require for mortgages should be delayed at least 18 months in order for all unintended consequences to be removed, as best as can be done, in order to protect consumers and market participants.

COMMENTS
of the
National Consumer Law Center
on behalf of its low-income clients

and

Alliance for a Just Society, Consumer Action,
National Association of Consumer Advocates, and the
National Community Reinvestment Coalition

to

Consumer Financial Protection Bureau
Regarding the
***Know Before You Owe* Proposed Mortgage Disclosures**

Submitted April 18, 2012

I. Introduction

The National Consumer Law Center[1] respectfully submits the following comments on behalf of its low income clients, with Alliance for a Just Society, Consumer Action,[2] the National Community Reinvestment Coalition,[3] and the National Association of Consumer Advocates.[4]

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[1] The **National Consumer Law Center, Inc. (NCLC)** is a non-profit Massachusetts corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws, including *Truth In Lending*, (7th ed. 2010), *Cost of Credit: Regulation, Preemption, and Industry Abuses* (4th ed. 2009 and Supp.), and *Foreclosures* (3rd ed. 2010), as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers. NCLC attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people, conducted training for thousands of legal services and private attorneys on the law and litigation strategies to address predatory lending and other consumer law problems, and provided extensive oral and written testimony to numerous Congressional committees on these topics. NCLC's attorneys have been closely involved with the enactment of all federal laws affecting consumer credit since the 1970s, and regularly provide extensive comments to federal agencies on the regulations issued under these laws. These comments were written by NCLC attorney Andrew Pizor.

[2] **Consumer Action** (www.consumer-action.org) is a national non-profit education and advocacy organization that has served consumers since 1971. Consumer Action serves consumers nationwide by advancing consumer rights in the fields of credit, banking, housing, privacy, insurance and utilities. Consumer Action offers many free services to consumers and communities, including an assistance/referral hotline. Consumer Action also develops free consumer education modules, training, and multi-lingual materials for its network of more than 8,000 community based organizations. Consumer Action's publications are offered in Chinese, English, Korean, Spanish and Vietnamese.

[3] The **National Community Reinvestment Coalition** (NCRC) is an association of more than 600 community-based organizations that work to promote access to basic banking services including credit and savings. Our members, including community reinvestment organizations, community development corporations, local and state government

We wish to begin by complimenting the CFPB for the openness of the *Know Before You Owe* project. By making public input so easy and by accepting input in the early stages of developing the new forms required by the Dodd-Frank Act, the CFPB has taken government transparency to a new level. We believe this manner of openness will help the Bureau in all its future rulemakings.

As much as we compliment the Bureau on its process for developing the new disclosures, we must also express with equal strength our deep concern over the direction the proposal has taken. The proposed disclosure forms are seriously flawed and we fear that adopting them will ultimately hinder, rather than promote, the goals of informed borrowing and consumer protection.

The proposal almost completely abandons the Annual Percentage Rate disclosure. Rather than emphasizing the APR or proposing a substitute, the new forms emphasize the initial interest rate and monthly payment–information that can easily be manipulated by disreputable creditors and that does not accurately disclose the cost of credit. In doing so the CFPB is, essentially, concluding that Congress was wrong in 1968 and that the past 40+ years of experience with TILA have been wasted.

We are also concerned by some aspects of the Bureau's approach to consumer testing. Consumer testing is certainly a useful tool for developing disclosure forms, and we encourage the Bureau to continue use testing to inform the development of policies and regulations. But it is important to remember how differences between the test setting and reality may affect the reliability of the results. The testing is conducted in a low-pressure environment where consumers are encouraged to read documents and contemplate the meaning of the disclosures. A real mortgage closing is characterized by the exact opposite circumstances. Borrowers are rushed and discouraged from reading. Even when they receive documents in advance, they do not receive the same prompts and encouragement to analyze the information provided.

