KNOW BEFORE YOU REGULATE: THE IMPACT OF CFPB REGULATIONS ON SMALL BUSINESS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES
HOUSE OF REPRESENTATIVES

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KNOW BEFORE YOU REGULATE: THE IMPACT OF CFPB REGULATIONS ON SMALL BUSINESS

WEDNESDAY, AUGUST 1, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1:00 p.m., in Room 2360, Rayburn House Office Building. Hon. Sam Graves (chairman of the Committee) presiding.

Present: Representatives Graves, Chabot, Tipton, West, Walsh, Hanna, Schilling, Velázquez, Owens, Chu, and Hahn.

Chairman GRAVES. Good afternoon, everyone. This hearing will come to order. And I want to thank our witness, Richard Cordray, the director of Consumer Finance Protection Bureau for appearing before our Committee today. We very much look forward to your testimony.

Today marks the Committee's first official look at the work of the CFPB, specifically as it affects small businesses. CFPB is drafting a number of regulations that will impose new requirements and compliance costs on broad segments of the U.S. economy. One of those regulations seeks to bring simplicity and transparency to real estate transactions.

For many years, consumers, industry, and regulators have recognized that the mortgage disclosure forms required by the Truth and Lending Act and the Real Estate Settlement Procedures Act overlap and are a source of confusion. The proposed rule, which is required by Dodd-Frank or the Dodd-Frank Act, will integrate those disclosure forms. Integrating and simplifying the disclosures is a laudable goal but these changes are going to affect small businesses.

Many of my colleagues here today, including myself, question the wisdom of the Dodd-Frank Act and many of the provisions within it, including the creation of the CFPB. However, those issues are not the subject of this hearing, but rather we are seeking to determine the extent to which the CFPB is complying with another law meant to protect small businesses, and that is the Regulatory Flexibility Act.

Much of the public attention on this rulemaking has been focused on the disclosure forms that consumers will see when they are taking out home mortgage loans. Our Committee is interested in how the regulations will affect small firms—those community banks, credit unions, mortgage brokers, mortgage companies, and settlement agents that will need to change business operations so they are going to have to upgrade software, retrain their employees to comply. Furthermore, the Committee is looking at the quality of the CFPB's assessment of the likely impacts of the rule, as well as the alternatives being considered to lower costs for small firms.

As the CFPB began developing this regulation, it determined that the changes would likely have a significant economic impact on a substantial number of small firms under the RFA. As a result, the CFPB convened a Small Business Advocacy Review Panel to receive input from affected small businesses and completed an initial regulatory flexibility analysis, which was required by the RFA.

On July 9, 2012, the CFPB posted the 1,100 page proposed rule on their website. And while the CFPB has followed the steps the RFA requires, there appears to be holes in the agency's assessment of the economic impact of the rule on small businesses and very little discussion of how the alternatives may reduce economic burdens.

Even with the sluggish economy, the CFPB is expected to issue many more rules, some as a direct mandate from the Dodd-Frank Act and others at its discretion. Despite our concerns with the latitude the CFPB has been granted, we hope they will honor the spirit and the letter of the RFA, and become a model actor with respect to this law that seeks to protect small business firms so they can thrive, which is something our economy sorely needs.

We appreciate the director's participation today on this oversight hearing. I now yield to Ranking Member Velázquez for her opening statement.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Since its enactment two years ago, Dodd-Frank has attracted significant attention from both critics and supporters. Of all the act's provisions, it has been Title X, which creates the Consumer Financial Protection Bureau that has attracted the greatest amount of scrutiny. This new agency is responsible for protecting consumers from unfair, deceptive, and abusive financial products. Last July, the CFPB started operations, making this an opportune time to review how it is affecting American small businesses.

Although the CFPB's primary role is to regulate financial products marketed to consumers, this rule also impacts small business owners. Small firms are major consumers of financial products, too. Nearly half use personal credit cards to finance their enterprises, while one in five utilize home equity loans for business purposes. It is clear that CFPB rules will influence small businesses seeking capital and credit. With the agency's broad responsibility, it is important that it balance the need to prevent abusive practices without adversely affecting the credit conditions facing small firms.

It was for this very reason that meaningful safeguards were incorporated into CFPB's enacting legislation. These efforts were designed to mitigate the potentially negative effects of this new agency on the small business community. For this reason, small community banks with assets of less than $10 billion were excluded from the reach of the agency as were retailers and merchants. So, too, were businesses that are already subject to insurance or securities regulation at the state level. Some entire industries dominated by smaller entities are also excluded from CFPB authority, such as realtors and auto dealers. Clearly, lawmakers recognize that small businesses were not the cause of the financial crisis and should not bear the burden of new regulations.

Beyond these exclusions, small businesses were given additional protections. CFPB must conduct small business advocacy review panels for certain rules, becoming only the third agency required to do so. Along with the Regulatory Flexibility Act safeguards, this will allow small firms concerns about CFPB's regulation to be heard. Doing so can help reduce the impact on small firms while minimizing any additional costs of credit to them.

The real issue before this Committee is one of oversight. Our responsibility today is not to exhume all arguments of ancient political battles, but to examine whether the agency is carrying out its mission in a way that safeguards consumers without overburdening small businesses. If done properly, this agency can make the entire financial system and economy more stable without constricting our nation's entrepreneurs.

With this in mind, it is not only the lingering memories of the financial crisis that make us remember why we created the CFPB in the first place. Almost every day we hear from a constituent about an erroneous credit report, pressure tactics from credit card companies, abusive payday loans, or coercive financing scams. As long as financial products are laden with fine print, scare tactics, and incoherent penalties, consumers will be unable to truly drive our economy forward.

I want to thank Director Cordray for being here and I look forward to his testimony. I yield back, Mr. Chairman.

Chairman GRAVES. Thank you, Nydia.

Our witness, Richard Cordray, is the first director of the Consumer Financial Protection Bureau and he was appointed to the position in January 2012. Prior to becoming director, he led the CFPB's Enforcement Division. He is a native of Ohio, and Director Cordray has served the state of Ohio in several elected positions, which included attorney general, treasurer, the Franklin County treasurer, and state representative for the 33rd Ohio House District. Director Cordray has also appointed the first solicitor general in Ohio's history. We are very pleased to have you today and your entire written testimony will be entered in the record. So, please.

STATEMENT OF RICHARD CORDRAY, DIRECTOR, CONSUMER FINANCIAL PROTECTION BUREAU

Mr. CORDRAY. Thank you, Chairman Graves, Ranking Member Velázquez, and members of this Committee for having me here today. I look forward to talking with you about the Consumer Financial Protection Bureau's work and how it does and does not affect small businesses.

When I served as the Ohio Treasurer, I revived a small business lending program that pumped hundreds of millions of dollars into buying down the interest rate on small business loans to encourage job creation. From this experience of working closely with small businesses in Ohio, alongside the National Federation of Independent Businesses, I came to learn a great deal about how small businesses work, what conditions they need in order to grow, and their vital importance to local economies. I personally visited many small businesses, which are an important engine for our economy, as you know. It is critical for everyone in government to understand what is necessary for small businesses to grow and prosper in today's economy.

The Consumer Bureau is responsible for administering and enforcing the laws that relate to the provision of financial products and services to consumers for personal or household use. Small community banks and credit unions, and certain other small providers, are an essential source of financing for many of these consumers.

Since the Bureau was launched just over a year ago, we have designed a number of ways to invite small businesses to provide their opinions about our work. We believe good public policy means getting as much feedback as we can, and that is exactly what we do with owners and representatives of small providers from across the country.

To this end, we are setting up advisory councils to help us focus on how our work affects community banks and credit unions in particular. We have also created an Office of Community Banks and Credit Unions within our Office of External Affairs. And we have had hundreds of meetings and discussions thus far with small banks and credit unions, reaching every state in the country.

We have also been holding small business review panels during our rulemaking process. So far, we have convened three such panels, along with the Office for Advocacy of the SBA and the Office of Information and Regulatory Affairs within OMB as required by law. These meetings consist of intensive, in-depth discussions about our upcoming rulemakings with small providers early in the process to help us shape our proposals around their specific input.

This process makes us unique among the banking agencies as the only one that holds such panels. Fifteen to 20 people from small businesses and small nonprofit organizations may join us for each of these panels. They come from urban and rural areas, different segments of the market, and different parts of the country. We purposely seek this diversity to better inform the whole picture of the relevant marketplace throughout the United States. They get advance notice about the early shape of our proposed rules, and they come prepared to discuss with us how these proposals would affect their businesses, both substantively and operationally. We come prepared to listen to their input, address their questions, and learn.

During the panel meetings, our staff discusses the background, objectives, and elements of the proposed rule under consideration. The small businesses usually talk about the costs, operational changes, and other impacts from their perspective. They give their frank opinions—positive and negative—about the proposal and offer suggestions on how to improve it. It is a collaborative effort all around, and the participants have told us that they appreciate the care and effort involved.

These small business review sessions, which typically last a full day, have proven to be valuable to us. From the panel we held on proposed changes to the federally required mortgage disclosure forms, we learned, for example, that we needed to provide more detailed guidance to accompany the rule, which smaller providers viewed as helpful for their compliance efforts. Indeed, the small businesses told us that smaller settlement agents can lose a half-hour per closing because they struggle to understand various issues with the current rules. And that is multiplied across millions of real estate closings.

So we took that insight in drafting our proposal, which now contains extensive commentary that details precisely how to complete the proposed forms; it also includes samples of completed forms. This extra material has become more specific in order to make it easier to implement the rules once they are adopted.

These panels and the detailed reports they write afterward have played an important part in these rulemakings. As in everything we do, we are open to feedback and will continue to refine our processes as we gain more experience. The bottom-line is we are committed to include small businesses in our rulemaking and to shape our proposals based on their input.

Let me close by saying that at the Consumer Bureau we believe in smart regulation. Although we are seeking to streamline and simplify rules, when we are told it would be helpful to provide more detail and more specifics—which is a suggestion we hear often from industry—we take that into account. We recognize that while we are issuing regulations to protect consumers, we are also issuing regulations to provide certainty to financial providers. Because we believe in the free enterprise system, we want to see honest, fair consumer financial businesses compete and thrive. Clear rules of the road that reflect the input of small providers help achieve that goal. That is good for consumers and for the overall economy.

Thank you. I look forward to your questions.

[The statement of Mr. Cordray appears in the Appendix.]

Chairman GRAVES. Thank you very much. I appreciate the testimony. We will start out, Alan.

Mr. WEST. Thank you, Mr. Chairman and Madam Ranking Member. Thank you, Mr. Cordray for being here today.

And you are right. I was not here when Dodd-Frank was passed, so we are not going back to do a history lesson. We are going to look at the law of unintended consequences.

One of the things and your written testimony talks about tight statutory deadlines. And I guess that is part of the law that was written in there. But my concern is that when I look at these small business advocacy panels that you have, review panels, that some of the individuals, these small entity representatives were only notified, you know, a couple weeks before and then yet we are asking for written input back a week later. Do you really feel when you look at the economic impact of some of these rules and regulations that that really is enough time for them to operate? And do you think that you can come back to us and ask for, you know, extended times if that does constrain you?

Mr. CORDRAY. Thank you, Congressman. It is actually a very good question. It is——

Mr. Well, thank you.

Mr. CORDRAY [continuing]. Part of the landscape that we are dealing with over this first year in particular. We have some very tight statutory deadlines. We have a number of mortgage rules that are required to be in place by January. If they are not in place, I would note that there are statutory provisions that kick in of their own accord. So whether we write the rules or not, things are going to change according to what Congress has done. But writing the rules allows us to get a lot of input from people and perhaps soften or change or modify some of the provisions. So I think for the most part, a lot of the industry is very supportive of us meeting our deadlines and being tight on that.

Mr. WEST. But do you think the one—the one week gives them really enough time——

Mr. CORDRAY. Yes.

Mr. WEST [continuing]. To look at this?

Mr. CORDRAY. So as to the balance of your question, in retrospect, we would have preferred to have had more time to prepare the panels. And we will in the future have more time to prepare the panels. I will say it is a self-selected group. This 15 or 20 people from around the country, who very much wanted to participate in this process, were picked out in part by themselves and organizations that sponsored them. So they had a real incentive to be involved in the process. They did comment that it was a very quick timeframe and that is what we are living under. In the future, it will be nice to have more time for that and we expect to allow more time.

Mr. WEST. So is there a way that we can come back and say if we do not get this thing right we need more time to get it right instead of rushing into it? You know, one of the things in the military we say you are always trying to a standard, not to a time. So I want to make sure that we get the standard correct and not just worry about the time. I mean, do you feel that you have the flexibility to come back and ask for more time if the industry members ask for that?

Mr. CORDRAY. By the way, I noticed your Army background. We have some real leaders at the Bureau who have an Army background and they keep us pretty straight.

Mr. WEST. Good. That is better than the Navy.

Mr. CORDRAY. But what I would say is we will always be subject to any dictates that Congress lays down for us. If Congress decides we should have more time, we will be glad to take more time. If Congress wants us to be faster, we will be faster. We are a law enforcement agency and what you tell us to do is what we will do.

Mr. WEST. Okay. The second question. If there are other agencies outside of CFPB that provide rules or regulations, are those rules and regulations also going to go through the same type of advocacy review panels or will they be able to slip under the radar screen and get implemented without having that process?

Mr. CORDRAY. In the law as it currently stands, the small business review panels, which we have actually found to be quite valuable, only apply in the federal government to the EPA, OSHA, and now to the CFPB. They do not apply to other financial regulators. That was the wisdom of Congress and that is the statute that we are enforcing. So the answer to your question is other than us, the EPA, and OSHA, that process does not apply to the rest of the federal government.

Mr. WEST. Do you think that that is something where we should go back and look at amending in case you have the Federal Reserve or someone else that tries to, you know, send in a rule and regulation that we need to make sure that they have to go through the exact same process?

Mr. CORDRAY. I find that I have my hands full trying to run my own new agency. I typically do not go out of my way to offer suggestions to Congress about how other agencies can be governed. They can certainly offer that perspective themselves. I do not really have a position on that.

Mr. WEST. But I guess the question that I am asking in the last 40 seconds is do you want to make sure that other federal government agencies cannot slip under the radar screen and implement rules and regulations that do not end up going through your small business advocacy review panels? And the next thing you know this is, you know, surprise, surprise. Here is something else. And again, the unintended consequences, the economic impact is exacerbated even more.

Mr. CORDRAY. Again, I would defer to Congress. I would leave it to them. I would say that we are working hard to collaborate closely with our fellow banking agencies and other agencies and departments of the federal government and state and local government. We think that we will do our work better if we are in partnership with others and that we are on the same page so that the kind of small businesses you all are looking out for are not confused because different people come at them from different perspectives. I do think that is quite important.

Mr. WEST. Thank you, Mr. Chairman. I yield back.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Cordray, in the last Congress, the House passed the Medical Debt Relief Act requiring paid or settled medical debt to be removed from credit reports within 45 days. That bill directly addressed the negative impacts such information has on a consumer's credit score. With your recent announcement that the CFPB would regulate credit bureaus, do you plan to address how medical debt is created on credit reports?

Mr. CORDRAY. That is a very interesting question and something that we have been grappling with at the Bureau. Not only as medical debt affects credit reporting bureaus as your question goes to, but also as it affects debt collection, which intersects obviously with credit bureaus. That is often the way things end up getting reported to credit bureaus.

We have found medical debt is a particularly difficult challenge because it is hard at times to define when a debt begins in the medical debt realm. You know, you will go to your doctor and you will receive services and it may be understood by the doctor's office that you do not necessarily pay on the spot. They will bill you later. When do you actually owe the debt? Is it as soon as services are rendered or is it after the first round of billing is done? There are often disputes between insurance companies as to what they cover and do not cover. I know from my family we may not know for a period of months exactly whether we owe a $10 co-pay or whether we owe $250 or whatever it is. So whether you would consider that debt or whether it is still a disputed item not yet firmed up, it is a hard issue.

So what I would say is this. We have announced recently the finalization of our Larger Participant Role. This is the special process that is laid upon us if we are going to be overseeing financial providers that are not banks in new realms such as credit reporting. We are going to be overseeing and supervising the larger participants in the credit reporting industry. That will cover about 30 or so credit reporting companies, including the three very largest that are the ones that people are most familiar with, which keep consumer files on millions and millions of Americans. We will be overseeing all of their approach to this, including medical debt.

We are in the process of working through issues of medical debt as it relates to what will soon be our supervisory coverage of debt collectors. We will continue to work through those issues. It is a sensitive spot. I know from my experience at the local level, where I collected real estate taxes at one time that one of the big issues that created delinquency for people was illness, injury, or death in the family. The debts that piled up around that often put people into default or foreclosure. So it is an issue we are very concerned about. We will be looking at the credit reporting bureaus with respect to that debt and all debt.

Ms. VELÁZQUEZ. Thank you.

One of the key responsibilities given to the CFPB is the supervision of nonbanks. What role can these nonbank entities play in providing alternative sources of capital for consumers and small businesses?

