

June 19, 2018

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The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, D.C. 20552

Re: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities; Docket No. CFPB-2018-0011 submitted electronically via:
<https://www.regulations.gov/comment?D=CFPB-2018-0011-0001>

Dear Acting Director Mulvaney,

On behalf of over 1.3 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the Request for Information (RFI) Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities. There have been numerous regulations issued by the Bureau of Consumer Financial Protection (Bureau) impacting the real estate industry, many of which have been necessary and helpful, but some continue to need attention to maximize compliance, benefits, and important consumer protections.

The National Association of REALTORS® (NAR) is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. REALTORS® businesses are regulated by many statutes, such as the *Real Estate Settlement Procedures Act* (RESPA), and are greatly impacted by the laws under the Bureau's authority related to home purchases transactions. As a result, NAR has a vested interest in providing feedback on the Bureau's actions encompassed in the RFI.

As the Bureau reviews adopted regulations and contemplates new rulemakings following the review of the RFI, the focus should be on continuing to provide clarity and remedy outstanding uncertainty while promoting necessary flexibility for regulated entities. Such changes are critical to incorporating public feedback, maintaining transparency, and reducing unnecessary regulatory burdens, to promote compliance for the real estate industry.

Maintaining Consumer Transparency and Lender Flexibility

Know Before You Owe

The "Know Before You Owe" (KBYO) mortgage disclosure rule that harmonizes the *Truth in Lending Act* (TILA, Regulation Z) and the *Real Estate Settlement Procedures Act* (RESPA, Regulation X) drastically changed the settlement process for consumers and the real estate industry. Through this rulemaking, the Bureau focused on increasing consumer protections and financial transparency, all in an effort to simplify mortgage disclosures. Since enactment in 2015, there have been several updates to the original rule and NAR greatly appreciates the clarity provided specifically on the sharing of the Closing Disclosure (CD) with third parties, including real estate professionals, and the



recent final rule remedying the so-called “black hole.” NAR is encouraged by the Bureau’s continued interest in fixing problematic KBYO provisions, which is necessary as some industry uncertainty remains.

For example, there continue to be issues with the small window to correct minor KBYO errors, which impacts loan salability to investors. NAR is aware of the intense examination by investors and due diligence firms on minor Know Before You Owe errors that jeopardizes overall market liquidity. Some investors are refusing to buy loans with minor errors, even if the error does not negatively impact a consumer or lead to material liability. As a result, lenders can incur huge losses if they sell these loans in the scratch and dent market. This is compounded by the fact that investors are not accepting cures past 60 days, even though investors can take more than 60 days to review and return loans to the lender. NAR is concerned that the increased cost of manufacturing these loans will ultimately trickle down to the consumer and impact access to credit, especially for lower-income and first-time homebuyers.

As the Bureau continues to assess the impact of the updated disclosures and the impact on consumers, providing necessary rules or guidance to adjust to changing circumstances is crucial for maximizing liquidity. NAR urges the Bureau to extend post-consummation timelines to correct minor Know Before You Owe errors and urges continued work with due diligence firms and investors to educate them about loan salability and technical errors. Through the streamlining of valuable information and money saving comparison-shopping, KBYO has made the home loan process a more manageable experience for consumers; however, the Bureau must continue to provide regulatory clarity for the industry for the benefit of home buyers and sellers.

Maintaining Mortgage Credit Liquidity and Availability

Ability to Repay/Qualified Mortgage Rule

The final Ability to Repay/Qualified Mortgage (ATR/QM) rule requires creditors to make a reasonable, good faith determination of a consumer’s ability to repay their mortgage. For mortgages qualifying for QM status, creditors receive certain protections from liability in connection with their ability-to-repay determinations. One way to qualify as a QM is to (1) comply with prohibitions on certain risky features, (2) come within limits on points and fees, and (3) be eligible for purchase or guarantee by Fannie Mae or Freddie Mac (the government sponsored enterprises, or GSEs) while under conservatorship. This provision (or ‘patch’) simplifying qualification of QM status sunsets when the conservatorship ends and no later than January 10, 2021.