The Bureau's decision to include test participants who are experienced with real estate transactions and are well-educated may also be a confounding factor in analyzing the results. Disclosures are most necessary for the least sophisticated consumer. While they must work for all consumers, those with experience and education are more likely to successfully interpret flawed disclosures than would more vulnerable consumers. Before settling on a final design, we encourage the Bureau to retest the disclosures on a panel of potential borrowers who have no experience with mortgages and who have no more than a high school education. The disclosures should be effective for the least sophisticated consumer.

Our comments below further discuss our concerns and make other recommendations for improving the Bureau's proposed disclosures and rule changes.

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agencies, faith-based institutions, community organizing and civil rights groups, and minority and women-owned business associations help create and sustain affordable housing, job development and vibrant communities for America's working families.

[4] The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

II. The Proposed Forms Are Flawed

A. The APR Should Be More Prominent Than the Interest Rate

1. History and Purpose of the APR

When Congress enacted the Truth in Lending Act in 1968 it intended to address the problems caused by a lack of transparency in credit pricing.[5] Congress was concerned that creditors sometimes camouflaged the true cost of credit with extraneous fees that should have been included in the interest rate.[6] This camouflage rendered "meaningless and deceptive" any interest rate quoted.[7] TILA's APR requirement was adopted to counteract this problem. "Just as the consumer is told the price of milk per quart and the price of gasoline per gallon, so must the buyer of credit be told the 'unit price.'"[8] The APR is the unit price of credit. "Without easy knowledge of this unit price for credit, it is virtually impossible for the ordinary person to shop for the best credit buy.[9]

The APR is "the most important single piece of consumer shopping information."[10] It addresses two serious problems facing consumer borrowers: 1) non-standardized methods of computing interest that result in an apples-to-oranges comparisons of rates; and 2) the fact that rates alone cannot reflect the full cost of credit, given the additional fees charged in connection with most loans.[11] The APR is a simplifying heuristic that allows borrowers to decide between options that are otherwise overwhelmingly complex.[12]

2. The APR is Widely Recognized

Since adoption nearly 45 years ago the APR has become a widely recognized tool for credit shoppers. Studies have shown that more than 90% of the population is "aware" of the APR and that over 70% report using the APR to shop for closed-end credit.[13] According to one study 78% of homeowners who refinanced their homes reported comparison shopping based on the APR.[14] Even though these figures greatly exceed the percentage of the population that can explain how to calculate the APR, they show that consumers are using the APR as it was intended.

3. Consumers Don't Need Expert Knowledge of the APR to Use It Effectively

Critics of the TILA disclosure rules emphasize problems with the APR as a disclosure tool. Common complaints include:

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[5] Elizabeth Renuart and Diane E. Thompson, The Truth, The Whole Truth, and Nothing but the Truth: Fulfilling the Promise of Truth in Lending, 25 Yale J. on Regulation 181, 181-82 (Summer 2008).
[6] 109 Cong. Rec. 2027, 2029 (1963) (statement of Sen. Douglas).
[7] *Id.*
[8] 90 Cong. Rec. S2042 (daily ed. Jan. 31, 1967) (statement of Sen. Proxmire).
[9] *Id.*
[10] Renuart, *supra*, at 184.
[11] *Id.* at 186, citing Kathleen E. Keest, Whither Now? Truth in Lending in Transition—Again, 49 Consumer L. Q. Rep. 360, 361 (1995).
[12] *Id.* at 190.
[13] *Id.* at 217.
[14] *Id.* at 217, citing 213 Jinkook Lee & Jean M. Hogarth, Consumer Information Search for Home Mortgages: Who, What, How Much, and What Else?, 9 Fin. Svcs. Rev. 277, 286 (2000).

- the APR is unreliable because there are so many exceptions;
- the APR is not helpful for adjustable-rate loans;
- the APR is inaccurate for consumers who plan to sell or refinance in a few years;[15]
- consumers do not understand the difference between the APR and the contract interest rate;[16] and
- consumers do not understand what goes into the APR.

These criticisms are easily addressed:

Reliability: The reliability problem can be resolved by eliminating the exceptions to the finance-charge definition. The CFPB has already indicated that it is considering this step.[17] We have previously recommended this change in our comments to the Federal Reserve Board and incorporate those comments by reference.