Mr. CORDRAY. We have seen in a number of markets that nonbank firms have been providing significant access to capital for individual and family consumers. We saw that in the mortgage market significantly before the mortgage breakdown and financial meltdown of 2007–2008, a tremendous amount of financed mortgages that did not go through any kind of bank or credit union or thrift or any kind of chartered institution. One of the problems in that market was that some parts of it were regulated and some parts of it were not regulated. And, you know, whatever your regime is, whether you think regulation can be a good thing or a bad thing, whether it is good in these circumstances and not in those circumstances, whatever your view is, the notion you would regulate part of a market and leave part of it unregulated, that does not work. I mean, that just does not work.

Ms. VELÁZQUEZ. You put at a disadvantage——

Mr. CORDRAY. It is unfair advantages for some and disadvantages for others. It tends to reward the irresponsible who do not bear the same costs as the responsible. That was part of the problem in the mortgage market and it is part of what was changed, and I think much for the better, under Dodd-Frank. So we are now, for example, overseeing and enforcing the law against both bank and nonbank mortgage originators and mortgage servicers, which has been a significant source of problems for individuals in districts across this country.

In other markets as well, you know, the market for short-term small dollar loans, which is a difficult market, one that is supplied often these days by payday lenders or other providers, maybe pawn brokers, maybe rent-to-own, other things. It is a market where there is a lot of concern about how consumers are treated. On the other hand, it is a market where consumers have a demand for that credit. So that is another area where we will cover both bank and nonbank sides of that, and I think that is helpful.

But there is no question that the banking system alone has not provided access to credit that satisfies the needs of the American public. We have estimates of 80 to 90 million people who are either not banked at all or who have a bank account but use many other services outside the banking system to meet their needs. This Bureau cares about all of those consumers as well. It is not just if you are in the banking system or get yourself into the banking system; it is also how can we meet your needs in that space with the prepaid cards and other things? And it is very fast evolving, so it is hard for us to keep up with it.

Ms. VELÁZQUEZ. Can you talk to us about the memorandum of understanding that the CFPB signed with the STC to deal with jurisdiction or overlap between the agencies? Will these be enough to limit bureaucratic duplication or do you think that there might be something else that needs to happen?

Mr. CORDRAY. What you are inquiring about is the fact that we now have authority over many nonbank providers of financial products and services, but Congress decided to retain overlapping jurisdiction with the Federal Trade Commission in many of these areas. They typically do not have jurisdiction over banks, but they do over nonbanks.

Congress specified that we needed to work out a memorandum of understanding between us and the FTC as to how we would jointly use our combined resources to address problems in that space. We have worked very closely with the FTC. They have been a great partner, unusual among federal agencies from what I know from over the years. They have really reached out and worked with us. We did reach a memorandum of understanding in July, which was the deadline for us doing so. And we have been working with them very productively on a number of different issues.

The other actors that have some role in the same space are state regulators and state attorneys general.

We have also been trying to forge a constructive partnership with them. Ultimately, what you would want, I think, is for all of us in this space who do have the ability to oversee and crack down on illegal practices by nonbank providers, to coordinate our efforts and resources, to create the best bang for the buck for consumers. And also in ways that do not do stupid things by double teaming or duplicating. There is plenty enough for us to do without us trying to do the same things as one another. But that requires a lot of communication and coordination.

Ms. VELÁZQUEZ. My last question. Because, you know, we basically, this is the Small Business Committee and a lot of concerns have been raised by small firms who are concerned that they will be subject to the CFPB oversight for financial transactions. So my question to you is will your agency attempt to exercise oversight over financial products when no consumer is involved?

Mr. CORDRAY. I do not think that we have the authority to be involved in a financial product where no consumer is involved. Our statutes are pretty clear that we are supposed to be—as a general matter, there may be some specific provisions in the statute that are different from that—but as a general matter, our authority is over consumer financial products and services defined as credit and financial products for individuals, households, for their families, for their personal purposes, not business credit, not business-to-business dealings. Again, there are a few odds and ends in our statute where that somehow relates, but that is in general not our field.

Ms. VELÁZQUEZ. Thank you. Thank you, Mr. Chairman.

Chairman GRAVES. Scott.

Mr. TIPTON. Thank you, Mr. Chairman. Thank you, Mr. Cordray, for being here today.

I would like to be able to explore just a couple issues with you. Recently, you were testifying today that the CFPB is taking some steps to be able to mitigate some of the criticism that you regard in some of the—is it the Tell a RESPA Rule? Is that how it is referred to?

Mr. CORDRAY. Yes.

Mr. TIPTON. And it being 1,099 pages and you put up a blog post that said it was actually only 400 and some odd pages and the rest was regulatory just to be able to get some definitions out. Did you get feedback? And can you understand that for small businesses, when we start issuing 400 new pages of regulatory requirements that this actually becomes a burden?

Mr. CORDRAY. Let me say several things. First of all, to sort of correct the record, there is about 200 pages of that that is the rule. There are about 200 pages of guidance that we included; particularly in response to input from small providers who told us that absent guidance and clarification on things they found that they lost time trying to figure things out, trying to interpret it. That is what I referred to up to half an hour per real estate closing multiplied by millions of closings.

So that is what they told us, and it is kind of counterintuitive for me. I mean, I would prefer to have short, simple rules, but these are complicated matters. They have asked for more detail, more specificity, which ultimately means more pages in order that they will not have lots of questions afterwards. And by the way, if we issued a short rule, simple rule, but left things vague, what happens is everything still has to be figured out. It gets worked out on the back end. It often involves litigation. It involves going into court to get a court to tell you what it actually means. That is expensive for businesses. It obviously takes time. There is uncertainty all during that time.

You know, a comparison I would make is the U.S. Constitution. It is a simple, very elegant document. For 200 years, courts have been construing what it means, and there is a huge amount of pages now that have been generated by that. What industry has told us—again, it was contrary to my initial instinct on this—was if they can have more specificity and clarity up front, then there will be less to argue about afterwards, less litigation, and also more certainty for them on how to proceed. So again, optically, I do not like the look of a longer rule, but they have told us in some respects that makes their work easier.

Mr. TIPTON. And with respect to your statements, did you do a cost benefit analysis on this?

Mr. CORDRAY. We are required by our statute to do an analysis of the burdens, impacts, and benefits of any rule.

Mr. TIPTON. What did that show?

Mr. CORDRAY. I beg your pardon?

Mr. TIPTON. Are you doing that now?

Mr. CORDRAY. We have been doing that. We have to do that at the proposal stage, so we have done that. We have to do that as we go.

Mr. TIPTON. Just out of curiosity, what are those costs going to be?

Mr. CORDRAY. Well, I think the costs are the ones that people told us about. First of all, there is always a transitional cost with any change. Even when you streamline.

Mr. TIPTON. Do you have a dollar amount?

Mr. CORDRAY. Well, there is a lot of analysis provided in the rule. I would hesitate to summarize, you know, what is, as you know——

Mr. TIPTON. Ballpark?

Mr. CORDRAY [continuing]. Hundreds of pages. Well, there are costs that are implementation costs of making a transition.

Mr. TIPTON. Right.

Mr. CORDRAY. And then as we go——

Mr. TIPTON. I just want a ballpark figure.

Mr. CORDRAY. It is important to recognize here, as we go, since we will have integrated these two forms as Congress has been wanting to do for 20 years and nobody has succeeded in doing it yet, that will mean less cost per individual real estate closing.

Mr. TIPTON. So you do not have an actual dollar number? A vague dollar number?

Mr. CORDRAY. There are dollar numbers provided. Again——

Mr. TIPTON. That is what I was asking.

Mr. CORDRAY. Okay. I can refer you to our rule and you can—your staff—there are different dollar figures for different kinds of providers.

Mr. TIPTON. Did you give us dollar figures?

Mr. CORDRAY. I beg your pardon?

Mr. TIPTON. Did you give us—just curious.

Mr. CORDRAY. Sure. What I wanted to note was over time this is going to save money.

Mr. TIPTON. You are 101 million. Does that sound familiar?

Mr. CORDRAY. That is a potential figure, depending on what assumptions you are making about who uses vendors and who does things on their own. But again, there is going to be a savings, sir. It is important to realize.

Mr. TIPTON. I would like to be able to—we are running out of time here. At the beginning of your statement you had noted—made the statement "critical for people in government to know what makes small business grow."

Mr. CORDRAY. Yes.

Mr. TIPTON. And you talked about access to capital. If those dollars are being spent more and more on regulatory compliance, $101 million, is that draining money out of resources that can be applied to be able to grow jobs, to be able to get people back to work and get this economy moving?

Mr. CORDRAY. Okay. So we are talking here about a multi-trillion dollar market for real estate transactions.

Mr. TIPTON. My world $100 million is big dollars.

Mr. CORDRAY. I understand. But it is not like there are a million dollars falling on each business. That is not what we are talking about here. And there is going to be savings in each real estate settlement closing. Each one over time that will pile up year by year by millions of transactions. And that needs to be taken into account as well.

Mr. TIPTON. Actually, we received comment, and I believe you probably have the written testimony as well from the realtors that they are concerned about this rule. Who is going to have to be filling out the forms? What some of those costs are actually going to be, and I think they are deeply questioning a lot of those actual cost estimates that are being taken so for granted by the administration.

Mr. CORDRAY. We met with them and we welcomed their input. At this point, this is at a proposal stage. It is not yet a final rule. And so everybody is going to have a chance, including what I hear today, but also as we go through the notice and comment process, to give us their input and we will take that into account on the final rule, including from the realtors, settlement agents, all of the people involved with these transactions. Yes. Yes, sir.

Mr. TIPTON. You know, with your permission, Mr. Chairman.

Chairman GRAVES. We are short on time.

Mr. TIPTON. Okay. I apologize. I yield back. Thank you.

Chairman GRAVES. Before I turn to Bill, we do have a series of votes coming up. And we are going to stay—we will stay here for the first 10 minutes after they are called, but I hate to keep you through that series, so we may—if anybody has got questions that can be submitted and then you give us answers, because I know I do, we will make that a part of the record.

Mr. CORDRAY. I am at your service.

Chairman GRAVES. Phil.

Mr. OWENS. Thank you, Mr. Chairman. Thanks, Mr. Cordray, for coming over to testify today.

When you talk about small business, how do you define that term for purposes of inclusion in the Small Business Advisory Groups?

Mr. CORDRAY. So, again, that is another interesting question. The term "small business" is somewhat in the eye of the beholder. It is defined differently often market by market. So what is a small business in the aerospace industry would look very different from what is a small business in the hardware business, for example. The Small Business Administration has a working definition that they apply as a rough cut for many markets that if you have revenues of $7 million or less, that is a small business. I can imagine markets where that would be a very large business, but that is one cut on it.

It is likely for us going to be something that we will have to define, taking into account the size of markets. I think the assets of a bank, for example, would be larger than the assets of many retail businesses. So it is very contextual. But that is one definition to begin from and think about and then work from that. So that is one of the things that we have taken into account.

Mr. OWENS. How did you define it for purposes of the groups that you assembled?

Mr. CORDRAY. So, for us, it is as laid out in the Regulatory Flexibility Act and the small business review panels, which as I have said have been used previously by the EPA and by OSHA, who are required by law to use them. We are the first banking agency of any kind that has been required to use this process.

And the other thing for us is we do have this other hurdle we jump through before we can supervise nonbank firms in some of these other markets besides the mortgage, student loan, and payday lending markets. We have to define who are larger participants. And thereto, we started off by taking as one of the factors—we considered the SBA definition of a small business. It is $7 million or less. That definition is under review, by the way, by them right now. But there are some industries where that makes sense and some industries where that is probably well off the mark.

Mr. OWENS. It has been my experience that settlement agents tend to be relatively small businesses, a couple of people. Mortgage brokers in small communities tend to be a couple of people.

Mr. CORDRAY. Yes.

Mr. OWENS. So that puts, I think as some of my colleagues were pointing out—some real burden on them in terms of compliance.

I see in your testimony that you are considering potentially not requiring electronic retention of records and allowing paper retention for smaller businesses. Are you seeing any development by other entrepreneurs of software for this industry that is graded, if you will, from the couple of person business up to the 50-person business?

Mr. CORDRAY. That is happening. That is obviously a tremendous business opportunity. Part of it is that 30 years ago there was very little computer involvement. Going back to my undergraduate days where to do anything on the computer you went across campus. It was a garage-size thing and you put in your cards and it took several hours. But now computers obviously are more and more integrating workplaces everywhere. And this is a vendor opportunity. So that is developing. But we have, in response to the input we got from small providers, some of whom have not gotten to that point and may never get to that point. They have been in business 20, 25 years. It is working for them. They do not really see the need to do the expensive upgrade in computer services. We have put into our proposal to consider exempting them from this electronic standard format which we otherwise prefer because it is going to make things very comparable. But that may not make sense for all providers and it is something we have listened to them on, heard from them on, and we are going to consider that as we finalize a proposal.

Mr. OWENS. I also noted that you said that in some of the instances the small businesses requested that you expand on the regulatory statements.

Mr. CORDRAY. Yes. Yes.

Mr. OWENS. And that was because they felt that with greater clarity there would be less litigation and less confusion. After you did the expansion, what was the response of those small businesses to the additional information you provided?

Mr. CORDRAY. I think in general there was appreciation that we heard from them, listened to them, and responded to them. Now, of course, people have various disagreements about the substance of what is in there, you know, whether we took their proposal or the escrow association's proposal or the credit union's proposal or something else. There is obviously always room for substantive disagreements. But I think they like the fact that we heard their suggestion to include more guidance.

Again, every problem we can solve for them without making them sort of solve it on their own, which not only involves uncertainty about whether they are getting it right. You know, they can be sued under the Truth and Lending Act if they do not get things right. That can involve expense, or they may feel the need to consult lawyers, which is expensive. Not something small businesses want to have to do if they can avoid it.

So everything we can do to clarify that up front, again, it feels perhaps to some, boy, all these pages. Why all these pages? Every one of those pages is trying to help solve problems that people have told us about and we are going to try to do it as best we can.

Mr. OWENS. Thank you very much. I appreciate your answers. I yield back, Mr. Chairman. Thank you.

Chairman GRAVES. Joe.

Mr. WALSH. Thank you. Thank you, Mr. Chairman. There we go. Thank you, Mr. Chairman. Mr. Cordray, welcome.

We have heard recently about CFPB's examination notification process, and it has raised some questions. From what I understand, financial regulators usually will contact the entity to be examined by letter to make them aware that an examination has been planned and send that entity a pre-examination checklist. I have been told recently that CFPB has been contacting these entities and on very short notice asking them to come to Washington, D.C. and meet directly with you. Why are you calling these entities—you, not yourself—but why are you calling these entities to Washington, D.C. to simply notify them of an examination? Or do I have that wrong?

Mr. CORDRAY. To be frank, Congressman, I am not sure where that is coming from. That is not, in fact, our practice. I am not calling people in to meet with me. I do not really see what the point of that would be.

Mr. WALSH. Are people being—Mr. Cordray, are people being called to Washington to notify them of a pending examination?

Mr. CORDRAY. No, they are not. Let me say this. We are a new agency, so when we notify someone of a pending exam, it is the first time they have ever heard from us. So what we typically try to do is set up a meet and greet, but I believe that we almost always go on site. We do not put the people out. We go there. And I do not mean me. I mean, our examination staff. And meet with them and have an initial meeting.

For the other agencies where typically they have been regulating and supervising and examining those people for years, you know, they just were there three years ago. Now they are coming again.

It is very common that they would send a letter. We are trying to do a meeting but we are not calling them to Washington for that.

Mr. WALSH. You do not know of any instances where you are calling people to Washington where people are having to come to Washington to be notified of an examination?

Mr. CORDRAY. No. What we are doing is there are times when we are having people come to Washington, or if it is more convenient we can go to them. Or they may be coming to Washington anyway and want to come in to see us where we are talking to them about specific issues of concern.

But in terms of the normal examination process, no, we are not dragging people to Washington just to tell them we are going to come to see you in three weeks. That seems kind of stupid.

Mr. WALSH. Did you simply notify them of an examination?

Mr. CORDRAY. Yeah. Yeah.

Mr. WALSH. Because you concur that makes no sense?

Mr. CORDRAY. That would be pretty dumb. We are not doing that.

Mr. WALSH. Do you have to be present when you are notifying any small banks or mortgage companies of a pending examination?

Mr. CORDRAY. No.

Mr. WALSH. You, yourself.

Mr. CORDRAY. And, in fact, you know, I am running an agency that is growing and is doing work all across the 50 states. I could not possibly do that. That would not make any sense for me. That would be a very poor delegation of authority on my part.

Ms. VELÁZQUEZ. Would the gentleman yield?

Mr. WALSH. Yes, I would be happy to.

Ms. VELÁZQUEZ. I just would like for Mr. Cordray to correct for the record the question itself when he asked small banks are cold. They are exempted.

Mr. CORDRAY. Well, small banks, anything under $10 billion in assets, we do not even examine. So none of them would be called anywhere. But it is also not our practice to call people to Washington to inform them of an upcoming exam.

Mr. WALSH. And you have made that clear. And I thank——

Mr. CORDRAY. Yeah. Although there are some special issues where we need to talk to someone about a particular issue that might or might not warrant a meeting.

Mr. WALSH. So banks and mortgage lenders, you have made that clear that you do not know of any instances. And again, it is not at all a requirement that you or your deputy director, Mr. Dante, needs to be present or is present during any of these meetings.

