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October 9, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

Re: RESPA Mortgage Servicing Proposed Rule. Docket No. CFPB-2012-0034/RIN 3170-AA14
TILA Mortgage Servicing Proposed Rule. Docket No. CFPB-2012-0033/RIN 3170-AA14

Transmitted electronically to www.regulations.gov for each proposed regulation.

Dear Director Cordray:

I am writing on behalf of more than one million members of the National Association of REALTORS® (NAR) to provide combined comments on the mortgage servicing proposed rules issued under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA).¹ NAR supports the overall objectives of these rules that are designed to clarify the obligations of servicers and protect borrowers.

NAR is America's largest trade association, including our eight affiliated Institutes, Societies and Councils, five of which focus on commercial transactions. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

The elements of the proposed rules that will implement provisions of the Dodd-Frank Act will go into effect in January 2013 if the CFPB has not yet issued a final rule. We urge you to publish the final rule by the statutory deadline, with an appropriate implementation period for servicers to adapt to the many new requirements. Implementation on an ad hoc basis by servicers, without a final rule, based on their individual understandings of the statutory requirements, would cause confusion, not just for consumers, but also for the servicers.

NAR believes the approaches the CFPB is considering to implement the new law and make other improvements under your general regulatory authority provide a common sense framework to mortgage servicing. Generally, servicers and consumer representatives are in the best position to analyze the various approaches, identify ways to streamline implementation, and avoid unnecessary and expensive "red tape" while at the same time protecting homeowners and giving them the information and tools they need to manage their mortgage obligations. We do, however, have a number of specific suggestions.



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¹ See 77 Fed. Reg. 57200 for the RESPA mortgage servicing proposed rule and 77 Fed. Reg. 57318 for the TILA mortgage servicing proposed rule (September 17, 2012).

RESPA Proposed Rule

Force-Placed Insurance (section 1024.37). The strict limits being proposed on the ability of servicers to arrange for force-placed insurance will significantly reduce an area of significant abuse in the servicing industry. Force-placed insurance is often typified by extraordinarily high premiums which means that these types of policies put in place unilaterally by lenders without oversight, can leave non-delinquent borrowers carrying the astronomical cost of two insurance policies. Borrowers are often left covering these costs while going through the burdensome process of getting their lender to recognize the preexisting coverage and refund force-placed premiums assessed.

Moreover, the high premiums and fees related to force-placed insurance can be the “last straw” for a borrower struggling to avoid losing the home. Catching up on the mortgage payments can be hard enough, without having to pay these extraordinary, sometimes questionable costs. Even where a borrower decides the home is no longer affordable, a large balance of such unpaid charges can make a short sale impracticable and result in foreclosure, with all of its damaging effects not just for the borrower and the lender, but also for the immediate neighbors, the wider community, and the economic recovery.

The requirement for servicers to advance funds to the borrower’s escrow for payment of the insurance policy would protect both the lender and the borrower. It avoids imposing costly premiums of force-placed insurance on borrowers while protecting the lender and the borrowers against loss of, or damage to, the home. You have invited comments on how to handle situations where there is no escrow and the borrower is responsible for paying the insurance premium directly to the company, and have suggested several alternatives. Other than urging you, in general, to adopt a requirement that results in an affordable premium for the borrower, we believe that the best parties to advise you on specifics are representatives of servicers and consumers.

Early Intervention with Delinquent Borrowers (section 1024.39). For years, REALTORS® have communicated to various government agencies the outrage expressed by their clients, and at times by themselves as delinquent homeowners, that it is nearly impossible to find help in time to prevent the loss of the home. NAR has urged lenders to increase their capacity to work with consumers in order to assist families stay in their homes and, where this is not possible, make short sales a feasible alternative to foreclosure. In 2008, when we first urged lenders to increase their servicing capacity, we found that lenders did not yet fully understand the urgency or scope of the problem. They apparently believed that the problem would resolve itself, presumably with the help of a prompt return to a steady pattern of increases of home values. Everyone now recognizes the need for both government loan modification and short sale programs (HAMP, HARP, and HAFA), as well as the proprietary versions of these programs that lenders have developed, very often based on the principles of the government programs. But confusion and frustration continue to baffle homeowners and those that seek to help them, including REALTORS®.

Accordingly, NAR strongly supports the Bureau’s proposals for requiring early intervention by servicers to help troubled or delinquent borrowers. These homeowners are often overwhelmed by their financial situation and the inability to get help from a single knowledgeable source. It is crucial that these borrowers receive, as soon as problems arise, information about their options, available programs, and how and where to receive help.

We appreciate the CFPB’s decision to accept NAR’s suggestion that the first outreach to a borrower who has missed a payment should be within 30 days of the due date, not the 45 days you considered earlier this year in an outline of policy options under consideration for the proposed rules.

The outline included the option of requiring servicers, within five days after a borrower notified the servicer of problems the borrower was having staying current on the loan, to provide the borrower with written information about loss mitigation options and information. We have not found a provision governing this situation in the proposed rule and recommend that a short deadline for responding to such borrower requests be included in the final rule.

Continuity of Contact with Delinquent Borrowers (section 1024.40). NAR has long urged lenders to provide a single point of contact to assist borrowers. We strongly support requiring servicers to assign personnel to have ongoing responsibility for working with the homeowner. We believe that except in the case of the smallest servicers, teams are the best approach. Borrowers should be informed in detail about how the servicer will handle their cases. Because no one individual will always be available to assist the borrower over many months, due to workload, temporary absences due to vacation or illness, and staff turnover, we believe the team approach is the most feasible.

Loss Mitigation Procedures (section 1024.41). In light of the continuing confusion over who is eligible for loss mitigation and how to be approved for it, NAR welcomes the proposed rule that would establish standard procedures related to applications for loss mitigation and deadlines for both servicers and borrowers. Restrictions on servicers going forward with foreclosure sales until they meet various criteria is particularly important to minimize the too-common situation that a

foreclosure cuts off a nearly final loan modification or short sale. Ideally, government and proprietary loss mitigation programs will gravitate towards these uniform rules to make it easier for all involved, not least the servicer personnel on the front line who now can face too many alternative sets of rules established by individual investors.

TILA Proposed Rule

Periodic Statements for Residential Mortgage Loans (section 1026.41). NAR supports the proposed exemption from this section for small servicers that service their own loans. Our main concern relates to cases where the seller provides the financing for one or a few properties. Seller financing can be crucial in certain markets and for unusual properties, especially in times of economic stress. In such situations, it should not be a problem to leave to the parties how to communicate the details about the current principal balance and other information related to the current status of the loan. We trust that these small servicers will accommodate all reasonable borrower requests about the balance of their mortgage loans.

Payoff Statements (section 1026.36(c)(3)). NAR also strongly supports imposing firm deadlines for lenders to send accurate payoff balance information to avoid delays, and even cancellations, of closings. Having deals collapse because the payoff amount is not communicated in time should be removed from the list of challenges faced by the housing market.

Conclusion

NAR commends your efforts to make servicers subject to requirements to help consumers manage their mortgages. We think that more uniformity and enhanced policies to help consumers avoid foreclosure or, where necessary, use a short sale to dispose of the home will also help the servicing industry and the mortgage investors they represent.

We would be pleased to discuss these issues and the state of the housing and mortgage markets in more detail at your convenience. If you have any questions, please contact Charlie Dawson, our Policy Representative for Financial Services, at cdawson@realtors.org or 202.383.7522.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Moe', followed by a horizontal line.

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