The QM exemption was created to ensure the ongoing availability of mortgage credit while lenders transitioned their underwriting standards to meet the provisions in the final rule. By providing for most of the conventional market to continue to originate higher debt-to-income loans as QM loans, the Bureau has allowed the market to originate well-underwritten loans to responsible consumers. As the Bureau examines the ‘patch’, and focuses on the 43 percent debt-to-income (DTI) threshold, NAR recommends that it assess data about the number of consumer loans purchased or guaranteed by the GSEs that exceed the DTI threshold, take into account rising student loan debt levels discussed further below, and ensure continuation of necessary flexibility for certainty and liquidity in the market.

NAR continues to support and encourage innovation and responsible lending but it is important to avoid constriction of credit to otherwise qualified borrowers. Therefore, careful consideration of available data and thoughtful analysis of anticipated market response is imperative as the Bureau evaluates the expiration of this particular provision.

Appendix Q, Standards for Determining Monthly Debt and Income

The large majority of NAR’s members are self-employed independent contractors working in association with brokers and are not classified as employees. NAR continues to advocate for additional flexibility for creditors when establishing a self-employed consumer’s earnings trend. It is critical that the availability of credit for self-employed borrowers is measured to assure that Appendix Q underwriting guidelines are not inadvertently leaving these borrowers with fewer options than salaried employees.

There may be an unspecified quantity of GSE or government-eligible loans that meet agency underwriting guidelines but fail to meet Appendix Q requirements on documentation and calculation of income and debt. Assessing how many of such loans exist and what characteristics made these loans ineligible should provide insight on how to improve underwriting requirements while still maintaining consumer protection goals.

Student Loan Debt

Recognizing that student loan debt is different from other debt is an important step in addressing the effect of student loan debt on potential homebuyers. As the Bureau evaluates financial education resources, future rulemakings, and necessary supplementary guidance, it must assess and incorporate how student loan debt holders are treated in the market, especially first-time homebuyers. For example, how a borrower making monthly student loan payments impacts debt-to-income ratio must be carefully evaluated under QM.

A significant aspect of the QM standard is a requirement that borrower payments on all debts, including those for their mortgage, car, and student loan payments, be 43 percent or less of their total income. Though it may be a reasonable standard in many instances, the continued rise in student debt and a weak labor market may have a long-term impact on the ability of many first time homebuyers to qualify under this standard, particularly lower income consumers. Many of these potential borrowers may find their student loan payments are a significant portion of their total monthly debt burden.

As a result, many community banks and lenders may choose not to approve mortgage loans to a large number of these responsible and otherwise qualified borrowers. This scenario impacts not only those hoping to purchase their first home, but also homeowners looking to trade up to larger homes or refinance their existing mortgages. Thus, any new mortgage finance rules put forward by the Bureau could have the effect of reducing homeownership opportunities for many responsible young Americans if the impact of student loan debt is not considered. As rising monthly student debt payments continue to limit consumers' ability to save for down payments, the Bureau must think through how such circumstances will play out under future regulatory changes.

Points and Fees Definitions under the ATR/QM Rule

In order to meet ATR/QM rule safe harbor, the total points and fees payable in connection with a QM Loan must not exceed three percent for most loans. For example, conforming loans must satisfy the points and fees test in order to receive QM status. As the Bureau reviews adopted regulations, it must consider consumer sentiments in working with affiliated companies and what impact the cap on points and fees has on their ability to use these services.

NAR and other industry partners have collected survey and other data demonstrating the impact of the discrimination against affiliates under the three percent cap on fees and point in the QM rule. An NAR survey of affiliated mortgage lenders revealed that almost half experienced problems with ATR/QM rule. In nearly half those instances where the three percent cap was cited as the cause, consumers either were not able to complete the transaction or not able to complete the transaction with their preferred settlement services provider. Where services were outsourced and charges known to the lender, nearly half of loans reported higher fees.

In addition to such data, there are numerous reports of increased costs when affiliate services were not an option. For instance, in one case, a buyer wound up paying \$600 more a year for their homeowner's insurance because they could not use the real estate affiliate. Another real estate company reported that deals where outside services are used, the additional costs are up to \$500 more per transaction. In a state where title fees were fixed according to law, a real estate company reported that borrowers were forced to use outside title because it was impossible to adjust the affiliate title rate to comply with the three percent cap. Such situations are limiting choices for consumers, rather than providing additional flexibility and cost-saving options.

