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November 5, 2012

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

Re: Docket No. CFPB-2012-0028 or RIN 3170-AA19 (submitted electronically)

Dear Director Cordray:

On behalf of the 1 million members of National Association of REALTORS® (NAR), I appreciate the opportunity to comment on the proposed rule amending Regulation Z and Regulation X to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) seeking to harmonize the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) forms and disclosures.

RESPA/TILA Harmonization Goal

NAR has long supported efforts to combine the initial Truth in Lending (TILA) disclosure and the Good Faith Estimate (GFE) into a single more understandable document. NAR has and continues to applaud the Consumer Financial Protection Bureau's (CFPB or the Bureau) efforts to combine these two forms. We also applaud the outreach CFPB has done to industry and consumers in an effort to perfect the combined form. We strongly believe that statutory interpretation aside, this was in fact Congress' intent in including RESPA/TILA harmonization in Dodd-Frank.

NAR does not believe Congress truly intended an attempt to largely or fully meld the two statutes into a single regulation. As the Bureau acknowledges, earlier attempts at updating and combining the forms led the regulators to express the opinion that legislative changes to RESPA and TILA would be required before such an effort could be accomplished by a regulator. In light of that and since the legislative mandate does not contain significant direction, it is hard to imagine Congress contemplated the fundamental changes the CFPB is proposing.

RESPA and TILA at heart serve two fundamentally different purposes. TILA is designed to ensure consumers are given truthful and accurate information regarding the loan they are obtaining. RESPA is designed to ensure that consumers are given a solid estimate of settlement costs at or soon after application, disclose changes during the approval process, and memorialize the settlement accurately and completely at closing. RESPA also recognizes that in a large percentage of transactions, the transaction is both a real estate transaction and a mortgage transaction. For this reason, RESPA is more flexible and covers a broader spectrum of issues.

Because the two laws serve largely different purposes, NAR has questioned the wisdom and advocated against a broader effort to completely merge the two laws. NAR has been sharing our concerns since the beginning of 2012 when it became obvious to us that harmonization proposals were going to go well past merging the GFE and initial Truth in Lending disclosure. We believe the rule as proposed will fundamentally change the settlement process with no net benefit to consumers and more likely significant costs in terms of time, money, and frustration.

I. Closing Disclosure and Process Concerns

a) 3 Day Waiting Period

The proposal to institute a 3-day waiting period upon receipt of the final closing disclosure (the combined HUD-1 and final TILA disclosure) on the surface sounds like a reasonable idea in a normative environment. However, in the complex world of real estate and mortgage transactions where many rules, regulations, parties, and other market participants all play a role in achieving consummation of the transaction, a hard and fast 3-day rule is likely to cause more problems than any hypothetical value it would achieve.

The Bureau does propose certain exceptions:

1) Buyer and seller negotiations relating to the real estate transaction such as something that might arise after a final walkthrough.
2) A change of $100 or less in any given numbers.
3) Changes that may occur after closing.
4) Clerical errors/technical changes.
5) Bona fide financial emergency.

However, it is unclear whether these exceptions cover the potential for harmless but nevertheless last minute issues that may arise with the 3-day waiting period. Furthermore, the vagueness of the proposed individual exceptions will mean they will be interpreted cautiously and far more changes of any kind will likely lead to the 3-day rule being invoked threatening potential injury to consumers.

NAR members have shown great concern about the 3-day rule. In an August 2012 email survey of more than 2000 REALTORS®, nearly 70% thought the 3-day waiting period would be problematic and was in fact "a bad idea." Only 17% thought it was a good idea and the rest were unsure.