Adjustable-Rate Mortgages: While it is true that the APR cannot accurately predict what credit will cost in the future, this criticism applies equally to disclosure of the contract rate. Though the APR is less than perfect in this regard, its value as a standardized, unit price makes it superior to the initial contract rate as a disclosure tool. Rather than discarding the APR for ARMs, its weaknesses are better addressed by supplementing it with other disclosures, such as the proposed payment summary and other proposed ARM-specific disclosures.

Consumers May Sell or Refinance Before Maturity: This concern overlooks the central purpose of the APR, which is to serve as a comparison tool. The amount of time a borrower expects to keep a loan has no bearing on the borrower's ability to compare the APR on different loan offers. If the APR is mathematically inaccurate because the borrower anticipates refinancing in 5 years rather than keeping the loan until maturity, the APR on all loans the borrower looks at will suffer the same flaw and will be viewed through the same lens. That is the point of unit pricing. Furthermore, "concern about the effect of duration is largely irrelevant except for the most sophisticated shoppers." [18] The APR need not be perfect. As long as it is standardized it will function as intended.[19]

Consumer Comprehension: It does not matter whether consumers understand what goes into the APR or why it is different from the interest rate. What matters is that they can use it to make informed financial decisions. "Most of the U.S. population can compare two stated APRs."[20] As long as consumers can do that, they can use the APR to shop for the cheapest loan.

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[15] *See* Renuart, *supra*, at 188 n.20 (describing this issue).
[16] Macro Int'l, Inc., Design and Testing of Effective Truth in Lending Disclosures 9, 26 (2007), available at www.federalreserve.gov/dcca/regulationz/20070523/Execsummary.pdf.
[17] *See* CFPB, Small Business Review Panel For TILA-RESPA Integration Rulemaking Outline of Proposals Under Consideration Alternatives Considered (Feb. 21, 2012).
[18] Renuart, *supra*, at 188 n.20 (citation omitted).
[19] *Id.*
[20] *Id.* at 209 (extrapolating from research on quantitative literacy).

This particular criticism appears to be one of the major factors behind recent efforts to downplay the APR as a disclosure, but this concern is misplaced. Everyday life is filled with examples of how consumers can successfully use numerical disclosures without understanding their derivation.

- Shoe sizes,
- Dress sizes,
- Blood pressure measurements,
- Gasoline octane,
- Stock market indices (the Dow Jones Industrial Average or S&P 500),
- Light bulb wattage

Consumers routinely make appropriate use of these numbers without the faintest idea of what they mean or how they are calculated. We can look at a label and know whether clothing is our size. We can choose the gas we want by looking at the numbers labeling the pumps. We know a 100 watt bulb is brighter than one with 60 watts. While hardly anyone knows what units blood pressure is measured in, anyone who has visited a doctor knows lower is generally better. ***And that's all consumers need to know about the APR—lower is better.***

The Bureau has justified its abandonment of the APR by reference to consumer testing showing consumers do not understand the APR. However we are concerned that prior testing and the Bureau's ongoing tests have been skewed by the preconceived notion that consumers must have a scientific comprehension of the APR. The Bureau and previous researchers have asked the wrong question. The question is not whether consumers know the different between the interest rate and the APR or what the APR is. The question is whether consumers can use the APR to find the least expensive loan.

We have not been able to locate any studies that directly test clear, simple language explaining that the APR is, in essence, a price tag and that a lower APR means a cheaper loan.[21] A thorough examination of whether consumers can use the APR would require testing many variations of potential statements. The Bureau should also test other ways of disclosing the APR, such as by giving it a new name (ex. the "loan score" or "loan rating") and disclosing it as something other than a percentage rate.[22] Instead it appears that the CFPB has only conducted limited testing on the APR and has not tested enough variations.

The Bureau's proposed disclosure form requires consumers to evaluate multiple price dimensions in order to compare loans. While some test participants may have done so successfully in a controlled setting, research into behavioral economics and experience suggest this will not work in the real world. Before the Bureau issues a proposed rule, the Bureau should further experiment with potential unitary price disclosures. The sticker price need not be the APR but the proposed forms will be less successful if they do not have a similar heuristic.