Mr. CORDRAY. Frankly, our examiners are much better equipped to manage and handle all aspects of the exams than I would be.

Mr. WALSH. Thank you. I yield back, Mr. Chairman.

Chairman GRAVES. Janice.

Ms. HAHN. Thank you, Chairman, and ranking member for holding this hearing.

You know, look, our economy is still reeling and recovering from what I believe was the damage that was caused by this housing crisis. And I know my small businesses, their biggest complaint is they have lost customers. So they are really concerned when folks are losing their homes and surrounding cities are contemplating bankruptcy as a result of it. So my small businesses want their customers to stay in their homes. So I, for one, am grateful that you are going to be able to do anything you can to make sure that folks really understand what they are getting into when they are getting into a mortgage.

You know, before, even—we now know that before the housing crisis, several banks were participating in predatory lending and were in some cases blatantly targeting minorities. And we know that even after controlling for income differences, the Center for Responsible Lending found that African American and Latino borrowers were about 30 percent more likely to get higher rate subprime loans than white borrowers with similar risk characteristics.

Can you tell me how the proposed rule will help to end this discrimination? And anything else that you can share that the CFPB is doing to protect minority borrowers from these, what I consider shameful predatory lending practices.

Chairman GRAVES. Quickly.

Mr. CORDRAY. Thank you Congresswoman. There have been, as you have probably seen, several enforcement actions in recent months taken by our fellow regulators. We work closely with them. We now have the authority to enforce the Equal Credit Opportunity Act, which will govern a lot of this kind of discrimination. We take that responsibility very seriously. We have an Office of Fair Lending in the Bureau. It is, I would say at this point, superbly staffed by high quality people who are very dedicated to this work. We are working closely with the Department of Justice as well, and there are times where we will coordinate with them on actions. And we are working with state attorneys general where that is appropriate.

But we feel that everybody in the United States is entitled to access credit on the same terms as one another. It should certainly not be affected by gender or by race or by ethnic background. Too often that has occurred in the past. The laws are now meant to prevent that. They have to be enforced effectively if we are going to accomplish that. That is part of our mission.

Chairman GRAVES. Thank you. I do not want to keep you, so I am going to ask the members that have questions, including myself, to submit them to you and get—in fact, my question is just about you said in your statement that the panels are a very valuable component of our rulemaking process. And I am very curious as to if you think that other federal agencies should incorporate the panel process to their rulemaking? And I would like an answer. Just submit it back. You do not have to answer now but I want an honest answer.

Mr. CORDRAY. We will be happy to address anything anybody wants to submit to us in writing, Mr. Chairman.

Chairman GRAVES. And that way we do not have to keep you. I know you are a very busy director.

Mr. CORDRAY. Okay.

Chairman GRAVES. This Committee is going to continue to be very active in watching how you move through the Reg Flex Act.

Mr. CORDRAY. I am at your service any time.

Chairman GRAVES. We appreciate it. And in fact, and I would ask unanimous consent, too, before I finish with the ranking member, unanimous consent that we have 10 legislative days for members to support materials and questions, whatever the case may be. And without objection, so ordered. Go ahead.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Two questions. Can you state for the record how much—did the housing collapse cause this nation?

Mr. CORDRAY. It was trillions of dollars in household wealth, let alone trying to assess people who lost jobs and how much, you know, the downturn affected our broader economy.

Ms. VELÁZQUEZ. And I am interested in knowing when the agency is going to comply with section 1071. That is aimed at helping regulators understand credit conditions for small women-owned businesses and minority-owned businesses. It is important that you implement the rule requiring the collection of that data.

Mr. CORDRAY. Yes, we are mindful of that. We also, as you may know, we have a separate window on this through our Office of Minority and Women Inclusion. And that gives us some ability to work with the financial industry on diversity in the industry which we take seriously as well. So I think all those things fit together.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Chairman GRAVES. Again, thank you very much Director Cordray. We appreciate you coming in. And with that, the hearing is adjourned.

[Whereupon, at 1:53 p.m., the Committee was adjourned.]

Written Testimony of Richard Cordray

Director, Consumer Financial Protection Bureau

Before the House Committee on Small Business

August 1, 2012

Chairman Graves, Ranking Member Velazquez, and Members of the Subcommittee: thank you for inviting me here today to talk about the CFPB's compliance with the Regulatory Flexibility Act (RFA) and its implementation of section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). My name is Richard Cordray, and I am the Director of the Consumer Financial Protection Bureau. I am honored to represent the Bureau here this afternoon.

Small businesses are a critical growth engine for our economy and an essential source of financial services for many consumers. For this reason, the CFPB believes that it is very important to understand the impacts of its actions on small businesses. Since our inception, the CFPB has actively and consciously designed a number of mechanisms to seek the input of small businesses to support its rulemaking, supervision, enforcement, consumer education, research, and reporting functions. In order to create good public policy, we consider it a priority to integrate direct input and advice from small businesses into the CFPB's decision-making process.

Section 1100G of the Dodd-Frank Act, which requires the Bureau to convene panels to seek direct input from small businesses prior to proposing certain rules, is a critical piece of that larger effort. We have now convened three such panels in conjunction with the Chief Counsel for Advocacy of the Small Business Administration (SBA), and the Office of Management and Budget's Office of Information and Regulatory Affairs (OMB). While we are still learning and refining our panel processes, we are pleased with the results to date. We have found the opportunity to have intense, in-depth discussions with small financial services providers to be invaluable as we evaluate potential rulemaking options. And our interaction with SBA and OMB has been cordial and extremely productive.

We welcome this opportunity today to report on our implementation process. I want to describe both the panel process and how the panels fit into the Bureau's larger efforts to engage in evidence-based rulemaking and to sensitize itself to the issues and concerns of small businesses.

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Before turning to the implementation of section 1100G, I believe it may be helpful to explain briefly the nature of the Bureau's jurisdiction over and early efforts to engage with small businesses.

Congress established the Bureau to focus specifically on the regulation of *consumer* financial products and services that are provided primarily for personal, family, or household use. There are also a few limited areas in which the Bureau has authority with respect to financial products and services for small businesses. First, the Equal Credit Opportunity Act (ECOA) prohibits lenders from discriminating in the provision of business (as well as consumer) credit on the basis of race, national origin, sex, or other protected bases. The Bureau implements ECOA by regulation and supervises compliance with ECOA for certain lenders. In addition, Congress has applied two credit card protections of the Truth in Lending Act (TILA) to business cards – limiting the liability of cardholders for unauthorized use of the card and restricting unsolicited issuance of new cards.

The Bureau's jurisdiction over small businesses that provide consumer financial products and services has been carefully crafted by Congress, and reflects the intent of Congress to consolidate in the Bureau rulemaking authority that had previously been spread across several different Federal agencies. This consolidation helps ensure that the entire consumer financial market is subject to consistent regulations and standards that apply equally to all businesses, including small businesses.

Small business review panels are a valuable component of our rulemaking process. The panels provide a mechanism for us to seek intensive input from small businesses about the impacts and potential alternatives for rulemaking initiatives. However, this is just one of several outreach initiatives. For example, the CFPB has created an Office of Small Business, Community Banks, and Credit Unions, within its Office of External Affairs, to specifically engage with small depositories and businesses in carrying out the Bureau's functions. In addition, the CFPB is currently working to convene various advisory councils that focus specifically on community banks and credit unions.

With this background in mind, I would like to talk about how the CFPB is implementing the RFA and section 1100G of the Dodd-Frank Act.

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The RFA, as amended by Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, generally requires Federal agencies to consider the potential economic impact of regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[1] RFA requirements apply to rules that are subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[2] Accordingly, the RFA and small business panel requirements do not apply to rules for which notice and comment is not required, such as the procedural rules issued by the Bureau to set up its own internal operations, but they do apply to notice and comment rules including many of those that we issue to implement laws governing the provision of consumer financial products and services.

Like other Federal agencies, the RFA requires the Bureau to make a threshold assessment of whether regulations covered by the statute could have a significant economic impact on a substantial number of small entities. Where the Bureau certifies that it does not expect such impacts, the RFA requires that it provide a factual basis for this conclusion. For example, the Bureau recently certified that it does not expect a proposal to implement amendments to the

[1] 5 U.S.C. 601 *et seq.*
[2] 5 U.S.C. 603, 604.

Home Ownership and Equity Protection Act of 1994 (HOEPA) to have a significant economic impact on a substantial number of small entities.[3] HOEPA regulates the provision only of "high-cost mortgages," which due to various factors are extremely rare in the housing market. For example, of the 5.3 million originations potentially covered by HOEPA in 2010, only about 3,400 loans were actually covered by HOEPA. Although the Dodd-Frank Act expands the scope of the law in several ways, the Bureau concluded after extensive quantitative analysis that the proposed rule was not likely to have a significant economic impact on a substantial number of entities.

Where the Bureau does not make such a certification, the RFA and Dodd-Frank Act section 1100G require it to take several additional steps. First, the Bureau is one of three Federal agencies that are required to convene a small business review panel to gather input directly from small entities prior to issuing the proposed rule. Second, like all other Federal agencies, the Bureau is required to conduct a written analysis of the potential impacts and alternatives at both the proposal and final rule stage. Third, the Bureau is required to separately assess and gather input on the potential effects of the proposed and final rules on the cost of credit for small businesses, and to evaluate alternatives to minimize any cost increases while achieving the objectives of applicable statutes.

I'd like to spend most of our time today discussing how the Bureau is implementing the first requirement. As I mentioned at the outset, the CFPB has conducted three small business review panels to date with the SBA and OMB:

- In February 2012, the Bureau convened its first small business review panel, regarding the Bureau's proposal to combine the disclosure requirements of TILA and the Real Estate Settlement Procedures Act (TILA-RESPA rulemaking). This panel gathered information from representatives of small banks and credit unions, mortgage finance companies, mortgage brokers, settlement agents, and nonprofit organizations. The panel report was released at the same time as the Bureau's proposed rule, on July 9, 2012.[4]

- In April 2012, the Bureau convened a small business review panel regarding the Bureau's upcoming proposal regarding mortgage servicing. This panel gathered information from representatives of small banks and credit unions, mortgage finance companies, mortgage servicers, nonprofit housing organizations, and other small businesses engaged in the servicing of mortgages. The final panel report will be released within the next few weeks at the same time as the proposed rule.

- In May 2012, the Bureau convened a small business review panel to discuss the Bureau's upcoming proposal regarding residential mortgage loan origination standards. This panel gathered information from representatives of small banks and credit unions, mortgage finance companies, mortgage brokers, and nonprofit housing organizations. The final panel report will be released within the next few weeks at the same time as the proposed rule.

[3] *See* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0029-0001 (HOEPA proposed rule).
[4] *See* http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0028-0001 (TILA-RESPA proposed rule).

For each panel, we have consulted with the small entity representatives concerning the potential impacts of the proposals under consideration by the Bureau on small financial services providers and on the cost of credit for small businesses. I'd like to talk first about the processes we are using to organize and run the panels, and then about the feedback that we have received.

Convening a small business review panel under the processes laid out in the RFA involves a substantial commitment of time and resources from all three participating agencies, as well as the individual small entity representatives. We are finding that the panel process requires a minimum of three to four months of intensive work to complete, including preparation time. We have provided a description of the processes that we are using to implement the small business review panels in a "Fact Sheet," which is accessible through the Bureau's website.[5]

Where the Bureau determines that a panel is warranted under section 1100G, it reaches out to SBA and OMB to begin preparations. The first steps are (1) to draft a detailed description of the proposals under consideration by the Bureau and an analysis of their potential impacts on small businesses and (2) to identify and recruit representative small entities to consult with the panel. Both the SBA and OMB provide feedback to the Bureau about the background materials, and as directed by the statute, the CFPB consults with the SBA on selection of the small entity representatives. By law, the representatives must be selected from businesses that are likely to be directly subject to the requirements of the rule. In part because of this requirement, the Bureau has been convening a number of other roundtables at roughly the same time that it convenes the small business review panels in order to obtain feedback from a broader range of stakeholders. The SBA typically suggests candidates for the small business review panels in addition to ones that the Bureau has identified through a variety of means, including its own previous outreach efforts and discussions with State and national trade associations.

For each of the panels to date, we have identified approximately 15 to 20 small entity representatives to meet with the panel. We find that this size allows significant diversity among the businesses represented, while also permitting extensive and frank dialogue. For each panel, the Bureau has attempted to recruit a wide range of small entities, including businesses from different parts of the country, rural and urban markets, and different segments of the market (such as servicers that may concentrate in particular types of loans). Final representatives are designated after consultation with the SBA. Representatives may participate in the panel outreach meeting in person or by teleconference, though to date we have been extremely pleased that most have been able and willing to travel to participate in the meeting in person.

Prior to a scheduled panel outreach meeting, the CFPB distributes background materials to each small entity representative. Although not required by the statute, the Bureau also posts the materials on its website and provides a general email address for other stakeholders to provide feedback.[6] The outreach materials typically contain:

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[5] *See* http://files.consumerfinance.gov/f/201205_CFPB_public_factsheet-small-business-review-panel-process.pdf.
[6] *See* http://www.consumerfinance.gov/blog/sbrefa-small-providers-and-mortgage-disclosure/ (TILA-RESPA rulemaking panel materials); http://files.consumerfinance.gov/f/201204_cfpb_small-business-review-outline_mortgage-servicing-rulemaking.pdf (mortgage servicing rulemaking panel materials);

- Information on the background of the proposed rule under development;
- An overview of the proposed rule or regulatory options under consideration;
- Other information that will enable small entity representatives to provide meaningful comments on the likely economic impacts of the proposed rule and advice on potential alternatives; and
- A detailed list of questions and issues on which the CFPB will seek small business input at the panel outreach meeting.

The outreach meetings between the panel members from the three agencies and the small entity representatives have each lasted a full day, and in some cases we have held follow up calls to answer additional questions or to request additional information about specific topics. During the panel outreach meetings, the CFPB walks through each set of proposals and options or alternatives under consideration with the small entity representatives, as well as the questions and issues that have been identified in advance. The small entity representatives provide extensive comments on the substance of the proposals and their potential impacts. The panel may ask the representatives to help identify other Federal regulations that may overlap or conflict with the CFPB's proposed rule. In addition, the panel solicits advice regarding potential alternatives that would minimize any significant economic impacts of the proposed rule on small businesses while accomplishing the objectives of applicable statutes.

In addition to providing oral comments on these issues during the outreach meeting, the small entity representatives are provided an opportunity to submit supplemental written comments, typically within about a week of the in-person meeting. The panel members from the three agencies then review the materials received along with materials provided by the Bureau, and draft a report that summarizes both the feedback received from the small entity representatives and the panel's findings and recommendations. The statute requires the report to be completed 60 days after the panel is convened.

The CFPB then carefully considers the panel's report and the comments and advice provided by small businesses as it finishes preparing the proposed rule and the initial written impact analysis that is required under the RFA for publication. Once the proposed rule and analysis are issued, the panel's final report is placed in the public rulemaking record. Any small business or organization, including those that participated in the panel outreach meeting, may submit formal written comments during the public comment period that occurs after the rule is proposed. We email the small entity representatives to alert them to the issuance and specifically ask for further feedback. After issuing the proposed rule, the CFPB will carefully evaluate the public comments and will prepare and issue final rules, which will include the additional regulatory impact analysis of the final rule as required by the RFA.

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http://files.consumerfinance.gov/f/201205_cfpb_MLO_SBREFA_Outline_of_Proposals.pdf (residential mortgage loan origination standards rulemaking panel materials).

Finally, I want to talk about how valuable we find the feedback we receive through the 1100G process and how we are incorporating it into our further deliberations. Because we have not yet released the proposals on servicing and mortgage loan origination, I want to focus primarily today on how the 1100G process affected the TILA-RESPA proposal, which was released on July 9.

As discussed in both the proposal and panel report, it was helpful to be able to spend a full day discussing the disclosure integration project with a variety of small financial services providers who deal with the existing forms and regulations on a daily basis and many of whom have close interaction with consumers. In this rulemaking, the information provided through the small business panel process helped us to draft a better IRFA analysis, which by law must describe the impact of the proposed rule on small entities, and include any significant alternatives to the proposed rule which accomplish the statutory objectives and minimize significant impact of the proposed rule on small entities.

We responded to every panel recommendation and every major concern raised by the small business participants, whether by adopting the recommendation, changing the proposal, seeking comment on a particular issue, or other action. To take just a few examples,

- During the panel outreach meeting, small entity representatives expressed the concern that current rules implementing TILA and RESPA disclosure requirements create significant uncertainty about how to comply. For example, a joint letter from four settlement agents stated that small settlement agents currently lose at least 30 minutes per closing due to regulatory uncertainty and compliance burdens associated with the current rules. Consistent with the panel's recommendation, the proposal contains extensive commentary that provides detailed guidance on how to complete the integrated forms including, as appropriate, samples of completed forms for a variety of loan transactions.

- The small entity representatives also expressed concern about the Bureau's proposal to harmonize different timing requirements under TILA and RESPA by requiring disclosures to be completed three days prior to closing. While the Bureau had expected to make limited accommodations for last-minute changes, the small entity representatives identified that there may be other potential complications. Following the panel's recommendation, the proposed rule permits certain specific changes after provision of the disclosure and also solicits comment on whether additional exceptions are appropriate.