NAR urges the Bureau to remove or significantly reduce this discrimination to level the playing field for non-affiliated and affiliated companies. As previous research indicates, the use of affiliates often results in important consumer savings, makes the home buying process more manageable and convenient, and is overall more efficient and less likely to have transaction

delays. Additionally, the title industry is already heavily regulated and competitive, and the likelihood that consumers would pay a non-market rate to an affiliate title company, as opposed to an unaffiliated firm, is slim. As the Bureau reviews adopted regulations, it is important that it consider all insights into consumer preferences and, in doing so, how the ATR/QM rule's cap on points and fees may remove preferred options with incremental, if any, benefit. Enhancing competition to allow for a wide array of options will enable consumers to choose the providers best suited for their needs without unfairly disadvantaging any segments of the market.

Evaluation of Potential New Rulemakings/Guidance

Alternative Credit Scoring and Score Transparency

A borrower's credit score is a critical access factor when trying to enter the housing market; with a poor score, or none at all, a borrower stands little to no chance of obtaining a loan. Yet millions of Americans, particularly minorities, immigrants, and people with modest incomes, come from backgrounds that avoid debt, leading many to have little to no credit history. By clearing the way for utility, telecommunication companies and rental histories to be reported for on-time payments to the credit reporting agencies, many of these "thin file" individuals would be able to obtain credit and enter the housing market.

As the Bureau has previously noted, nearly 45 million Americans are underserved and have trouble accessing affordable credit. With new credit scoring models that incorporate additional predictive metrics and payment history, many of these "thin file" individuals would be able to obtain credit and enter the housing market. These new models would help many households, especially minorities and potential first-time homebuyers, achieve housing security by responsibly boosting consumer access to mortgage credit.

In the development and use of alternative credit data, it is imperative to provide consumers the ability to fully understand their credit score and seek correction of any errors based on the "warning flags" a score can raise. Such consumer financial education is key to improving transparency and promoting responsible borrowing practices. As lenders remain stringent in their underwriting, credit scores continue to be increasingly important in the mortgage transaction. And consumers who are not able to fully understand their credit situation may be denied the opportunity to purchase a home.

NAR believes that homeownership is an integral part of the American Dream that should not be out of reach for individuals and families that lack access to traditional forms of credit or lack the foundational understanding of such credit circumstances. Thus, NAR supports the Bureau's assessment of alternative credit scoring models designed to responsibly expand mortgage credit for millions of hardworking families.

RESPA

There is a need for additional clarity on acceptable ways in which settlement service providers can enter into agreements to provide marketing services under RESPA. In 2014, NAR worked with leading RESPA experts to construct "Dos and Don'ts" for marketing services agreements that represent more than a decade's worth of industry best practices. Recent Bureau consent orders and state enforcement authorities implementing Federal interpretations have caused outstanding uncertainty for practicing professionals, resulting in an essential need for updated guidance.

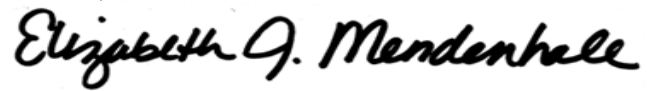
Last year, NAR issued best practices for online co-marketing as digital technology platforms develop unique advertising opportunities for the real estate industry. As online platforms continue to evolve, a lack of guidance and oversight of online co-marketing practices could harm consumers. The Bureau should ratify NAR's best practices to ensure that those who have complied with RESPA do not face unnecessary regulatory burdens and potential lawsuits.

Conclusion

NAR commends the Bureau's efforts to assess the impact of adopted rulemakings and the feedback sought through the RFI process. Ensuring that the Bureau's rules continue to promote responsible homeownership for consumers and important legal compliance by industry are necessary steps to improving consumer financial protection in America and safeguarding a vital

sector of the economy. NAR looks forward to continue working with the Bureau to protect the American Dream of homeownership through responsible and fair regulations.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth G. Mendenhall". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Elizabeth Mendenhall
2018 President, National Association of REALTORS®