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February 21, 2013

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

Re: Docket No. CFPB-2013-0002 or RIN 3170-AA34 (submitted electronically)

Dear Director Cordray:

On behalf of the 1 million members of the National Association of REALTORS® (NAR), I appreciate the opportunity to comment on the proposed rule amending Regulation Z to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), seeking to amend the Truth in Lending Act (TILA) regulations in accord with the Ability to Repay (ATR) rule.

NAR strongly supports measuring a consumer's ability to repay before advancing mortgage credit. In fact, our policy in support of measuring the ability to repay dates back to 2004. NAR also believes that access to credit has tightened significantly since the mortgage crisis and remains tight. The Consumer Financial Protection Bureau (the Bureau) must weigh very carefully whether all of the proposals under this rule serve to ensure that a consumer can repay a mortgage or instead simply further reduce access to mortgage credit for qualified borrowers. Furthermore, the Bureau should also consider whether elements of this proposal reduce access to credit by reducing access to the most experienced mortgage professionals as well as reputable firms with strong ties to their local communities.

Fees and Points - Affiliates

NAR reiterates that the Bureau should use its broad authority to address the issue of discrimination against affiliate businesses in the calculation of fees and points in making a determination of whether a loan is a "Qualified Mortgage" (QM) and eligible for safe harbor or other protections under the rule. Forcing lenders with title affiliates in particular to count these charges and others such as escrow for insurance toward the 3% cap is unfair and will lead to reduced access to credit.[1] The title industry is heavily regulated at the

[1] NAR once again also notes that corrective language with regard to title charges was included in Dodd-Frank and previous anti-predatory lending legislation. Both the Bureau and the Board have taken its last minute removal during the haste of the conference as evidence of Congressional intent. The history and facts show that its inclusion far more reflected the intent of Congress, and its exclusion the haste of finalizing a large bill in a short period of time.

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state level and highly competitive. Charges simply do not vary that much whether affiliates are involved or not.

In addition to the competitive nature of title, other laws such as the Real Estate Settlement Procedures Act (RESPA) prevent unjust enrichment via affiliates. An owner of affiliates simply cannot collect any more than the profits commensurate with his or her ownership interest in the affiliated firm. In addition, RESPA prohibits referral fees and any other thing of value from being given. This means there cannot be any financial incentive for a real estate agent or other party to the transaction to recommend the affiliate. In fact, the real estate agent often acts as a gatekeeper when affiliates are involved. If the quality of service and costs are not up to standards, they will not recommend the affiliate.

Finally, RESPA prohibits "required use" of affiliates so brokers, agents, builders, or other settlement service providers simply cannot legally make a consumer use an affiliate. The Bureau should consider all of these elements and use its authority to end discrimination against affiliates. This would allow more consumer choice, convenience, and competition.

Fees and Points – Originator Compensation

NAR believes the Bureau should only count fees and points paid directly by the consumer towards the calculation of fees and points under the 3% cap. To put it simply, the various structures under which originators are compensated reflect diversity in the industry. Because compensation, reasonable profits, or cost of doing business under certain business models is more transparent than others should not lead to discrimination against those models. If a given model is truly disadvantaging the consumer, it will be reflected in higher interest rates including those that would violate the QM interest rate caps.

We believe the Bureau should not discriminate against various business models via the points and fees definition because it will ultimately lead to reduced service and reduced access to credit for consumers and greater concentration of lending amongst the largest institutions. At the very least, the Bureau should only count the excess (if any) of originator compensation from fees charged directly to the borrower.

Fees and Points – Loan Level Price Adjustments

NAR also believes the Bureau should reconsider the inclusion of Government Sponsored Enterprise (GSE) Loan Level Price Adjustments (LLPAs) in the calculation of fees and points under the 3% cap. The effects of this pricing mechanism and its relation to whether a loan is QM or not should be measured via the interest rate charged if it exceeds that requisite cap, not the fees and points calculation. Using the fees and points calculation will only serve to limit access to credit for borrowers who otherwise meet the ability to repay test and are otherwise eligible for a QM mortgage.

Small Creditors and Underserved Areas

NAR supports greater flexibility for small creditors and those serving underserved areas. The Bureau should be careful to craft a broad enough standard so as to provide practical and workable options under these two categories. In particular, we question whether the Bureau should limit the definition of "underserved" to a county with two or fewer creditors providing mortgages. NAR suggests that the Bureau expand this to at least three so that there is both flexibility for lenders and choice for borrowers where that choice exists.

Nonprofit Creditors and HFAs

NAR believes the Bureau should give greater flexibility to non-profit creditors such as Habitat for Humanity and its affiliates to serve communities. NAR and its local and state affiliates often partner with Habitat, its affiliates, and other entities providing homeownership opportunities to underserved families. Arbitrary limits on such entities could only serve to reduce access to credit (and the most experienced and effective nonprofit entities) especially amongst those in lower income brackets who nonetheless are eligible for the unique homeownership opportunities such non-profits provide.

Likewise, Housing Finance Agencies (HFAs) also provide unique opportunities for entry-level homeownership. The Bureau should similarly seek to maximize these opportunities in accord with the rule instead of arbitrarily stifling them. In both HFA and many non-profit situations, there is considerable third party support throughout the process for borrowers, including counseling in general. The Bureau should be careful to craft a rule that allows for flexibility and innovation in such programs while still offering basic consumer protections.

Conclusion

NAR appreciates the Bureau's efforts to craft and implement the ATR rule. We believe the Bureau should use its broad authority under Dodd-Frank to ensure that the ATR rule does not have the unintended consequence of limiting access to credit or increasing its cost to consumers, reducing mortgage choice and competition, or picking winners and losers among industry participants.

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,

Gary Thomas
2013 President, National Association of REALTORS®