- The small entity representatives expressed concern that certain statutory disclosures would be difficult to calculate and would likely not be helpful to consumers. The panel recommended that the CFPB consider revisions to the disclosures that would minimize the burden on small entities while ensuring that consumers receive important information about mortgage transactions. Consistent with the panel recommendation, the proposal solicits comment on whether the CFPB should use its authorities to remove the disclosures from the integrated forms.

These are just a few examples of the valuable contributions the review panel and small business representatives made to the TILA-RESPA rulemaking, which are discussed in detail in the proposed rule that was published on the Bureau's website on July 9. While I cannot go into the details of the servicing and mortgage loan origination proposals today, I can say that the feedback we received in those panels has helped us to think significantly about the basic premises of proposals under consideration and about alternatives and accommodations for small businesses. In short, this is not a "check the box" kind of exercise but rather a vitally important source of information as we carry out the mandates that Congress has imposed.

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In closing, I want to note that implementation of section 1100G has been a learning process. We have convened our first panels at a time when the Bureau is both standing itself up and working under tight statutory deadlines to implement extensive new protections that Congress enacted to fundamentally reform the mortgage market. As you know, that market is critical to the nation's broader economy, and we must issue regulations to provide certainty to both financial services providers and protections to consumers.

In light of these time pressures, we have worked very hard to develop an inclusive process that will allow us to consider fully the effects of proposed regulations on small businesses, as well as meet the statutory deadlines. We have consulted extensively with the SBA and OMB in this effort, as well as with the Environmental Protection Agency and the Occupational Health and Safety Administration, which are the other two agencies that are required to hold small business review panels. We have also consulted with trade associations and other stakeholders, particularly to recruit small entity representatives.

Our procedures have already evolved over the course of the first three panels, and will continue to evolve, based on lessons learned from each rulemaking.

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Mr. Chairman, thank you for the opportunity to testify on this important topic. I look forward to continuing to work with you and the Committee, and I will be happy to take your questions.

About Rich Cordray

Richard Cordray serves as the first Director of the Consumer Financial Protection Bureau. He previously led the Bureau's Enforcement Division.

Prior to joining the Bureau, Mr. Cordray served on the front lines of consumer protection as Ohio's Attorney General. Mr. Cordray recovered more than $2 billion for Ohio's retirees, investors, and business owners and took major steps to help protect its consumers from fraudulent foreclosures and financial predators. In 2010, his office responded to a record number of consumer complaints, but Mr. Cordray went further and opened that process for the first time to small businesses and non-profit organizations to ensure protections for even more Ohioans. To recognize his work on behalf of consumers as Attorney General, the Better Business Bureau presented Mr. Cordray with an award for promoting an ethical marketplace.

Mr. Cordray also served as Ohio Treasurer and Franklin County Treasurer, two elected positions in which he led state and county banking, investment, debt, and financing activities. As Ohio Treasurer, he resurrected a defunct economic development program that provides low-interest loan assistance to small businesses to create jobs, re-launched the original concept as GrowNOW, and pumped hundreds of millions of dollars into access for credit to small businesses. Mr. Cordray simultaneously created a Bankers Advisory Council to share ideas about the program with community bankers across Ohio.

Earlier in his career, Mr. Cordray was an adjunct professor at the Ohio State University College of Law, served as a State Representative for the 33rd Ohio House District, was the first Solicitor General in Ohio's history, and was a sole practitioner and Of Counsel to Kirkland & Ellis. Mr. Cordray has argued seven cases before the United States Supreme Court, including by special appointment of both the Clinton and Bush Justice Departments. He is a graduate of Michigan State University, Oxford University, and the University of Chicago Law School. Mr. Cordray was Editor-in-Chief of the University of Chicago Law Review and later clerked for U.S. Supreme Court Justices Byron White and Anthony Kennedy.

Mr. Cordray lives in Grove City, Ohio with his wife Peggy – a Professor at Capital University Law School in Columbus – and twin children Danny and Holly.

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

August 22, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Dear Director Cordray:

On behalf of the Committee on Small Business, I would like to thank you for testifying at our hearing on August 1, 2012, titled "Know Before You Regulate: The Impact of CFPB Regulations on Small Business." Because the hearing was adjourned early due to a series of floor votes and out of respect for your time, the Committee appreciates your commitment to respond to written questions. Attached please find questions stemming from your appearance before the Committee. Your responses will be made part of the official record for the hearing.

Please submit your responses to the Committee by September 12, 2012. Should you or your staff have any questions concerning this request, please contact Barry Pineles, Chief Counsel, or Viktoria Ziebarth, Counsel for the Committee, at (202)225-5821.

Sincerely,

Sam Graves
Chairman
Committee on Small Business

Committee on Small Business
"Know Before You Regulate: The Impact of CFPB Regulations on Small Business"
August 1, 2012
Questions for the Record

1. On July 9, 2012, the CFPB posted the "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" proposed rule (the TILA-RESPA Rule) on its website. However, the TILA-RESPA Rule still has not been published in the Federal Register, as required under 5 U.S.C. § 553(b). The TILA-RESPA Rule became available to view on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 but is not scheduled to be published in the Federal Register until August 23, 2012.

    a. On what date did CFPB transmit the TILA-RESPA Rule to the Office of Federal Register for publication?

    b. The version of the TILA-RESPA Rule posted on CFPB's website on July 9, 2012 is 1,099 pages. The version of the TILA-RESPA Rule posted on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 is 1,096 pages. What changes have been made to the documents that account for the three page discrepancy?

    c. Did the CFPB ask for the publication of the TILA-RESPA Rule to be delayed until August 23, 2012? If yes, why did the CFPB ask for publication to be delayed for an extended period of time?

2. In your written testimony you stated that CFPB's procedures for the Small Business Advocacy Review (SBAR) panels have "already evolved over the course of the first three panels . . . based on lessons learned from each rulemaking."

    a. How have CFPB's procedures evolved?

    b. What lessons have you learned from the first three SBAR panels?

3. What is the CFPB's process for determining whether a SBAR panel needs to be conducted for a proposed rule?

4. What is the CFPB's process for identifying and selecting small entity representatives (SERs) for a SBAR panel?

5. Why has the CFPB chosen not to make public the names of the SERs upon their selection?

6. What is CFPB's process for preparing materials to provide to the SERs participating in the SBAR panel process?

7. In response to Representative Allen West's question regarding whether CFPB had provided the SERs selected for the TILA-RESPA SBAR Panel enough notice in advance of the March 6, 2012 meeting and enough time to adequately respond to the questions CFPB raised, you stated that "in retrospect, you know, we would have preferred to have had more time to prepare the panels. And we will in the future have more time to prepare the panels." The SERs and their trade association representatives have stated that two weeks' notice was insufficient.

    a. How much notice (e.g., a month, six weeks, two months) will CFPB give to SERs in advance of the panel outreach meeting so that SERs have adequate time to make work and travel arrangements and review the regulatory proposal?

    b. SERs have also commented that they were unable to provide detailed information and feedback in the time frame that CFPB mandated, one week after the March 6, 2012 meeting. How much time will CFPB give SERs to provide written feedback?

    c. Will the CFPB prepare more detailed guidance for its rulewriters on how to comply with the Regulatory Flexibility Act (RFA) and conduct robust SBAR panels, and will the CFPB make that guidance document public as the EPA has done?

8. The CFPB completed the SBAR Panel Final Report (Panel Report) for the TILA-RESPA Rule on April 23, 2012. However, CFPB did not make the Panel Report public until it posted the proposed rule on its website on July 9, 2012. The CFPB has stated that one of its primary missions is to make the financial products and services that consumers use more transparent.

    a. Why did the CFPB decide not to release the Panel Report for the TILA-RESPA Rule when it was completed?

    b. In the spirit of transparency, will the CFPB make panel reports public when they are completed?

9. According to the TILA-RESPA Rule, the CFPB interviewed 92 consumers and 22 industry participants between May 2011 and March 2012 to determine if they understood the form and liked the design. The SERs recommended that you test the forms on actual, real-world real estate mortgage closings before finalizing the rule.

    a. Will the CFPB test the forms on actual real estate mortgage closings?

    b. If not, why not?

10. The initial regulatory flexibility analysis for the TILA-RESPA did not include economic impact analysis or cost estimates for several parts of the regulatory proposal.

    a. How many Ph.D. level regulatory economists does the CFPB have on staff?

b. How many regulatory economists does the CFPB have analyzing the costs and benefits of CFPB regulations?

c. Please describe the process that CFPB is using to estimate the costs and impacts of proposed rules, in particular the small business impacts.

d. Is the CFPB conducting its own research and attempting to estimate costs before conducting SBAR panels?

11. Under Section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amended the RFA, the CFPB is required to include in each initial regulatory flexibility analysis, "any projected increase in the cost of credit for small entities," and advice and recommendations of representatives of small businesses relating to that issue. We are concerned that CFPB's analysis of cost of credit is lacking in the mortgage disclosure rulemaking.

    a. Can you describe how CFPB is analyzing the impacts to the costs of credit?

    b. Does CFPB have economists working on this type of analysis?

    c. Is CFPB only relying on small entities to try to explain these impacts?

    d. Will CFPB analyze the impact on the cost of credit for small entities for every rule and make that analysis public?

12. Currently, CFPB is working on several rulemakings that are inter-related, including the Qualified Mortgage (QM) Rule, Qualified Residential Mortgage Rule, and the TILA-RESPA Rule that will impact the residential mortgage industry.

    a. Is the CFPB considering how these rules are going to work together?

    b. What steps are you taking to analyze and mitigate the cumulative impact of these rules on the affected small businesses?

13. Will the CFPB conduct SBAR panels for rules that are transferred from other agencies, such as the QM Rule, if the proposed rule is expected to have a significant economic impact on a substantial number of small businesses? If not, how will the CFPB ensure that it meets its analytical requirements under the RFA?

14. On page 577 of the TILA-RESPA Rule the CFPB states that it "believes that the ongoing costs of compliance with the proposed disclosure requirements would likely be equal to or less than current ongoing compliance costs."

    a. What led you to this conclusion?

b. Wouldn't you need to test these forms in a real world setting to actually validate this statement?

15. In the TILA-RESPA Rule, the CFPB estimates that the total one-time costs of revising software and systems and training employees to implement the changes to the disclosure forms is $100,100,000. However, on page 575 of the regulation the CFPB states that, "the Bureau does not believe that adoption of the integrated Loan Estimate or Closing Disclosure would impose any direct costs on consumers."

    a. Who do you believe will pay this $100,100,000?

    b. Isn't it logical to assume that businesses may find it necessary to pass some costs onto consumers?

16. One part of the TILA-RESPA Rule may change which party, the lender or a settlement agent, is responsible for providing the Closing Disclosure form to a consumer. In analyzing the costs of the proposed rule on small business, the CFPB only analyzes the impact of the rule on lenders. No information is provided on the impact to settlement agents or mortgage brokers. Yet, settlement agents serving as SERs to the SBAR panel provided specific information to CFPB on the costs a settlement agent will incur upgrading software and training employees.

    a. Why did the CFPB fail to assess the impact to settlement agents, which consists mainly of small businesses, and mortgage brokers?

    b. Why didn't the CFPB use the data and cost estimates provided by the settlement agents to estimate the economic impact of the TILA-RESPA Rule on settlement agents?

    c. Isn't it likely that if the role of settlement agents in the mortgage closing process is changed, there will be an economic impact?

    d. Do you think this could lead to fewer choices for consumers?

17. Industry has stressed to the CFPB that they will need a significant amount of time to implement any final TILA-RESPA Rule. Small businesses have told CFPB that they will need 12 to18 months to upgrade software and systems and train their employees.

    a. Will CFPB provide a compliance period of 12 to 18 months to allow small businesses to come into compliance with the new regulation?

18. The design of the new Closing Disclosure eliminates the current line numbering that exists on settlement statements. According to the SBAR Panel Final Report, several SERs wrote that "changes of location or numerical reference cause significant system programming issues and are one of the largest drivers of software development costs and implementation time." The CFPB stated in the TILA-RESPA Rule that it was soliciting comment on

whether an alternative design or numbering format will lower the costs of the software upgrades.

a. What was the reasoning behind the decision to remove the line numbers?

b. Did the CFPB contact any software providers to learn about potential programming issues that might be caused by removing the line numbering that currently exists and the costs involved with the redesigning of the forms?

c. If not, why didn't the CFPB try to learn about programming issues from software providers?

19. The TILA-RESPA Rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The CFPB is proposing that Loan Estimates be retained electronically for 3 years and Closing Disclosures be retained for 5 years. This is electronic data retention requirement is not required under TILA, the RESPA, or the Dodd-Frank Act. The CFPB acknowledges that "requiring standardized, electronic records may be a significant burden for small creditors that do not currently have such electronic systems or use vendor software." Small businesses are concerned that this provision will be unduly burdensome.

a. Why is CFPB proposing this requirement if it is not required under any of the related statutes?

b. Why did CFPB fail to estimate compliance costs for this requirement?

c. How does this requirement improve consumer's understanding of the mortgage disclosure forms?

20. Many small businesses that are trying to navigate your website find it confusing. SBAR panel materials are difficult to locate because the materials on SBAR panels are on different pages on the CFPB website and until very recently, there was no search box on the CFPB website.

a. Are you aware of how the website is structured and of these concerns?

b. Will the CFPB improve its website so that small businesses can easily find the information on rules subject to the SBAR panel process?

Committee on Small Business
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1. On July 9, 2012, the CFPB posted the "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" proposed rule (the TILA-RESPA Rule) on its website. However, the TILA-RESPA Rule still has not been published in the Federal Register, as required under 5 U.S.C. § 553(b). The TILA-RESPA Rule became available to view on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 but is not scheduled to be published in the Federal Register until August 23, 2012.

a. On what date did CFPB transmit the TILA-RESPA Rule to the Office of Federal Register for publication?

The Bureau transmitted the TILA-RESPA Proposed Rule to the Office of the Federal Register (OFR) on Monday, July 9^{th}, 2012.

b. The version of the TILA-RESPA Rule posted on CFPB's website on July 9, 2012 is 1,099 pages. The version of the TILA-RESPA Rule posted on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 is 1,096 pages. What changes have been made to the documents that account for the three page discrepancy?

The three-page discrepancy is the result of formatting changes made following the OFR's review of the document. Several typographical errors were also corrected, but these edits did not affect the length of the document.

c. Did the CFPB ask for the publication of the TILA-RESPA Rule to be delayed until August 23, 2012? If yes, why did the CFPB ask for publication to be delayed for an extended period of time?

No. In a letter dated July 12, 2012, the Bureau requested immediate filing for public inspection and publication as soon as possible. (See Attachment A.) As is customary for Federal Register submissions, the OFR staff conducted a formatting review of the proposed rule and submitted their changes to the Bureau on August 2, 2012. The Bureau reviewed the changes, requested several typographical edits, and renewed the request that OFR immediately file the document for public inspection and publish it as soon as possible. The OFR placed the document on public inspection on August 6 and scheduled the document for publication on August 23.

On September 6, a Bureau notice extending the comment period for comments on the definition of the finance charge in the TILA-RESPA proposed rule to November 6, 2012 was published in the *Federal Register*.

2. In your written testimony you stated that CFPB's procedures for the Small Business Advocacy Review (SBAR) panels have "already evolved over the course of the first three panels ... based on lessons learned from each rulemaking."

a. How have CFPB's procedures evolved?

Prior to convening its first panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Bureau consulted with the agencies that have participated in prior panels: the Small Business Administration's Office of Advocacy (SBA), the Office of Management and Budget (OMB), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA). Through these consultations, we received valuable information about different approaches to conducting SBREFA panels.

The Bureau's first SBREFA panel was convened to assist the Bureau in the preparation of the TILA-RESPA Proposed Rule. For that panel, we decided that the meeting with the small entity representatives (SERs) should last for a full day to allow sufficient time for discussion of all the relevant issues, that the meeting should be conducted in private to facilitate open discussion, and that each SER should be permitted to bring a guest to the meeting to assist them. The feedback from the SERs on the meeting itself was very positive, but some SERs recommended that in the future more time be provided in advance of the meeting to review the materials and more time be provided after the meeting to submit written feedback. Accordingly, for the subsequent SBREFA panels on mortgage servicing loan originator compensation, we provided as much time before and after the meeting as possible in light of the Bureau's deadline to issue final rules to implement these Dodd-Frank Act provisions, which would otherwise take effect on January 21, 2013.

b. What lessons have you learned from the first three SBAR panels?

We believe that the open discussion, between the SERs themselves and with the representatives of the Bureau, SBA, and OMB, gave the SERs a better understanding of the proposed regulations, while providing the Bureau with a greater appreciation of the costs and benefits of the proposals under consideration. We also learned that including SERs who represented diverse subsets of consumers, businesses, and parts of the country enabled an open exchange of different, and sometimes conflicting, perspectives. Such robust discussion yielded comprehensive and insightful feedback.