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[21] We encourage the Bureau to test many, simple variations of this concept, such as: "The lower the APR, the better," "A low APR will save you money," "The APR is the price-tag for a loan," "The APR is like the price for a loan--the lower the better."
[22] Exhibit A to these comments includes some suggestions.

4. The Interest Rate Disclosure Is Ambiguous, Easily Manipulated, and Omits Prepaid Finance Charges

The contract interest rate is one of the most prominent disclosures on the proposed forms. Displayed in a large font on the first page, borrowers cannot avoid noticing it. As a result, it will almost certainly have an impact on the borrower's opinion of an offer. This is unfortunate because it is also one of the most easily manipulated and least understood numbers in a loan contract.

The contract interest rate is only part of the cost of credit. Origination fees and closing costs add thousands of dollars to the cost of borrowing money and must be factored into the selection of a loan. Yet, by emphasizing the interest rate instead of the APR, the Bureau is emphasizing only one piece of this important equation.

The contract rate disclosed on the proposed form can be easily manipulated with the use of step-rate loans or ARMs having low teaser rates. The widespread use of hybrid ARMs in the subprime market illustrates the lure of a low teaser rate. While teaser rates can make the APR look deceptively low too, the APR at least requires consideration of the fully-indexed rate and inclusion of prepaid finance charges. Replacing the APR with the interest rate will encourage the market to return to offering teaser rates and will encourage the trend of shifting the cost of credit from the interest rate to prepaid finance charges.

The interest rate disclosure is also ambiguous because interest can be calculated three different ways: simple interest, add-on interest, and discount interest.[23] Interest can also be calculated over different time periods. So a disclosed rate could be annual or monthly. This means the disclosed interest rate on one loan may not be comparable to other loans. TILA requires use of the APR specifically to provide an apples-to-apples comparison. While the majority of contracts currently reflect the annual rate, usually calculated with the simple interest method, a disclosure form that highlights the contract interest rate rather than the APR will reward deceptive lenders who use other methods. This risk will be even greater in the fringe market, such as for home-improvement loans. Mandating use of the actuarial rate would only be a partial solution because the interest rate does not take into account the cost of prepaid finance charges.

An example shows how the Bureau's proposed "Loan Terms" disclosure, using the contract rate, does not do the job as well as the APR.

Sample Loans	Loan A	Loan B	Loan C
Loan amount	$99,900	$100,200	$100,000
Fixed-rate	5%	4.69%	4.4%
Monthly payment	536.28	$519.07	$500.76
Settlement costs	$5,000	$9,999	$11,000

The proposed disclosures provide the four items of information shown in the table above. This means there are four variables involved in comparing these loans. Research on quantitative

[23] National Consumer Law Center, The Cost of Credit: Regulation, Preemption, and Industry Abuses § 4.3 (4th ed. 2009 and Supp.).

literacy suggests that a significant number of consumers using the proposed disclosures would not be able to identify the most economical loan from among these examples. The available research suggests some consumers would try to compare the loans by evaluating two, three or maybe all of the variables—and would likely end up paying more than consumers who focused on only one variable.[24] Other consumers would simplify the decision by ignoring some variables and by approximating what is too difficult to calculate.[25] Some borrowers would inevitably focus on the rate, others the monthly payment, and some would look at the total closing costs. However, the only reliable way to decide which of these loans is the most economical, without extensive calculations, is to know the APR for each loan.[26] The Bureau proposes to bury this information where few consumers will see it.[27]

B. Require an APR or Interest Rate Comparison Graph

One more way of addressing consumer difficulty with understanding the APR is to disclose it in a way that provides a context for understanding whether the APR on any given loan is good or bad in relation to commonly understood markers. The FRB proposed such a tool in August 2009 when the Board proposed disclosing the APR on a graph that would compare the disclosed loan to higher rate and prime rate loans. We were disappointed to see that the Bureau has not included this graph on any of the proposed model forms. Apparently the Bureau did not even attempt to test the effectiveness of such a disclosure.