Ostensibly, the Bureau is attempting to give the consumer time to fully review the document prior to closing in order to prevent a rushed and unwanted outcome particularly with regard to the mortgage elements of the transaction. This is a laudable goal that is already achieved by other means. Without belaboring the issue, consumers are already protected from surprises at closing by existing rules. Under RESPA, tolerances must be adhered to or cured. Under TILA, fundamental changes to the loan terms and conditions must be re-disclosed with appropriate time for consideration by the consumer.[1]

The Bureau should leave the two documents (HUD-1 and Final TIL) separate with their attendant rules largely intact. In the alternative and in an effort to comply with the perceived Congressional mandate, the Bureau could require a final TILA disclosure three days before closing and memorialize those final terms on the settlement statement at closing. The Bureau could mandate that the closing disclosure/statement be made available the day before closing while still giving some flexibility for day of closing changes on matters unrelated to the mortgage itself.

To reiterate, NAR's belief remains that there is no need to subject the entire settlement to further restriction that will lead to questions about whether a last minute change is covered by an exception or not. In the current regulatory environment, it is not hard to imagine that far more scenarios will lead to delay simply because of the abundance of caution lenders and virtually all other parties are applying to transactions under numerous existing and pending regulations as well as the dictates of other market participants. Once again, NAR believes that the Bureau need not and should not fundamentally change the settlement process.

b) 3 Day Waiting Period – Waiver

If the Bureau feels it must proceed with the 3-day period, it should include the option for waiver by the consumer. This way if the consumer truly feels they need more time, they can invoke the rule. If not, they can move forward. If the right to the

[1] Not to mention in detail the protections of the Ability to Repay/Qualified Mortgage rule, Anti-steering/Loan Officer Compensation rule, and the Homeownership Equity Protection Act (HOEPA) rule. When taken together all of these rules render items such as imposing the 3 day waiting period superfluous. NAR is seriously concerned that when taken together, these rules will add so much cost and so many restrictions, that consumer access to affordable mortgage credit will be severely restricted.

3-day waiting period is made explicit enough, consumers should be able to consult and obtain advice from the numerous professionals involved in each transaction about whether to approve the waiver or proceed differently.

c) Preparation of Closing Document

The magnitude of the proposed changes to the closing process has left significant uncertainty with regard as to who will prepare the closing disclosure. NAR's solution is to not make wholesale changes to the settlement process and documents and thus avoid a possibly confusing and costly scenario that is of dubious benefit to the consumer.

Without knowing what will ultimately be included in the settlement documents, the process that will be required, and who will be legally responsible for their content, it is impossible to say who should be charged with filling out the forms. NAR suggests the Bureau simply allow arrangements to remain as they are and avoid needlessly confusing and costly changes.

d) Tolerances

The Bureau proposes to tighten the RESPA tolerances, particularly for mortgage firms with affiliates involved in the transaction. NAR believes the tolerance structure implemented by the Department of Housing and Urban Development did not lead to desired cost savings. Instead, many believe that in order to avoid tolerance violations, settlement costs increased. In fact, in our email survey of 2000 REALTORS® 74% said there have been noticeable increases in closing costs.

In meetings with the CFPB, it was made relatively clear that the Bureau has no intention of dropping the tolerance scheme under RESPA.[2] Since industry has adapted to the tolerance structure, the most cost effective outcome could very well be to simply leave the situation as is or only make minor adjustments such as granting leeway for governmental charges, such as taxes and recording fees, which are not as readily knowable all the time at application for a loan as was thought.

The Bureau also proposes a zero tolerance for affiliates involved in the transaction as opposed to a 10% tolerance for unaffiliated firms. The theory is that affiliate charges are more easily knowable and accurate than unaffiliated third party charges. This may very well be true. However, NAR is concerned about ongoing discrimination against affiliate businesses in this rule and other rules such as the Ability to Repay/QM rule and the Loan Officer Compensation rule.

If in fact it is true that affiliate charges are likely to be more accurate and the Loan Estimate is an effective shopping tool, then why would the Bureau feel the need to apply a double standard to affiliate businesses in the calculation of fees and points under the Ability to Repay/QM rule? Clearly under RESPA a firm would be unable to hide charges in the loan estimate and would be subject to tolerance violations either way at closing. Why does it then make sense to create the impression of uncompetitiveness by forcing lenders with affiliates to calculate fees and points differently and likewise include affiliate charges in the "0-0"[3] loan option under the Loan Officer Compensation proposal? NAR believes the Bureau should end discrimination against affiliates in all of these pending rules.

e) Breakout of Appraisal fees

A relatively minor reform the Bureau could undertake would be to breakout the fees associated with appraisals on the HUD-1 or equivalent document. For example, in the case where an appraisal management company is involved in the transaction, it would be useful to know how much of the overall appraisal fee goes to the management company and how much goes to the appraiser doing the actual appraisal. This would give consumers a better understanding of what they are paying for, and to whom, when they purchase appraisal services.