3. What is the CFPB's process for determining whether a SBAR panel needs to be conducted for a proposed rule?

The Regulatory Flexibility Act (RFA), as amended by section 1100G of the Dodd-Frank Act, specifies when a SBREFA panel needs to be conducted for a proposed rule. The Bureau is not required to convene a panel for proposed rules that are subject to the RFA but that the Director certifies will not have a significant economic impact on a substantial number of small entities, such as the High-Cost Mortgage and Homeownership Counseling Amendments proposed rule

(HOEPA Proposed Rule).[1] When such certifications have been appropriate, the Bureau has explained the decision transparently by publishing detailed analyses of economic impact in the notice of proposed rule, and solicited public feedback on the Bureau's determination. For example, in the HOEPA Proposed Rule the Bureau conducted the economic impact analysis by developing an overview of the market for high-cost mortgages, determining the number and classes of affected entities, and then analyzing the impact of the various proposed provisions on the affected entities.[2] In addition, the RFA does not require a SBREFA panel in the case of rulemakings in which a notice of proposed rulemaking is not required by the Administrative Procedure Act. Finally, the Bureau is not required to convene a SBREFA panel when the rule was originally proposed by the Federal Reserve Board such as the Qualified Mortgage rule.[3]

4. What is the CFPB's process for identifying and selecting small entity representatives (SERs) for a SBAR panel?

By statute, the SBREFA panel focuses on the small entities that are directly subject to and must comply with the rule. The Bureau, in consultation with the SBA, selects the SERs who will meet with and provide advice and recommendations to the panel. Potential representatives for the TILA-RESPA, mortgage servicing, and loan originator compensation panels were identified through a variety of methods. We received suggestions from the SBA, trade associations and other industry groups, consumer organizations, and non-profit organizations. We also learned of interested SERs through our own outreach efforts.

5. Why has the CFPB chosen not to make public the names of the SERs upon their selection?

To protect the privacy of the SERs and to promote open discussion with the panel, the Bureau chose not to release the names of participating SERs to the general public before the panel completed its work. However, the Bureau included the name and company of each participating SER in the panel reports. Also, nothing prevented a SER from making her or his name public, as some chose to do.

6. What is CFPB's process for preparing materials to provide to the SERs participating in the SBAR panel process?

The Bureau's goal is to provide participating SERs with materials that will facilitate meaningful feedback and dialogue about the proposals under consideration. Once the Bureau has conducted sufficient outreach, research, and analysis of the issues to formulate preliminary proposals, Bureau staff have prepared an outline of the proposed rule under consideration, possible rulemaking alternatives, and the potential economic impacts on small businesses. These materials have been provided to the SERs in advance of the meeting, along with a list of issues or discussion items on which the Bureau is interested in receiving more input from small businesses during the meeting.

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[1] 77 FR 49089 (Aug. 15, 2012).

[2] *Id.* at 49140-5. A similar analysis was conducted for the Appraisals Proposed Rule, 77 FR 50390, at 50400-2 (Aug. 21, 2012).

[3] *See* 76 FR 27390 (May 11, 2011).

7. In response to Representative Allen West's question regarding whether CFPB had provided the SERs selected for the TILA-RESPA SBAR Panel enough notice in advance of the March 6, 2012 meeting and enough time to adequately respond to the questions CFPB raised, you stated that "in retrospect, you know, we would have preferred to have had more time to prepare the panels. And we will in the future have more time to prepare the panels." The SERs and their trade association representatives have stated that two weeks' notice was insufficient.

a. How much notice (e.g., a month, six weeks, two months) will CFPB give to SERs in advance of the panel outreach meeting so that SERs have adequate time to make work and travel arrangements and review the regulatory proposal?

The Bureau values the informed and thoughtful feedback provided by the SERs, and recognizes the amount of preparation that is necessary to provide such feedback. In an effort to develop the best possible process, the Bureau will provide advance notice to SERs tailored to the complexity of and circumstances surrounding each particular rulemaking. It may be appropriate to adjust the time period in response to specific circumstances, such as a statutory deadline, a request from Congress, or an urgent need to address a market issue. In all cases, the Bureau is committed to providing SERs with sufficient advance notice to make necessary work arrangements.

b. SERs have also commented that they were unable to provide detailed information and feedback in the time frame that CFPB mandated, one week after the March 6, 2012 meeting. How much time will CFPB give SERs to provide written feedback?

The RFA does not require written SERs feedback as part of the SBREFA panel process. However, the Bureau welcomes such feedback. Much like the Bureau's procedure for providing advance notice, the Bureau intends to tailor the amount of time provided for written feedback to the particular rulemaking. In some cases, SERs may need more time to prepare written feedback if unforeseen issues are raised during the meeting. In other cases, a lengthy time period may be unnecessary. Notably, the Bureau extended the written feedback deadline for the loan originator compensation SBREFA panel because some SERs requested additional time.

c. Will the CFPB prepare more detailed guidance for its rulewriters on how to comply with the Regulatory Flexibility Act (RFA) and conduct robust SBAR panels, and will the CFPB make that guidance document public as the EPA has done?

The Bureau has produced detailed and robust SBREFA panel materials and RFA analyses. The Bureau has created a public "Fact Sheet" on the SBREFA panel process that is provided to SERs and has been posted on the Bureau's website. As part of its commitment to transparency, the Bureau has made copies of substantive materials distributed to the small business representatives available to the public, including other small businesses, on its website at about the same time they are sent to the small business representatives.

8. The CFPB completed the SBAR Panel Final Report (Panel Report) for the TILA-RESPA Rule on April 23, 2012. However, CFPB did not make the Panel Report public

until it posted the proposed rule on its website on July 9, 2012. The CFPB has stated that one of its primary missions is to make the financial products and services that consumers use more transparent.

a. Why did the CFPB decide not to release the Panel Report for the TILA-RESPA Rule when it was completed?

The statute requires the Panel report be made public as part of the rulemaking record, but does not specify when the report should be released to the public. The CFPB released the TILA-RESPA report with the proposed rule in July so that the public can consider them together.

b. In the spirit of transparency, will the CFPB make panel reports public when they are completed?

The Bureau highly values transparency. Publicly releasing the panel report with the Proposed Rule promotes transparency. However, as panel reports must be interpreted in the context of the corresponding proposed rule, the Bureau must also consider whether releasing the panel report before the proposed rule would cause unnecessary confusion.

9. According to the TILA-RESPA Rule, the CFPB interviewed 92 consumers and 22 industry participants between May 2011 and March 2012 to determine if they understood the form and liked the design. The SERs recommended that you test the forms on actual, real-world real estate mortgage closings before finalizing the rule.

a. Will the CFPB test the forms on actual real estate mortgage closings?
b. If not, why not?

The Bureau is investigating the possibility of additional testing. On March 28, 2012, the Bureau published a notice for comment under the Paperwork Reduction Act in connection with potential quantitative testing of the proposed forms, specifically inviting comment on whether the information collected will have practical utility, the accuracy of the Bureau's burden hour estimates, and ways to enhance the quality of the information collected and to minimize the burden on respondents.[4] Although the Bureau received no comments in response to this notice, the Bureau continues to study whether additional testing procedures may help further improve the proposed TILA-RESPA forms. The Bureau solicited comment in the TILA-RESPA Proposed Rule regarding the impact of the proposed disclosures on actual real estate closings. The Bureau will consider this feedback in determining whether additional testing is appropriate, including testing using actual loan files or in actual closings.

10. The initial regulatory flexibility analysis did not include economic analysis or cost estimates for several parts of the regulatory proposal.

a. How many Ph.D. level regulatory economists does the CFPB have on staff?

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[4] 77 FR 18793 (Mar. 28, 2012).

b. How many regulatory economists does the CFPB have analyzing the costs and benefits of CFPB regulations?

There are currently twelve Ph.D. level economists on staff, roughly half of whom are analyzing the costs and benefits of Bureau regulations.

c. Please describe the process that CFPB uses to estimate the costs and impacts of proposed rules, in particular small business impacts.

The Bureau begins the process of estimating the costs and impacts of proposed rules on small business by determining what types of small businesses, as defined by the Regulatory Flexibility Act, may be affected by the rule. As you know, whether or not a business is a "small business" for purposes of the RFA is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[5] The Bureau then determines the number of entities subject to these categories. For example, for the TILA-RESPA Proposed Rule, the Bureau determined the number of entities subject to the NAICS categories by reference to several data sources, such as the December 2010 National Credit Union Administration Call Report data and the Nationwide Mortgage Licensing System Call Report data for Q2 and Q3 of 2011.[6] The Bureau then develops cost estimates based on information collected from a variety of sources, including feedback provided to the Bureau, information learned during the SBREFA panels, and data collection efforts. For example, for the TILA-RESPA Proposed Rule, the Bureau relied on data publicly available from the Bureau of Labor Statistics to determine the average compensation for a loan officer, while relying on information submitted by settlement agents to determine how much time businesses could save by implementing the TILA-RESPA standard forms.[7] The Servicing Proposed Rule and Loan Originator Compensation Proposed Rule followed the same procedures.[8]

d. Is the CFPB conducting its own research and attempting to estimate costs before conducting SBAR panels?

Yes, the Bureau researches and analyzes costs before preparing the SBREFA materials and conducting the panels. For example, for the TILA-RESPA Proposed Rule, the Bureau conducted extensive outreach before conducting the SBREFA panels, which was used to inform our decisions and collect information related to costs. We spoke with small businesses, and trade associations representing small businesses many times during the year prior to convening the panels. This research was used in estimating the costs and benefits of potential regulatory approaches.

11. Under Section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amended the RFA, the CFPB is required to include in each

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[5] 5 U.S.C. 601(3). The current SBA size standards are found on SBA's Web site at http://www.sba.gov/content/table-small-business-size-standards.
[6] *See* 77 FR 51115, 51285-6 (Aug. 23, 2012).
[7] *Id* at 51288-9.
[8] *See* 2012 Truth in Lending Act Mortgage Servicing Proposal at 125-6, and Truth in Lending Act; Loan Originator Compensation Proposal at 269-71.

initial regulatory flexibility analysis "any projected increase in the cost of credit for small entities," and advice and recommendations of representatives of small businesses relating to that issue. We are concerned that CFPB's analysis of cost of credit is lacking in the mortgage disclosure rulemaking.

a. Can you describe how CFPB is analyzing the impacts to the costs of credit?

The CFPB's regulatory authority is focused on financial products meant for consumers. We therefore expect that most of the CFPB's rulemakings will have no effect on small business credit. There may be a few limited exceptions.

For proposed rules subject to this RFA requirement, the Bureau has and will continue to consult with small businesses on the potential impact of the proposals under consideration on the cost of credit. This consultation may take place either as part of the SERs meeting or during separate consultation meetings convened by the Bureau that focus on small business credit issues. In addition, the Bureau collects, and will continue to collect, market-wide data related to the cost of credit. With respect to the TILA-RESPA Proposed Rule in particular, the Bureau determined that the proposal would have little to no effect on the cost of credit, and therefore would have little to no effect on the cost of credit for small businesses.[9] The lender SERs reported making few mortgage loans that are used primarily for personal, family, or household purposes (and therefore are covered by TILA and RESPA) but that are used, secondarily, to finance a small business. In addition, the few loans they described making would appear to fall within the TILA and RESPA exceptions for loans made primarily for business purposes, and therefore would not be subject to the Proposed Rule.[10] The Bureau made a similar determination for the Mortgage Servicing Proposed Rule and for the Loan Originator Compensation Proposed Rule.[11] We will carefully review any comments we receive regarding potential impacts on the cost of credit for small businesses and will address these in the final rulemaking documents.

b. Does CFPB have economists working on this type of analysis?

Yes, the Bureau has hired and continues to hire Ph.D. economists, financial analysts, and industry experts to assist our consideration of potential impacts of Bureau regulations on the cost of credit for small entities.

c. Is CFPB only relying on small entities to try to explain these impacts?

In addition to the information received during the SBREFA panels, the Bureau is conducting its own research, and has sought input from industry experts and trade associations. The Bureau has also solicited public information about costs and impact, including impact on small businesses, in its proposals.

[9] *Id.* at 51297.
[10] *Id. See also* TILA section 104(1); RESPA section 7(a)(1).
[11] *See* 2012 Truth in Lending Act Mortgage Servicing Proposal at 244, *and* Truth in Lending Act; Loan Originator Compensation Proposal at 291.

d. Will CFPB analyze the impact on the cost of credit for small entities for every rule and make that analysis public?

The Bureau will continue to fully comply with Dodd-Frank section 1100G's requirements that the Bureau consider the impact certain rules will have on the cost of credit for small businesses, and to evaluate specific alternatives to minimize any increases in the cost of credit while accomplishing applicable statutory objectives. The Bureau will continue to include a description of these efforts in the Initial Regulatory Flexibility Analysis, as required by the statute.[12]

12. Currently, CFPB is working on several rulemakings that are inter-related, including the Qualified Mortgage (QM) Rule, Qualified Residential Mortgage Rule, and the TILA-RESPA Rule that will impact the residential mortgage industry.

a. Is the CFPB considering how these rules are going to work together?

The Bureau is carefully considering how these rules will work together. As required by the Dodd-Frank Act, the Bureau is currently working on rulemakings related to HOEPA, mortgage servicing, loan originator compensation, appraisals, qualified mortgages, and escrow accounts. In the proposals issued this summer, the Bureau stated that it regards these rulemakings as components of a larger undertaking.[13] Accordingly, the Bureau is coordinating carefully the development of these final rules. Each rulemaking will adopt new regulatory provisions to implement Dodd-Frank Act mandates. In addition, each rule may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

b. What steps are you taking to analyze and mitigate the cumulative impact of these rules on the affected small businesses?

We have solicited comment regarding the potential impact of these proposed rules on small businesses. We have also asked for commenters to provide us with data illustrating the impact on small businesses. We have taken the further step of attempting to obtain additional data on our own during the comment period. This multi-pronged approach should provide us with sufficient information to analyze the impact on small businesses and adopt regulatory approaches that will serve the needs of both consumers and small businesses.

13. Will the CFPB conduct SBAR panels for rules that are transferred from other agencies, such as the QM Rule, if the proposed rule is expected to have a significant economic impact on a substantial number of small businesses? If not, how will the CFPB ensure that it meets its analytical requirements under the RFA?

[12] 5 U.S.C. 603(d)(1).

[13] 77 FR 49089, 49093 (Aug. 15, 2012); 77 FR 51115, 51125 (Aug. 23, 2012).

The RFA requires that a panel be convened only for rules proposed by the Bureau, the EPA, and OSHA. In the case of the qualified mortgage rulemaking, a SBREFA panel is not required because the proposed rule was issued by the Federal Reserve Board. However, the Bureau consistently has sought the input of small financial services providers in rulemakings that affect them. For example, on June 5, 2012, the Bureau reopened the comment period to the qualified mortgage proposal to seek additional public comment on new data and information that the Bureau had received.[14] A number of small businesses and the SBA submitted comment letters during the reopened comment period. Furthermore, in connection with the qualified mortgage proposal, the Bureau has met with a variety of stakeholders, including small businesses and trade associations for small businesses, to hear their feedback and comments on the proposal, including any potential economic impacts on small businesses.

14. On page 577 of the TILA-RESPA Rule the CFPB states that it "believes that the ongoing costs of compliance with the proposed disclosure would likely be equal to or less than current ongoing compliance costs."

a. What led you to this conclusion?

The Bureau believes that ongoing compliance costs associated with the integrated disclosures will likely be equal to or less than the compliance costs associated with current disclosure requirements. For example, the Bureau believes that the integrated disclosures will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, most small entities that participated in the SBREFA panel process for the TILA-RESPA Proposed Rule stated that the integrated forms would be easier to explain to consumers than current forms, which would lead to time savings for creditors and settlement agents. Further, information submitted to the Bureau by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. These time savings could lead to decreased compliance costs.[15]

b. Wouldn't you need to test these forms in a real world setting to actually validate this statement?

As discussed above, the Bureau is currently evaluating whether such testing would be feasible and produce valuable information.

15. In the TILA-RESPA rule, the CFPB estimates that the total one-time costs of revising software and systems and training employees to implement the changes to the disclosure forms is $100,100,000. However, on page 575 of the regulation, the CFPB states that, "the Bureau does not believe that adoption of the integrated Loan Estimate and Closing Disclosure would impose any direct costs on consumers.

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[14] 77 FR 33120 (June 5, 2012).
[15] 77 FR 51115, 51271 (Aug. 23, 2012).

a. Who do you believe will pay this $100,100,000?

This figure is an estimate of the direct costs to creditors, mortgage brokers, and settlement agents. The Bureau estimates that the integrated disclosures would result in one-time costs to revise software and compliance systems of approximately $100,100,000, which amounts to less than three dollars per origination when amortized over five years and spread across the estimated 8,000,000 mortgage originations per year.[16]

b. Isn't it logical to assume that businesses may find it necessary to pass some costs onto consumers?

The Bureau does not believe that adoption of the integrated disclosures would impose any direct costs on consumers. However, as noted in the TILA-RESPA Proposed Rule, consumers may bear some of the costs of the new disclosures if covered persons pass through some or all of the costs that would be imposed on them. The Bureau estimates that any increased costs to consumers per origination would be small and that, after one-time costs are absorbed, the proposal would likely reduce the cost per origination.[17]

16. One part of the TILA-RESPA Rule may change which party, the lender or a settlement agent, is responsible for providing the Closing Disclosure form to a consumer. In analyzing the costs of the proposed rule on small business, the CFPB only analyzes the impact of the rule on lenders. No information is provided on the impact to settlement agents or mortgage brokers. Yet, settlement agents serving as SERs to the SBAR panel provided specific information to CFPB on the costs a settlement agent will incur upgrading software and training employees.

a. Why did the CFPB fail to assess the impact to settlement agents, which consists mainly of small businesses, and mortgage brokers?