The graph was a significant improvement for all the reasons described in the FRB's description of the proposal. It alerts consumers to where the pending loan offer fits in relation to other rates available in the market. For consumers who have not adequately shopped for credit, this may encourage the consumer to shop elsewhere or to ask the creditor for a better rate. It also accommodates different learning styles and is likely to help attract the consumer's attention to the importance of the APR. Showing the APR in context will also reinforce the concept that a lower APR is better for the consumer.

The mortgage industry reportedly objected that the graph would be misleading because borrowers might not be qualified for the prime rates shown on the left end of the graph, because Freddie's Primary Mortgage Market Survey (PMMS) did not include the same finance charges as the APR, and because they thought it would be technically difficult to produce the graph. None of these objections are valid reasons for omitting the graph.

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[24] Susan E. Woodward, Consumer Confusion in the Mortgage Market 2 (July 14, 2003) (unpublished manuscript), *available at* www.sandhillecon.com/pdf/consumer_confusion.pdf (last viewed Mar. 19, 2007) (observing "Borrowers attempting more difficult shopping strategies that involve a tradeoff of rates and points pay higher fees on average than borrowers who roll closing costs into the interest rate and thus can shop on the basis of rate alone.")

[25] Oren Bar-Gill, The Law, Economics and Psychology of Subprime Mortgage Contracts, 94 Cornell L.R. 1073, 1122 (2009).

[26]

Loan A	Loan B	Loan C
5.457% APR	5.622% APR	5.418% APR

Calculation of APR assumes all settlement costs are prepaid finance charges.

[27] The Bureau further diminishes the utility of the APR disclosure by putting it next to the Total Interest Percentage (TIP) disclosure, which will always be dramatically higher than the APR. As a result, the APR will look deceptively low by comparison. The decision to juxtapose the APR and the TIP is one that would delight most bank marketing departments.

- Consumers who are not eligible for a better rate—whether due to poor credit or aspects of the loan they have requested—will not know unless they ask. In this sense, the graph will serve the same educational function as the credit score disclosures mandated by the Fair Credit Reporting Act. In addition, creditors routinely advertise rates that are only available to highly qualified borrowers, so they already expose their customers to rates for which they may not be qualified.
- Even though the APR/PMMS comparison is not a perfect one, all loans will be subject to the same comparison, putting all creditors on a level playing field. But, even if the APR/PMMS objection was more serious, there are alternative solutions. For example, the Bureau could collect APR data on prime loans and use that instead of the PMMS.
- Concerns about technical difficulties could be resolved by allowing a long implementation period.[28]

III. Rule Changes Proposed in Small Business Review Panel Outline

A. Make the Lender Solely Responsible for Providing the Disclosures

The Bureau has raised two possibilities for assigning responsibility for providing the disclosures. We urge the Bureau to make the lender solely responsible. Setting a bright-line rule for responsibility will simplify enforcement of the rule and will avoid confusion between the lender and other parties to a closing. This will not prevent the lender from delegating authority to agents as it sees fit. But it will encourage the lender to ensure that the task is done properly by ensuring that someone is clearly accountable for errors. Lenders can adequately protect themselves from settlement agent mistakes by negotiating indemnification agreements with agents and by adopting business procedures that provide sufficient supervision.

B. Require Use of the Model Forms Under RESPA and Set Strict Standards Under TILA

We support the Bureau's proposal to require creditors to use standardized model forms. The Bureau is going to great lengths to develop forms that adequately disclose important information. The final versions will reflect the Bureau's careful testing and development of the language used in the disclosures as well as their appearance. It would be a mistake to then allow creditors to cherry-pick the parts of the forms they wished to use, or to use an entirely different form. Creditors have an incentive to disclose loan terms in a manner that encourages consumers to overlook or misinterpret information that does not favor the lender. If creditors were not required to use the model forms, it is simple to imagine a disclosure format that could favor a creditor without violating TILA or RESPA. Creditors already benefit from tremendous knowledge asymmetry in the loan origination process. Allowing them to deviate from carefully developed model forms allows them to further stack the deck and needlessly risks litigation over whether the creditor's form complies with the law.