II. <u>Issues Regarding the Loan Estimate</u>

a) Timing of Issuance

NAR believes that altering the formula for when a loan estimate must be issued from the previous formula for the GFE will cause unnecessary confusion and may lead to inaccurate and more numerous loan estimates being issued. The current rule of requiring six items of information plus a catchall seventh item for issuance of a GFE has led to inflation of certain closing

[2] It is worth noting that it is unclear whether RESPA itself grants sufficient legal authority to impose tolerances in the first place.
[3] The "0-0" option is the no fees/no points proposal in the loan officer compensation rule that essentially builds settlement costs into the interest rate of the loan.

costs and other factors in order to ensure the final costs remain in line with tolerances. This has had the perverse effect of causing closing costs to actually increase according to one study.[4]

Given the numerous regulations governing whether a consumer will be eligible for certain types of mortgages such as a QM under the ability to repay standard, it is highly likely that lenders will require more information, not less before they can truly provide a consumer with an accurate loan estimate.

It is also important to note that when HUD implemented its rule for the GFE, it caused much confusion and led to costly system glitches as lenders and their software providers grappled with implementation and lack of clear knowledge of the true point at which a GFE should be issued.

Should the Bureau nevertheless proceed on this path, the Bureau should do what HUD ultimately did and grant a grace period after the implementation deadline so that glitches can work through the system.

b) Shopping

Both HUD with the GFE and now the Bureau with the loan estimate have expressed a desire that this document be used by consumers to shop for a lender and loans. It is unclear with regard to the GFE whether such shopping has materialized, particularly in this tight credit environment. Should such shopping occur in the future, NAR cautions the Bureau that this in fact could harm the consumer.

While the methods of the credit bureaus are less than transparent, it is clear that credit inquiries can lead to a reduction in credit rating. If a consumer obtains too many loan estimates over too long a period, they will likely at least marginally hurt their credit score. This could cause one to either not ultimately qualify for a loan or lead to an otherwise higher interest rate. The Bureau should consider this as it moves forward and take measures to prevent credit inquiries from negatively affecting one's credit score. Should the Bureau choose not, it must at the very least raise awareness of this negative effect.

c) Total Interest Percentage

The Bureau should use its broad exemption and modification authority to eliminate the total interest percentage (TIP) from the forms and associated rules. The TIP is a superfluous calculation that would likely have less meaning to consumers than the APR. Keeping the TIP only causes needless confusion and adds little to consumer understanding of the loan product and terms being offered. It would also likely add time and cost burdens to providers as providers would have to explain the calculation and its implications or lack thereof to the consumer's transaction.

d) Lender Cost of Funds

Likewise, the Bureau should use its broad exemption and modification authority to eliminate the Lender Cost of Funds (LCF) measure from the forms and associated regulations. Not only would the LCF add to confusion for consumers, it is virtually incalculable in any meaningful or accurate way given the many ways in which loans are originated, sold, or held. Furthermore, attempting to create some type of index or other benchmark would similarly fail a meaningful and accurate test.

It appears the creation of this measure was an attempt to force a disclosure of the wholesale cost of the mortgage funds to the lender or originator so the consumer can bargain on the retail costs to them. First, the pricing of wholesale funds varies greatly and is often dependent on the ultimate holder of the loan, meaning it may not only be hard to calculate but virtually unknowable prior to closing the loan. Second, forcing industry to disclose a number even if it is not meaningful, could in fact lead to reduced access to credit as lenders reject borrowers who attempt to negotiate based on this number rather than on market prices reflected in interest rates and closing cost pricing.

e) APR

To reiterate our earlier comments, NAR question the wisdom and practicality of proposing and implementing the so-called "all in" annual percentage rate or APR.