The Bureau proposed two alternatives for provision of the integrated Closing Disclosure. Under the first alternative, the creditor would be solely responsible for providing the disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would share this responsibility, although the creditor would retain ultimate responsibility. Mortgage brokers would not be responsible for provision of the integrated Closing Disclosure under either proposed alternative.

For purposes of the Bureau's Initial Regulatory Flexibility Analysis, the Bureau assumed that the creditor will bear the costs of revising software and compliance systems. However, the Bureau also stated its belief the costs would be similar if borne by settlement agents. The TILA-RESPA Proposed Rule requests comment on this approach to estimating costs, including whether settlement agents would incur costs that are substantially different from those incurred by creditors if they were responsible for providing the Closing Disclosure.

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[16] *Id.* at 51272.
[17] *Id.*

b. Why didn't the CFPB use the data and cost estimates provided by the settlement agents to estimate the economic impact of the TILA-RESPA Rule on settlement agents?

The Bureau considered all available data, including data provided by settlement agents through the Small Business Review Panel process, in estimating the economic impact of the Proposed Rule. As discussed above and in the TILA-RESPA Proposed Rule, the Bureau believes that if settlement agents, rather than creditors, bore the one-time costs associated with complying with the Closing Disclosure requirements, the costs would likely be similar to the costs to creditors. Furthermore, the cost estimates provided by settlement agents informed certain recommendations of the SBREFA panel, which the Bureau then relied on in developing the proposal. For example, with respect to the costs associated with modifying the line number format, the Panel recommended that the Bureau solicit comment on whether an alternative design or numbering format would impose a lower amount of software-related costs on settlement agents.[18] The Bureau did so in the Proposed Rule.[19]

17. Industry has stressed to the CFPB that they will need a significant amount of time to implement any final TILA-RESPA Rule. Small businesses have told CFPB that they will need 12 to 18 months to upgrade software and systems and train their employees.

a. Will CFPB provide a compliance period of 12 to 18 months to allow small businesses to come into compliance with the new regulation?

Because the TILA-RESPA final rule will provide important benefits to consumers, the Bureau wishes to make the rule effective as soon as possible. However, the Bureau understands that the final rule will require small businesses to make extensive revisions to their software and to retrain their staff. We have solicited comment, both generally and in relation to specific proposed regulatory provisions, regarding the impact of such a rule on small businesses. We have also asked for commenters to provide us with data illustrating the small business impact. We have taken the further step of attempting to obtain additional data on our own during the comment period. This multi-pronged approach should allow us to collect a significant amount of data, analyze the impact on small businesses, and explore approaches finely tuned to address the needs of small businesses.

The Bureau is aware of the software-related challenges experienced by small businesses in the past. We are committed to minimizing the disruption and delays related to training and system upgrades. The Bureau has not only solicited comment on the appropriate implementation period, but has solicited comment on whether small businesses need a different implementation period than the rest of industry. We also took the additional step of consulting directly with small business software providers. We frequently discussed disclosure issues with software providers during the development of the TILA-RESPA forms, communicated with them regarding potential regulatory issues, and will continue coordinating with them to facilitate the

[18] *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements*, at 28-29 (Apr. 23, 2012), available at *http:// files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.*
[19] 77 FR 51115, 51240 (Aug. 23, 2012).

implementation process. We are confident that small businesses will have the time and support to come into compliance with the new regulations.

18. The design of the new Closing Disclosure eliminates the current line numbering that exists on settlement statements. According to the SBAR Panel Final Report, several SERs wrote that "changes of location or numerical reference cause significant system programming issues and are one of the largest drivers of software development costs and implementation time." The CFPB stated in the TILA-RESPA Rule that it was soliciting comment on whether an alternative design or numbering format will lower the costs of the software upgrades.

a. What was the reasoning behind the decision to remove the line numbers?

Both consumer and industry participants at the Bureau's testing stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit and underlying real estate transactions. However, consumer participants at the Bureau's testing appeared overwhelmed by the three and four-digit line numbers on the prototypes similar to the current RESPA settlement statement, and performed worse with prototypes containing that numbering system. The Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. The Bureau tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants, with some industry participants preferring it over the system of the current RESPA settlement statement. Accordingly, the proposed disclosure format contains a two-digit line numbering system that is different than the current RESPA settlement statement.

b. Did the CFPB contact any software providers to learn about potential programming issues that might be caused by removing the line numbering that currently exists and the costs involved with the redesigning of the forms?

The Bureau contacted software providers during the preparation of the proposed rule and is aware of the potential programming issues that might be caused by changing the current line numbering. However, given the results of the Bureau's testing, the Bureau thought it appropriate to acquire more specific information on this topic to enhance the Bureau's ability to make an informed decision. Thus, the proposal requested comment on the impact of the line number changes given the rest of the changes in the integrated closing disclosure contemplated by this proposal.

c. If not, why didn't the CFPB try to learn about programming issues from software providers?

Not applicable. Please see above.

19. The TILA-RESPA Rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The CFPB is proposing that Loan

Estimates be retained electronically for 3 years and Closing Disclosures be retained for 5 years. This is electronic data retention requirement is not required under TILA, the RESPA, or the Dodd- Frank Act. The CFPB acknowledges that "requiring standardized, electronic records may be a significant burden for small creditors that do not currently have such electronic systems or use vendor software." Small businesses are concerned that this provision will be unduly burdensome.

a. Why is CFPB proposing this requirement if it is not required under any of the related statutes?

The Bureau believes that the proposed data retention requirement will ensure that records associated with the integrated disclosures are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA. This proposed regulation may also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA keep records in a standard format.[20] Furthermore, a prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, a standardized electronic format that reduces industry burden may, in the long run, reduce costs to consumers as well.[21]

b. Why did CFPB fail to estimate compliance costs for this requirement?

As noted above, the Bureau conducted extensive outreach regarding the degree to which small creditors use electronic systems. The Bureau was informed by small businesses, trade associations, and software providers alike that, given the complexity of modern underwriting, investor requirements, and State and Federal legal requirements, all creditors use electronic systems for some aspect of the mortgage loan process. Thus, the Bureau is unaware of any creditors that do not currently have such electronic systems or use vendor software. However, the Bureau solicited comment on this issue. If the Bureau receives feedback indicating that paper-based creditors do exist, such feedback would be reflected in the Final Regulatory Flexibility Analysis, should the Bureau decide to adopt the proposed requirement in the final rule.

c. How does this requirement improve consumer's understanding of the mortgage disclosure forms?

The proposed requirement would help the Bureau and other regulators monitor compliance to ensure that the disclosures provided are reliable. Ensuring reliability will improve consumers' ability to understand their transaction and compare mortgage loans, as well as preventing tactics, such as bait-and-switch, designed to confuse consumers.

20. Many small businesses that are trying to navigate your website find it confusing. SBAR panel materials are difficult to locate because the materials on SBAR panels are on

[20] *Id.* at 51186.
[21] *Id.* at 51276.

different pages on the CFPB website and until very recently, there was no search box on the CFPB website.

a. Are you aware of how the website is structured and of these concerns?

Yes, the Bureau is aware of these concerns.

b. Will the CFPB improve its website so that small businesses can easily find the information on rules subject to the SBAR panel process?

Since the Bureau launched consumerfinance.gov more than year and a half ago, we have heard from all of the site's audiences – consumers, small businesses, and many more – about features that are working well and ones that could be improved. In that time, the Bureau has refreshed the design of its homepage and navigation structure twice to respond to those concerns and make it easier for all members of the public to access the information and resources they need. For example, we have recently added a search box with natural language search functionality. We believe the website will always be a work in progress – constantly evolving to the needs of the people the Bureau serves – and will continue making improvements in the months and years ahead.

Attachment A

July 12, 2012

Charlie Barth
Director, Office of the Federal Register
800 North Capitol Street, NW, Suite 700
Washington, DC 20001

Dear Mr. Barth,

We respectfully request that your office immediately file for public inspection and publish at your earliest convenience the enclosed proposed rule with request for public comment from the Bureau of Consumer Financial Protection (Bureau) entitled, "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)."

Under section 1032(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau must issue this proposal by July 21, 2012. Portions of this proposal also affect a number of other mortgage-related rulemaking actions that the Bureau will be proposing this summer. At least four of those rulemaking actions must be finalized by January 21, 2013, or certain amendments in the Dodd-Frank Act will become effective without clarifying regulations. In an effort to manage the respective comment periods efficiently and give interested stakeholders as much time as possible to submit substantive comments, the Bureau requests that your office immediately file the proposed rule and publish it at your earliest convenience. We understand that this is a busy time of year and appreciate your attention to this special request.

Also enclosed please find a CD that includes a true copy of the original signed document in MS Word format. Please call me at (202) 435-7152 to confirm the publication date of this document or if you have any questions. Thank you for your attention to this request.

Sincerely,

Lea Mosena

Lea Mosena
Attorney, Office of the General Counsel
Consumer Financial Protection Bureau

American Escrow Association
Dedicated to Moving the Escrow Settlement Industry Forward

211 North Union Street, Suite 100
Alexandria, VA 22314
(703) 519-1240
www.a-e-a.org

August 1, 2012

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Nydia Velazquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Graves and Ranking Member Velazquez:

Thank you for holding today's hearing, "Know Before You Regulate: The Impact of CFPB Regulations on Small Business." Thank you for this opportunity to submit comments on behalf of the American Escrow Association (AEA), the nation's trade association for real estate settlement professionals, on the CFPB's recent proposed rulemaking on integrating TILA and RESPA disclosures for home loans under the Dodd Frank legislation.

On the question of the CFPB's SBAR panel process, we were quite pleased with the process and the inclusion of an AEA member on the panel. In addition the advance materials the CFPB published laid out the key issues and alternatives (focusing on small business) and thus were very helpful in formulating a targeted response. We have reviewed the Final SBAR Report dated 4/23/12 and the Regulatory Flexibility Act discussion in Section VIII of the preamble of the proposed Rule under "Supplementary Information" and find they contain a fair and complete discussion and analysis of the concerns raised by our member.

On the proposed Rule, we had hoped the CFPB would find sufficient flexibility in exercising its rulemaking discretion under the statutes to adopt our primary recommendation. Instead it appears to us that four statutory provisions/considerations, as applied by the CFPB, were found to have severely constrained any CFPB rulemaking flexibility on the RESPA provisions applicable to us.

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(703) 519-1240
www.a-e-a.org

1. TIL-driven decision that the timing of the final disclosure (including 4. below) must be three business days before loan consummation. This changes timing under current RESPA requirements for the delivery of the final settlement statement.
2. The addition of section 128(a)(17) to TILA by section 1419 of the Dodd Frank Act which requires aggregate settlement charges to be disclosed including specifying those paid at closing.
3. The related purpose of eliminating any surprise to the consumer as to the amount of cash required to close.
4. The Dodd Frank specification, without limitation of application, of combining sections 4 and 5 of RESPA within the framework of the integrated disclosure. This ostensibly would include all settlement charges on buyers and sellers if the entirety of section 4 is drawn in to this rulemaking. (Meaning loan-related as well as non-loan transactional closing cost information.)

For us, the key set of issues relates specifically to the proposed final disclosure ("Closing Disclosure") and includes: which business party or parties (lender and/or settlement agent) will be responsible for determining the loans terms; federal/state-required information and dollar amounts needed for completing the integrated (combined TIL and RESPA) disclosure; who will present it to the borrower; and when will it be required to be done.

More specifically stated our recommendation was that the integration should logically include the terms of the loan, relevant loan information required under federal law (and state-related law if applicable), and the costs of originating the loan, including loan closing costs (as in the "Loan Costs" section, the top part of page 2 of the "Closing Disclosure") and those should be easy to compare to the early disclosure. Under this approach only the lender would be involved in the preparation and presentation in applying the applicable TIL and RESPA components. The settlement agent would come into the process after the above was both disclosed and signed as a penultimate disclosure (but final as to loan terms and costs) then the final all-inclusive information would be prepared by the settlement agent.

To complete the final closing disclosure, the settlement agent would fold into the previously prepared integrated loan disclosure (which would be re-disclosed as originally stated) all remaining costs, called "Other Costs" on page 2 of the proposed "Closing Disclosure," and present it at or before closing. We felt this would meet the purposes of Congress and allow for a non-surprise sequence of events and information

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211 North Union Street, Suite 100
Alexandria, VA 22314
(703) 519-1240
www.a-e-a.org

for the borrower. We also felt that while on the surface the objective of a consumer knowing the "cash needed to close" would be subject to some question, that purpose would be sufficiently met under this two-step approach, both of which would use the same format of combined disclosure.

Finally small entity settlement agents would not find their regular work flow practice and procedure disrupted at additional cost particularly for purchase/sale transactions where there are both seller and seller cost considerations, as well as buyer items that are more related to the consumer as a buyer than a borrower. Obviously software and systems costs and training, as covered below, would still be required as with any change in disclosures.

The CFPB did not include our recommendation in its proposal. Rather, there are two different alternatives in the proposal for settlements agents. In the first a settlement agent would have no stated role under the proposal. In actuality the settlement agent would have to play a role, since in many loan transactions there is information (such as transfer tax, recording fees, homeowner's association dues and costs) that only the settlement agent would have access to under normal circumstances. If the lender were to prepare an all-inclusive final disclosure on a purchase/sale transaction for presentation to the borrower at least 3 business days prior to the signing of the promissory note and any other instruments, there undoubtedly would be items for which only the settlement agent would be able to provide the fact the items are applicable and the dollar amounts. The settlement agent would have to provide that in advance of the 3-day period. This effectively could be a 4 or 5 day- in-advance requirement imposed on the settlement agent.

In the second alternative as stated by the CFPB in its preamble, "the lender may rely on the settlement agent to provide the form." In this case the settlement agent would need to import or otherwise obtain the loan-related information from the lender to complete the form. The CFPB has proposed that each would be equally responsible. This approach has additional liability considerations and would require enhanced training for items such as TIL information and other federal law that the settlement agent would not currently be familiar with, beyond general familiarity.

In each of the above alternatives there will be changes of work flow and timing, training and systems costs and upgrades. We can't comment on which vendors, if any, would require significant up-front fees to provide the updates and training. We would only comment that as a policy matter the timing of any effective date and flexibility for small businesses must factor in these considerations. Ideally we would hope the CFPB would, as an alternative, give our proposal an additional look. If not it would appear a legislative fix would provide the only open door for a change.

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(703) 519-1240
www.a-e-a.org

On electronic records, we concur with the mention of XML in Part VIII (Regulatory Flexibility Act) of the Supplemental Information section of the preamble. We would go further and suggest the CFPB study and consider the Mortgage Industry Standards Maintenance Organization (MISMO) standards which include free and open release to vendors to develop applications. Especially with small businesses, consisting of settlement agents, the ability to export and import electronic information through standard platform, XML based, enhancements provided by vendors would be valuable to retain business with non-local lenders. This would provide the communications interface needed to do business with lenders with different systems. Part VIII mentions XML but not MISMO. We believe this requires further study by the CFPB on the merits and on the appropriate effective date of the integrated disclosure. We also have the question of whether the settlement agent who imports information from the lender has the primary or sole responsibility to store all the data in machine readable form as once received they are the only party with all the information.

In summary we applaud the CFPB for its comprehensive efforts to address small business issues in this rulemaking. However where the CFPB has not found flexibility in the interplay of the relevant statutes, we believe the impact on small business could be profound especially for small businesses trying to retain the business of non-local lenders. We believe our alternative would satisfy congressional purpose and avoid any undue impact on settlement agents, particularly small entities.

Respectfully submitted,

/s/ Arthur E Davis III

American Escrow Association
Arthur E Davis III
General Counsel
703-625-9288
art.davis@a-e-a.org

AMERICAN
LAND TITLE
ASSOCIATION

August 1, 2012

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Nydia M. Velázquez
Ranking Member
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Re: Know Before You Regulate: The Impact of CFPB Regulations on Small Business

Dear Chairman Graves and Ranking Member Velazquez:

The American Land Title Association[1] (ALTA) thanks you for holding this important hearing on the impact the Consumer Financial Protection Bureau's proposed regulation to integrate the mortgage disclosures that are provided to consumers in a real estate transaction and the regulation's effect on small business. Today, settlement agents, who are predominantly small businesses, serve as facilitators of residential real estate and mortgage transactions. Settlement agents handle and disburse monies to the appropriate parties; pull together and record all the documents, including the deed, mortgage or deed of trust, note, homeowners association restrictions and other documents that are needed to legally complete the transaction; ensure any previous mortgages, liens or other encumbrances on title are paid off and released of record; and provide the required Uniform Settlement Statement (HUD-1) to the borrower, lender and seller (as applicable).