Though 15 U.S.C. § 1604(b) prevents the Bureau from requiring use of the model forms under TILA, the Bureau should mandate strict standards that require creditors who do not use the

[28] Or the Bureau could invite the public to invent an effective solution on Challenge.gov.

model forms to make the most important disclosures in a manner that will be as clear and effective as the model forms. This is especially important for disclosures that testing shows are particularly sensitive to format or terminology. The standards should mandate the order, language, font size, and format of key disclosures. Mandating uniformity will produce many benefits. If the format is uniform it means that, as consumers gain experience with the new disclosures, they will become more skilled at finding the information that is useful to them. A uniform format will also make it easier for consumers to make a head-to-head comparison of different loans, which may increase beneficial competition on loan terms.

Mandating the format of disclosures will also save time and money for creditors. An approach that allowed creditors to determine the format and language of disclosures would simply be a full employment bill for in-house legal departments. Mandating the format of disclosures also reduces creditors' potential liability, as there are fewer opportunities for them to make mistakes. The small category of loans subject to TILA but within the scope of RESPA are likely to be made by small, fringe lenders who are less likely to attract the attention of regulators. It is these creditors who are most likely to prey upon desperate borrowers. For that reason, the Bureau should leave them as little leeway as possible when designing their disclosure forms.

C. Eliminate the Exceptions to the Finance Charge Definition

We strongly support the Bureau's proposal to eliminate exceptions to the finance charge definition, as proposed by the FRB in 2009. We provided a detailed response to the FRB's proposal at that time, which may be viewed on our website.[29] These changes will make the APR a more valuable and effective tool that should be prominently disclosed. It would be a shame if the Bureau improved the APR with one hand, and brushed it under the rug with the other.

D. Expand the Zero Tolerance Rule for Increased Closing Costs

We support the Bureau's proposal to expand the coverage of the zero-tolerance rule for increasing closing costs. This would help reduce the occurrence of bait-and-switch in loan origination. Lenders and the settlement industry can control costs through advance planning and contractual agreements. There is no excuse for the many last-minute increases that have plagued borrowers. Expanding the zero-tolerance policy would eliminate the incentive to underestimate costs in hopes of ensnaring potential borrowers.

E. Require Delivery of the Final Settlement Disclosure At Least Three Business Days in Advance

The proposal to require delivery of the settlement disclosure at least three business days in advance will be a significant improvement. This will allow borrowers to review the loan terms outside the stressful, high-pressure environment often experienced at the settlement table. This will also give consumers time to ask questions and demand corrections where necessary. The list of triggers requiring issuance of a revised disclosure is, however, inadequate. The list should also include:

- changes in the loan principal;
- increases in the total monthly payment (PITI);

[29] http://www.nclc.org/images/pdf/foreclosure_mortgage/predatory_mortgage_lending/r-1366-with-app-dec09.pdf.

- addition of any feature that could cause the interest rate to increase (for example if the rate could increase when the borrower changes jobs, closes accounts, pays late, or cancels automatic account deductions used to pay the loan);[30]
- changes in any debts to be paid-off with the loan proceeds.

Any of these changes could have a significant impact on the desirability of a loan even if they do not affect the APR.

The Bureau should also define "business day" in a manner that excludes Saturday and Sunday, as well as federal holidays.

[30] At least one lender made mortgages that gave a discount on the interest rate for timely payment. The monthly payment and APR were disclosed based on the assumption that the borrower would earn the discount by paying in accordance with the terms of the note (i.e. that the borrower would pay on time). If the borrower paid late, once, the borrower would lose the incentive and the rate would increase. A lender could easily accomplish the same result with other incentives.

Exhibit A
Suggestions for Alternative APR Disclosures

COST FACTOR (CF)

The lower the CF the better the loan:

Cost Factor
650