First, it is unclear how the reconfigured APR will impact or relate to other rules such as the yet to be finalized Ability to Repay/Qualified Mortgage rule and the HOEPA rule to name two. This makes it very difficult for commenters to provide

[4] http://www.bankrate.com/finance/mortgages/2010-closing-costs/

meaningful input to the CFPB on this issue. If changes are made, NAR suggests that they should be done after other Dodd-Frank rules are finalized.

Second, as the CFPB and other agencies have documented and the industry can attest, the APR itself is of little value to consumers. At best, it causes needless confusion. Reconfiguring the manner in which the APR is calculated does nothing to improve consumer understanding of the APR.

Finally, Dodd-Frank itself does not require wholesale changes to the APR. The sheer magnitude of changes coming forth has the potential to impose much confusion and cost to both industry and the consumers they serve. For these reasons, we urge the CFPB to simplify their approach and focus on elements of the proposal that are specifically required by Dodd-Frank and will have maximum impact on consumer understanding such as the refinement of the initial loan disclosure to ensure that it works with all loan products.

III. <u>Logistics and Implementation Cost/Burden Concerns</u>

a) Record Retention

NAR recommends a shorter record retention requirement rather than a longer one as it is costly to retain significant amounts of information for extended periods. However, whatever retention period the Bureau chooses should be consistent across all regulations.

b) Machine Readable Formatting

NAR strongly urges the Bureau to consider the significant costs to small business that a requirement for machine readable forms could impose. These costs could significantly impact smaller lenders and other settlement service providers, potentially making them uncompetitive and thus reducing consumer choice. If the Bureau chooses to impose this requirement it should consider a small business exception as well as an extended implementation period.

c) Mandatory Forms

NAR believes the Bureau is correct in mandating the use of the Bureau's version of the loan estimate to avoid confusion amongst settlement service providers as well as for consumers. Use of a standardized form will make it easy for consumers to use the loan estimate for comparison purposes. The same holds true for settlement service providers who will have a much easier time knowing which form is in fact the loan estimate when compiling forms and information for closing transactions.

d) Effective Date and Implementation – Other Dodd-Frank rules Affect RESPA/TILA

NAR believes significant lead time is needed for proper implementation of RESPA/TILA reforms. This is particularly so if the Bureau chooses to implement a broad reform close to the one proposed. NAR recommends at least one year's lead time based on the industry's recent experience with HUD's RESPA reforms. The implementation was more costly in both time and money than HUD anticipated and there were many glitches along the way as evidenced by the need to produce 400 frequently asked questions.

Along the same lines, the Bureau should not issue the final rule until the Ability to Repay/QM, QRM, HOEPA, Loan Officer Compensation, and other rules have been finalized as they all could affect the RESPA/TILA rule. It would add needless cost to issue the RESPA/TILA rule only to have to update the rule and associated forms and systems to take into account the other rules.

IV. <u>Conclusion</u>

NAR believes the Bureau should significantly simplify the RESPA/TILA harmonization proposal and focus on the elements that will most benefit consumers, especially the upfront loan estimate. The nature of real estate and mortgage transactions is such that the opportunity for real cost comparisons exists at the beginning of the process. Soon after a decision is made on a lender, the process transforms into an effort to complete what is a both a complicated transaction and especially in the case of a home purchase, a multidimensional personal and familial life event. This transformation renders almost worthless the myriad disclosures and paperwork presented in the late stages of the transaction.

If consumers are made aware of major changes such as changes to loan terms and have an opportunity to question or reject them and as long as there are protections against unreasonable and major changes in settlement costs at closing attributable to the lender or other settlement service providers such as those that exist under current regulations, then consumers will be well-served. They will not be well served by fundamental, costly, and confusing changes to the settlement process.

Thank you for this opportunity to comment. NAR stands ready to assist you as you endeavor to meet the charge provided to you by Dodd-Frank.

Sincerely,

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