The Bureau's proposed combined mortgage disclosure forms and accompanying rules will require a large shift from today's business practices. These changes will impact consumers, lenders and settlement agents and could prove harmful to small business by either (1) making it costly for small business settlement agents to implement the rule's provisions or worse, (2) making it impossible for small business to compete in the future marketplace. This letter highlights some of the rule's provisions that will impact small business settlement agents. It also outlines our thoughts on the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) process that the Bureau conducted in relation to this rule and discusses ways in which we believe that process could be improved.

While the industry as a whole is still analyzing the rule, the topics below are ones we believe could cause the greatest impact on small business settlement agents' role in the real estate and mortgage closing process.

[1] Founded in 1907, ALTA is the national trade association and voice of the real estate settlement services, abstract and title insurance industry. With more than 8,000 office locations throughout the country, ALTA members operate in every county in the United States to search, review and insure land titles and conduct closings to protect the rights of home buyers and mortgage lenders who invest in real estate. ALTA members include title insurance companies, title agents, independent abstracters, title searchers and attorneys, ranging from small, one-county operations, to large national title insurers.

1828 L Street, N.W. ■ Suite 705 ■ Washington, DC 20036 ■ (202)296-3671 ■ 202-296-3671 ■ 800-787-ALTA
E-mail: service@alta.org ■ Web: www.alta.org ■ Fax: 888-FAX-ALTA ■ Local Fax: (202)223-5843

Who Fills Out the New Closing Disclosure?

The most significant impact of this new rule on small settlement agents is that it may take away one of their prime responsibilities: conducting the settlement. Currently, the person conducting the settlement (the settlement agent) is required to provide the HUD-1 to consumers, while lenders are required to provide the revised Truth in Lending disclosure. By combining these two disclosures into the new Closing Disclosure, the Bureau must determine which of these two industries will provide the new disclosure to the consumer.

In the proposal, the CFPB provided two alternatives for public comment, (1) the lender would be responsible for delivering the Closing Disclosure form to the consumer, and (2) the lender may rely on the settlement agent to provide the form, but the lender would still remain responsible for the accuracy of the form as well as the timing. Since the research needed to complete the Closing Disclosure is so intertwined with the work settlement agents conduct to bring a transaction to settlement, taking away the settlement agents responsibility for providing the disclosure to the consumer will likely cause a significant change in the settlement agents' role in the transaction.

Technological Issues for Implementing the New Disclosures

As the Bureau recognized, small settlement agents will rely on software vendors to implement the new rule. When the industry implemented the most recent round of RESPA changes in 2010, industry vendors reported that the comparatively smaller changes by HUD's rule cost each software company approximately $800,000 to $1 million to implement. Based on a conservative estimate, and assuming settlement agents maintain a role in the transaction, industry software vendors estimate that it will cost between $2 million and $2.5 million per software provider to develop compliant software systems for settlement agents.

Some of these costs could be avoided by making simple formatting changes to the disclosure form. Something as seemingly insignificant as changing the line numbers or cost grouping from the current HUD-1 will be an enormous software coding effort for vendors. Maintaining the current line numbers also has the added benefit of making it easier for consumers to be directed a particular charge than the CFPB's proposed method. While the Bureau has solicited comment on these costs, it is not clear whether once received they will weigh them against any possible benefits for consumers or industry.

Standardization Benefits Both Consumers and Industry

We are thankful that the Bureau chose to make the disclosures a single, promulgated disclosure form (as required by RESPA) rather than a model disclosure form (as required by TILA). A promulgated form is significantly less costly to implement and ensures that software vendors do not have to duplicate efforts by making custom forms for each of the hundreds or thousands of lenders across the country. Further uniformity, such as uniform cost descriptions and placement of those costs on the form would also reduce costs and implementation problems.

To achieve its goal of facilitating industry compliance with RESPA and TILA and to reduce costs and uncertainty for industry, the Bureau must provide industry clear and definitive guidance. While the official staff commentary provided in the proposal is a step in the right direction, further guidance will be necessary to ensure that industry understands how to comply with the new rule.

Costly Delays to Closings for Consumers and Industry

Federal regulation should improve the closing process for consumers and industry. However, the Bureau's proposal that consumers must receive the Closing Disclosure form at least three business days before the loan closes may actually make it more disruptive for both consumers and industry. Under the proposal, if changes occur between the time the Closing Disclosure form is provided and the closing, the consumer must be provided with a new form and must wait an additional three business days before closing. Thankfully, the Bureau has included a number of commonsense exceptions from the three-day requirement, but more exceptions will be needed to ensure the proposal does not make the closing process more costly and difficult for consumers and industry in other circumstances.

Increased Liability on Lenders

Increasing liability on lenders for the costs and actions of third parties will likely have the unintended consequence of incentivizing lenders to limit the number of settlement agents with whom they conduct business. 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, including settlement agents, be cut out of the market and unable to compete, but consumers will be harmed as well by less consumer choice and competition, which 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 Bureau to work with us to ensure that settlement agents still provide the settlement statement and conduct the closing. An independent third party conducting the settlement is absolutely necessary to protect consumers.

Improvements to SBREFA

ALTA strongly supports the small business provisions in the Dodd-Frank Act, including the requirement that the Bureau conduct a Small Business Advocacy Review Panel (SBAR) when a rule is expected to have a significant impact on a substantial number of small entities. This process is vital to ensuring that the Bureau's regulatory goals are met in a way that is not overly burdensome on small business. While we are grateful that the Bureau recognized that this rule will have a significant impact on small business settlement agents, and thus held a panel on March 6, ALTA believes that a number of improvements should be made to ensure these panels meet their goal of understanding the impact a rule will have on small business and discovering potential less impactful alternatives.

The Bureau should consider a number of process-oriented changes to the panel procedures. First, the Bureau should give small entity representatives participating in the SBAR ample notice of the meeting so that they can make appropriate and cost effective travel arrangements. On February 21, 2012, the Bureau sent official invitations to small entity representatives for its March 6 SBAR panel on this rule. By providing only two weeks' notice, the Bureau made it unnecessarily costly for small entity representatives that do not live in the Washington, D.C., area to attend the panel meeting in person. For example, one ALTA member who attended the panel spent over $1,400 to attend the meeting. This is a substantial sum for a small business owner. The Bureau should aim to give participants at least one months' notice so they can make the appropriate travel arrangements.

Second, the Bureau should work with industry trade associations to better prepare the small entity representatives for the SBAR meeting. One of the main goals of the SBAR panel is to uncover how costly a regulation will be to implement for small business and to identify less-costly alternatives. There are many factors that go into an effective cost estimate (including differences in regional practice) or information about alternatives that can reduce costs for small businesses that are not known to a small business owner unless they have the assistance from their trade association. Conducting outreach to trade associations before holding the panel (including inviting trade associations to observe the panel meeting in person) ensures that the SBAR gets the most accurate cost data available.

Third, the Bureau should make the SBAR panel report public once it is complete. By publicizing the report earlier in the regulatory process, the Bureau can provide crucial information to industry stakeholders. This will allow industry to either coalesce around the recommendation or begin the process of developing more useful data for the Bureau to consider about the impact of their proposals on small business. Either way, the result will be a smoother regulatory process.

Lastly, in addition to the above process-oriented changes, the Bureau also should consider broadening the way it looks at the impact of a regulation on small business. The SBAR panel focused heavily on the direct costs of this rule on small business, such as software costs, but glanced over the parts of this rule that could have indirect but very serious costs on small business. These indirect costs can be extraordinary, including potentially preventing small business from being able to compete in the future marketplace.

An example is the panel's review of the proposals related to "changes in costs/redisclosure" (also known as tolerances). The Bureau is proposing to increase the level of liability on lenders for costs that increase more than a certain amount between loan application and closing. While the panel focused on the costs of redisclosure as the direct consequence of this policy choice, the indirect costs (namely that lenders would be incentivized to limit the number of small entities with whom they work) will be much more devastating to small business. The Bureau should take greater care to determine whether a proposal will cause business-model shifts that could be harmful to small-business competitiveness.

ALTA looks forward to continuing to work with the Committee and the Bureau on this project, and we thank you for your consideration of these important recommendations. If you have any questions, please do not hesitate to contact ALTA Vice President of Government Affairs Justin Ailes at 202.261.2937.

Sincerely,

Michelle L. Korsmo
Chief Executive Officer

NATIONAL ASSOCIATION *of* REALTORS®

REALTOR®

Maurice "Moe" Veissi
2012 President

Dale A. Stinton
Chief Executive Officer

GOVERNMENT AFFAIRS DIVISION
Jerry Giovaniello, Senior Vice President
Gary Weaver, Vice President
Joe Ventrone, Vice President
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW
Washington, DC 20001-2020
Ph. 202-383-1194 Fax 202-3837580
www.REALTOR.org

July 31, 2012

Dear Chairman Graves and Ranking Member Velazquez:

On behalf of the 1 million members of the National Association of REALTORS® (NAR), I thank the Small Business Committee for holding a hearing on the impact of Consumer Financial Protection Bureau (CFPB) regulations on small business and want to share our member's views on the small business impact of one of those rules. The Consumer Financial Protection Bureau's (CFPB) "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" proposed regulation will have a significant impact on the many small firms that make up the mortgage and real estate industries.

On July 9, 2012, the Consumer Financial Protection Bureau (CFPB) issued a 1,100 page proposal to harmonize the Real Estate Settlement Procedures Act (RESPA) and the Truth and Lending Act's (TILA) disclosures, forms, and procedures. The published proposal was not simply the anticipated effort to simplify two disclosures; rather, as issued, it has the potential to significantly alter the loan and home settlement process.

NAR has long supported the improvement of initial disclosures under RESPA and TILA, including the CFPB effort. However, NAR has concerns regarding the proposed transformation of the two laws and the CFPB's attempt to create a unified settlement statement incorporating the HUD-1 and the final TIL in one form called the "closing disclosure." In addition to creating a new form, the CFPB has decided to also implement a new three-day waiting period for the combined document. As a result, the disclosure's content must be final and in the consumer's hand three days prior to closing. This may seem reasonable in theory, but in actual practice, it could prove problematic for a number of reasons. While the CFPB did follow NAR's recommendation and created a few exceptions from the mandatory three-day period, at present it is unclear to NAR whether these limited exceptions will be sufficient to cover the majority of scenarios that could lead to a required reissuance of the closing disclosure and a delay in the mortgage, and any associated purchase transaction, closing.

If the rule is adopted as proposed, the fundamental change to the closing process will likely be very costly to implement, especially for small settlement firms, and lead to consumer and provider confusion. At present, it is unclear whether this final document is to be prepared by the settlement agent, the lender, or both in some manner. Merely changing who must prepare the documents will require significant and likely costly educational expense. Furthermore, the volume of changes that will be required to computer systems, the increased paperwork, and additional training that will be required to handle this conversion has the potential to be immense. This alone is a great concern. In addition, this is not the only CFPB rulemaking facing the industry. There are at least five other rulemakings that will also be implemented around the same time and will affect the outcome of this rulemaking. The aggregate costs of doing all this could be sizeable and the impact substantial.

Finally, NAR also has encouraged the CFPB to engage in a more open and substantial Small Business Regulatory Enforcement Fairness Act (SBREFA) process. We understand the CFPB's desire to meet statutory deadlines. However, given the magnitude of proposed changes and their potential impact, it is more important that any final rule is

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reasonable, effective, and not disruptive rather than that it be issued quickly. In contemplating the impact of the rule, it is important for the CFPB to consider how a rule that reduces consumer choice by driving small business from the market will ultimately harm consumers.

NAR appreciates the Small Business Committee's interest in this and other critical regulatory proposals that. We stand ready to assist you and the CFPB in efforts to ensure this proposal does not significantly negatively impact small business and the consumers they serve.

Sincerely,

Maurice "Moe" Veissi
2012 President, National Association of REALTORS®

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

August 1, 2012

RESPA-TILA Rules Must Be Informed by the SBREFA Process

On behalf of its nearly 5,000 community bank members, ICBA is pleased to submit this statement for the record for the House Small Business Committee hearing titled: "Know Before You Regulate: The Impact of CFPB Regulations on Small Business." We appreciate the opportunity to share our perspective on the Consumer Financial Protection Bureau's (CFPB's) proposed rulemaking to combine the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) regulations and the Small Business Regulatory Enforcement and Fairness Act (SBREFA) panel they convened on this topic.

SBREFA Process

ICBA is supportive of Congress's and the CFPB's efforts to clarify and streamline RESPA and TILA 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. The newly-created SBREFA process has the potential to result in rules that are more practical for both community banks and their customers. ICBA and community banks have taken advantage of the opportunity to participate in SBREFA panels on RESPA-TILA and other mortgage lending rulemakings. However, we are deeply concerned that the CFPB did not adopt changes suggested by community banks in the recently-published RESPA-TILA proposed rule. The published proposal is essentially the same as the draft presented to the SBREFA panel, though the preamble does pose questions and seek comments based on feedback from the panel. The community banking industry may not be open to incurring the expense of participating in the SBREFA process if members believe it is merely a pro forma or "check the box" exercise. The CFPB should carefully consider and incorporate the comments and suggestions where possible of community banks and other SBREFA panel participants in upcoming rulemakings.

Top Issues for Community Bankers on the RESPA/TILA Rulemaking

Below we highlight the principal concerns we raised with the CFPB during the SBREFA process:

CFPB should maintain the current 10 percent tolerance for changes in required third party settlement costs. The proposal would eliminate the current 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. These include appraisals, surveys, credit reports, and property inspections. Charges for these services are passed through to the borrower and are not "fee generators" for community banks.

The elimination of the 10 percent tolerance will cause the initial pricing for these services to increase 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 the loan estimate, and only reveal themselves during the processing of the loan.

We believe that the only providers of these services that could offer a rate or fee on a consistent basis would be the large national settlement service providers, many of which are owned by large national mortgage lenders. Elimination of the 10 percent tolerance would accelerate consolidation among service providers leading to fewer local providers who generally provide better service.

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. There is no 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. Providing the customer 24 hours to review the settlement statement and obtain the funds needed for closing is more than adequate.

Cost to Implement RESPA-TILA Changes. 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 portfolio, 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 believes the CFPB has underestimated the costs that will accrue as a result of the changes in the RESPA-TILA rule. Specifically, the CFPB states that there are only two major software vendors that support small mortgage lenders for loan processing systems which include the production of the various disclosures, including the new Loan Estimate and Settlement Disclosures. The CFPB also stated in the Rule as well as in the SBFREA panel that they believe the costs to implement these new disclosures would be absorbed and included in the "annual update" which vendors usually provide to their clients, resulting in little, if any additional costs to the lender. This is contrary to the feedback from the SBFREA panel, and the way the vendor industry provides their clients major updates to software programs. While vendors may provide some "credit" towards a new release such as this one, the scope of these changes are vast and no software company could absorb those costs to redevelop, test, and guaranty the performance of their product. Those costs will be substantial and will be passed down to all lenders.

Closing

Again, all of the above concerns and others were raised during the SBREFA process by ICBA and by community banks during the SBREFA panel on the RESPA-TILA rulemaking. We were disappointed that they were not addressed in the proposed rule. We hope that this will not be true for the upcoming mortgage servicing and mortgage origination rulemakings. These rules, like the RESPA-TILA rule, have the potential to make mortgage lending and servicing impractical for community banks and lead to further consolidation of the mortgage industry. It is imperative that the CFPB take account of the input provided in the SBREFA panels on these rulemakings.

Thank you for convening this hearing and for the opportunity to submit this statement for the record.

August 1, 2012

Statement for the Record

On behalf of the

American Bankers Association

before the

Committee on Small Business

of the

United States House of Representatives

American Bankers Association

Statement for the Record

On behalf of the

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United States House of Representatives

August 1, 2012

Chairman Graves, Ranking Member Velázquez and members of the Committee, the American Bankers Association (ABA) appreciates the opportunity to submit a statement for the record for this hearing to conduct oversight on the Small Business Regulatory Enforcement Act (SBREFA) process as implemented by the Consumer Financial Protection Bureau (Bureau) for the proposed RESPA-TILA rule.[1] ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets—small entities as defined by the Small Business Administration that are the focus of this process.

ABA commends the Committee for holding this oversight hearing. ABA strongly supports the SBREFA review process that Congress chose to require for rules proposed by the Bureau and we offer some suggestions for how to make this process more effective.

ABA believes that convening a Small Business Advocacy Review Panel (Panel) is vital to ensuring that the Bureau considers the potential impact of regulatory proposals on small entities and on the cost and availability of credit. The SBREFA review process offers the possibility for important early information gathering, collaboration, and consensus building around less burdensome alternatives that may significantly improve the rules promulgated by the Bureau. Indeed, we believe that gathering this input is critical to the Bureau's commitment to being data driven, and will ensure a competitive market for all financial service providers—regardless of their size. More importantly, the input will result in rules that genuinely benefit consumers.

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[1] Section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or DFA) compels the Bureau to apply the SBREFA process to Bureau rulemaking. DFA further compels the Bureau to propose an integration of Real Estate Settlement Procedures Act and Truth In Lending Act (RESPA-TILA) disclosures. See DFA sections 1032(f) (12 U.S.C. 5532), 1098 and 1100A.

ABA is grateful for the outreach the Bureau and its fellow Panelists have pursued to involve our association members in this important regulatory process. ABA member small entities who participated in the separate Panel meetings that have been convened to date appreciate the personal courtesy and professional attentiveness that Bureau staff and other Panel representatives showed in arranging and conducting the meetings. We also wish to acknowledge the earnest engagement of fellow small entities and their respective associations in working together to make the Panel meetings productive. ABA and its members look forward to continued constructive involvement with future Panels as the Bureau proceeds with its important work.

However, we believe that the process can be improved. The RESPA-TILA rulemaking was the first occasion that the Bureau, the Chief Counsel for Advocacy of the Small Business Administration and the Office of Information and Regulatory Affairs (OIRA) convened a Panel to comply with the statutory mandate of the Dodd-Frank Act to apply the requirements of SBREFA to Bureau rulemaking. As such, all parties had lessons to learn about how to conduct the process most effectively. With this in mind, we offer the following recommendations to ensure that the process going forward affords small entities the opportunity that Congress envisioned for beneficial impact:

- **More Time Is Needed for Small Entity Review.** The Panel must ensure that there is ample time for the selection, preparation and participation of Small Entity Representatives in the SBREFA review process.

- **The Panel's Focus Should Be Advocating for Small Entities.** The Panel Report should reflect its statutory duty to minimize the impact of a proposed rule on small entities and the cost of credit.

- **Vendor Implementation Cost Data Should Be Gathered.** The Panel should insist that the Bureau gather information from third-party service providers about potential implementation costs.

We will discuss these items in detail below.

I. More Time is Needed for Small Entity Review

For the SBREFA process to improve rulemaking and to reduce regulatory burden on small entities, ABA firmly believes that the Small Entity Representatives (SERs) must be afforded adequate time to consider the proposals, to provide detailed and specific feedback, and to reach consensus on alternative approaches to achieve the desired regulatory goal. Given adequate time, SERs could spend more time consulting with staff about required policy and process changes and with third-party vendors about anticipated software and system changes. Similarly, additional time would permit SERs to have conversations with other mortgage market participants. Such consultation would certainly allow additional issues to surface. Moreover, such consultation allows for the development of less burdensome alternatives that could then be suggested to the Bureau for consideration.

ABA believes that the timetable established for SER participation in the RESPA-TILA rulemaking unnecessarily limited their ability to provide input. In that rulemaking, the SERs were invited to participate and were provided with information about the SBREFA process and the regulatory proposals being **considered** ***just two weeks before the convening meeting***. As the Committee is aware, small business men and women work long hours and have many demands on their time. A two-week preparation period is simply inadequate to permit a thorough review of the proposed alternatives, to consider the ramifications of each, and to try to gauge their potential impact on compliance costs and operations. Allowing only a week after the convening meeting for SERs to provide written comments to the Panel further limited the ability of SERs to provide detailed information and feedback. If SERs are to successfully fulfill their representative role, they need to be engaged earlier so that they can leverage the resources of professional networks and trade association memberships to collect relevant experience from peers.

The aspirations of the SBREFA process—information gathering, collaboration, and consensus-building around less burdensome alternatives to achieve a regulatory goal—take time, and ABA is concerned that the process and timetable established by the Bureau for SBREFA review is inadequate. ABA believes the Bureau should allow several months after SERs are identified and before the Panel is officially convened. During this pre-panel outreach period, the Bureau could facilitate SER interaction and discussion in person or by conference call. Presumably, each meeting would permit the discussion to delve further into the proposed alternatives and to identify issues for which additional discussion and data are needed. Also, extending SER contact over a longer period would facilitate greater interaction among SERs, enable more outreach to SER colleagues to access other sources of representative information, and increase opportunities to reach consensus on a regulatory framework that will work optimally for consumers and small entities.

ABA appreciates the fact that the Dodd-Frank Act has challenged Bureau staff to complete important new mortgage regulations in a tight time frame. We believe more outreach is possible, however. For example, the RESPA-TILA integration project was initiated in the early fall of 2010 with a series of Bureau sponsored roundtables that led to the "Know Before You Owe" initiative in 2011. Despite repeated calls by ABA and other mortgage industry representatives for the Bureau to evaluate possible rule modifications simultaneous with its form redesign, the Bureau chose a different path and delayed engaging stakeholders in the rule proposal development phase. This choice, not the Dodd-Frank Act deadline, resulted in postponement of the SBREFA Panel until the end of February 2012. We believe the Bureau could have and should have recruited SERs and engaged them in interaction far earlier in the Know Before You Owe process so that they could have been better prepared to provide input.

ABA believes that the Panel Report on the RESPA-TILA rule reflects the rushed time-table and the limited opportunity SERs had to provide anything other than an initial reaction to the Bureau's proposals. As the Report notes, there was significant discussion and disagreement about the proposed re-definition of what constitutes an application (triggering early disclosures and statutory liability for inaccuracies in those disclosures) and specifically "a lack of consensus among the SERs who opposed elimination of the seventh item about what constitutes what additional information is needed to provide a reasonably accurate Loan Estimate."[2] We believe that it was the responsibility of the Panel to provide the opportunity for further discussion to facilitate the identification of a satisfactory alternative for this foundational definition, and it was insufficient for the Panel to recommend simply that "the CFPB solicit public comment on what, if any, additional specific information beyond the six items included under the proposed definition of application is needed to provide a reasonably accurate Loan Estimate."[3]

Similarly, the Panel Report notes that the SERs strongly opposed requiring lenders to provide the Settlement Disclosure three days before closing, challenging its value to consumers

[2] Panel Report at 29.
[3] *Id.*

and describing the operational inefficiencies and added costs for small lenders and settlement agents. Although the Report describes four alternatives suggested during the convening meeting and in written comments filed by the SERs, due to the limited time allotted for consultation with SERs, there was no opportunity for further consideration and discussion of these or any new alternatives that might have surfaced. Instead, the Report simply directs the Bureau to "continue to explore whether the potential impact of the three-business-day requirement on small entities can be mitigated while maintaining the benefits to consumers…"[4]

II. The Panel's Focus Should Be Advocating for Small Entities

Inherent in the SBREFA review process is an obligation for the Panel to be an advocate for small entities. Specifically, SBREFA, as amended by Dodd-Frank Act §1100G, directs the Panel to report on the comments of the small entity representatives and to recommend specific steps the Bureau may take to minimize any "significant economic impact on small entities consistent with the stated objectives of applicable statutes," ***including any increase in the cost of credit for small entities.*** In addition, the Panel should evaluate specific alternatives to minimize these impacts.[5]

ABA believes that the Panel report for the RESPA/TILA rulemaking fails to meet these statutory objectives. The report does provide a summary of the regulatory proposals and the SER comments. However, we believe that the "Panel Findings and Recommendations" shows a reluctance to be an advocate for small entities. For example, with regard to the proposal to require lenders to provide the Settlement Disclosure three days before closing, the report states, "The Panel recognizes that statutory requirements ***limit*** the discretion of the CFPB to shorten the three-business-day waiting period" (emphasis added).[6] A closer look at the Bureau's discussion of its integration of RESPA and TILA, however, demonstrates that the Bureau has exercised considerable discretion in interpreting Congressional intent to integrate the two statutes. In fact, forcing precise and final fee disclosures in advance of settlement is not a requirement found in the underlying statutes being integrated. The proposed three-day period exhibits inflexibility in the Bureau's deliberations and an apparent unwillingness to analyze all of the options available. Considering the strong opposition by the SERs from all participating industry segments to the

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[4] Panel Report at 29.
[5] *See* Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C.§609(d).
[6] Panel Report at 29.

proposed three-day rule, ABA believes that the Panel Report should have challenged—not accepted—the Bureau's assertion of "limits" on its discretion.

In addition, as noted above, the Panel further abdicated responsibility for providing specific direction to the Bureau. Instead, the Panel simply directed the Bureau to "continue to explore whether the potential impact of the three-business-day requirement on small entities can be mitigated." Indeed, each of the Panel recommendations and findings concludes in a similar way. Rather than recommending that the Bureau take a specific action or accept a suggested alternative, the Panel Report recommends that the Bureau "solicit public comment," "consider," or "evaluate" an existing proposal.

The identification and recommendation of less burdensome alternatives—such as phased-in deadlines, reduced obligations, thresholds or exemptions for small entities—is an important objective of a SBREFA Panel. There is no question this difficult work requires a considerable commitment of time, but doing so will ensure that the small business review makes meaningful recommendations and results in consumer protection rules that work for both consumers and small businesses.

III. Vendor Implementation Cost Data Should Be Gathered

ABA believes that in preparation for a SBREFA review, the Bureau should be required to gather and share with SERs information from third-party service providers about anticipated system and software changes (and potential costs) required by regulatory proposals under consideration. At the beginning of the Panel's summary of SER comments on the RESPA-TILA rule, the Panel states that SER estimates of implementation costs often varied, noting, "Because the SERs were drawn from different industries and their experiences differed, the SERs understandably may have famed, referred to, or described similar costs differently."[7] ABA agrees with this assessment, but we do not believe that it can excuse the Panel's failure to elicit and consider information on the anticipated economic impact of a regulatory proposal under consideration.

We understand that during the RESPA-TILA convening meeting, there were assumptions about required changes and costs, but no real information or data. ABA believes that the Bureau—whose access is far superior to that of small entities—should have an affirmative duty

[7] Panel Report at 17.

to obtain this information and to provide it so that SERs can react to it and suggest how the changes might affect their business practices and fees and gauge the likely impact on the cost of credit. In addition, having this information available should minimize the variation between SER cost and burden estimates, providing the Panel greater confidence in the information it collects.

Also, extending the time period before the convening meeting will enable the Panel to delve further into cost estimates. For example, in the RESPA-TILA process, during the convening meeting the SERs strongly opposed the proposal to require lenders and settlement agents to maintain disclosures in "machine-readable" format, anticipating the costs to develop and implement the technology would be "substantial." ***However, without specific information about the technology that would be required, they could not even estimate the cost***. Not surprisingly, the Panel Report simply recommended that the "CFPB solicit public comment on those costs and explore whether an exemption from any requirement to maintain the required records in machine readable format should be provided to small entities..."[8]

We believe that the Panel should have insisted that the Bureau provide specific information on its expectations for machine-readable disclosures including cost estimates from service providers who have developed, or are developing, this technology. Then the SERs could have reacted to this information, describing how it would impact their practices and ultimately the cost of credit, or suggesting alternatives for mitigating this impact.

Conclusion

ABA understands that the Bureau is in the process of implementing a step in its rulemaking process that has not previously been a component of consumer financial protection regulation. The implementation of the SBREFA review process is essential to the success of the Bureau's mission, particularly since the Bureau's rules will apply to all size institutions, but they only have supervisory experience with the largest providers. We encourage this Committee to exercise appropriate and continuing oversight of the Bureau's SBREFA review process to ensure it is meaningful and results in consumer protection rules that work for both consumers and small businesses.

[8] Panel Report at 30.

CUNA
Credit Union National Association
cuna.org
Bill Cheney
President & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | Phone: 202-508-6745 | Fax: 202-638-3389

July 24, 2012

The Honorable Sam Graves
Chairman
Small Business Committee
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Graves:

On behalf of the Credit Union National Association (CUNA), I am writing about the Small Business Committee's upcoming hearing on federal agency compliance with the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612 and the Consumer Financial Protection Bureau's (CFPB) recently published proposed rule on the 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 the opportunity to provide comments on both topics in advance of this hearing.

Section 1100G of the Dodd Frank Act

As the Committee is aware, Section 1100G of the Dodd-Frank Act added the Consumer Financial Protection Bureau (CFPB) to the short list of agencies required to conduct Small Business Advocacy Review (SBAR) Panels under 5 U.S.C. §§ 609. Other agencies required to conduct these panels are the Environmental Protection Agency and the Small Business Administration. I will focus my comments on the CFPB SBAR Panel process and experience to date.

CUNA appreciates the fact that CFPB is charged with, and is complying with, assembling these panels. It is important for regulators to consider the real-world and real-dollar impact that regulations have on regulatory burden and compliance costs for small businesses. However, we do have some concerns with the operation of these panels as experienced thus far.

First, CUNA would appreciate if the CPFB would convene panels for rules that were transferred to them from other agencies, for instance, the Federal Reserve's Ability-to-Repay/Qualified Mortgage Rule. To date, the CFPB has not done this for all transferred rules.

Secondly, CUNA believes that those invited to participate in a panel should be afforded adequate time to prepare in advance of, or to submit their written remarks following the completion of a panel discussion. Providing some type of consistent timeframes for inviting Small Entity Representatives (SERs) to participate and to submit comments following a panel would be welcome. Often, SERs need more than a week to either prepare and make arrangements to attend, or to provide written comments following the panel discussions. As an example of what the SERs must prepare for, please see the CFPB's "Small Business Review Panel and Cost of Credit Consultation for RESPA/TILA Integration Rulemaking: Discussion Issues for Small-Entity Representatives" available on their website at http://files.consumerfinance.gov/f/2012/02/20120221_cfpb_tila-respa-integration-rulemaking-discussion-issues-for-small-entity-representatives.pdf.

Third, CUNA feels there could be more transparency regarding SERs and the resulting reports required of the panels. It has been difficult to ascertain who has been invited to participate in these panels. Information regarding the selected SERs is not posted on the agency's Web site prior to the panel discussions and hasn't been made available upon request. Moreover, in order for a trade association with a vested interest in the topic being discussed to attend, trade association staff must be an invited guest of an SER, and the SER is required to notify the CFPB of this individual's attendance in advance of the panel discussions. CUNA would recommend allowing trade representatives with a vested interest to be able to attend these panel discussions as an observer with the option to submit written comments following the conclusion of the panel discussions.

We are also concerned that, while the panel report is required to be "issued" once a panel has been concluded (within 60 days of a panel convening); the CFPB's practice thus far has been to only publish such reports alongside a proposed rule. In the case of the TILA/RESPA proposed rule, the SBAR panel was convened in February, and the SBAR report was issued on April 23, yet the report was not published and made available to the public until the proposed rule was issued on July 9, almost three months after such report was made available to the CFPB.

To be clear, CUNA appreciates the input the CFPB is willing to receive from credit unions around the country. However, we believe these suggestions would improve the process for both the CFPB and our industry.

RESPA/TILA

CUNA supports providing consumer disclosures that are meaningful and clear for borrowers to understand the important terms of a financial transaction. 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. During the development of the proposed integrated forms, the CFPB reached out to CUNA on numerous occasions to solicit information on credit unions' views and concerns.

However, we are very concerned about key aspects of the 1,099 page RESPA/TILA proposed regulation that was released on July 9, 2012, and this is a perfect example of the enormous burden that credit unions and other smaller financial institutions face. The proposal is massive and reviewing of the document will prove to be problematic for some stakeholders who do not have the luxury of large staffs and teams of lawyers they can devote to working through the proposal, while also trying to comply with other CFPB issues that are pending. Due to the various mandates Congress required the CFPB to implement, we are concerned that just being able to respond to all the important issues raised in the proposal will be burdensome, particularly in light of other proposals that are pending or developing from the CFPB to meet statutory requirements.

Finance Charge
One aspect of the new RESPA/TILA proposal would be to expand the definition of the finance charge as defined under Regulation Z. As the Bureau has acknowledged, absent further action by the bureau, a more-inclusive finance charge as proposed would have the following effects:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans;
- Cause more loans to trigger requirements to maintain escrow accounts for first-lien higher-priced mortgage loans;
- Cause more loans to trigger requirements to obtain one or more interior appraisals for "higher-risk" mortgage loans;
- Reduce the number of loans that would otherwise be "qualified mortgages" under the ability-to-repay requirements, given that qualified mortgages cannot have points and fees in excess of 3% of the loan amount.

Comments are due to the CFPB on the finance charge definition by September 7, 2012, and CUNA will be focusing on the substance and impact of the proposed expansion of the finance charge definition. While the current system for determining what is a finance charge and what is not is certainly confusing, we hope to work with the CFPB to address this issue without triggering so many other unintended consequences.

Effective Dates
The Bureau is proposing to delay the compliance deadline of certain requirements relating to new disclosures required under the Dodd-Frank Act and is seeking comments on this

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approach. While Congress is responsible for creating these requirements, it has given the CFPB authority to mitigate compliance burdens and we appreciate the CFPB's willingness to consider how best to use that authority as it relates to these disclosures.

Congress did not specify a specific compliance deadline for this regulation and the Bureau is presently considering a compliance deadline for the RESPA/TILA proposal. We hope Congress will encourage the CFPB to give credit unions as much time as possible to comply with a final rule.

Model Forms vs. Standard Forms
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 issue 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 believe that such an approach would yield less opportunity for unscrupulous lenders to present "bait and switch" scenarios to consumers, and that this approach would contribute overall to better consumer protection. Again, recognizing that the RESPA/TILA form combination is required by 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 to 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.

Consider Repeal of Specific Disclosure Requirements
With respect to disclosures specifically mandated by the Dodd-Frank Act, we recognize that Section 1419 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 Congress to repeal this requirement or make it more meaningful to consumers by clearly distinguishing it from the annual percentage rate. We are concerned that there is tremendous potential for consumer confusion with this disclosure, particularly if it is not distinguished from the APR.

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. 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. 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 estimated 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 requirement. It is difficult, at 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.

Best regards,

Bill Cheney
President & CEO