RESPRO
Real Estate Services Providers Council, Inc.

Written Statement

Of

Tim Wilson
President of Affiliated Businesses
Long and Foster Companies

On Behalf of

The Real Estate Services Providers Council, Inc. (RESPRO®)

Before the
U.S. House of Representatives

Subcommittee on Insurance, Housing and Community Opportunity
Of the
Committee on Financial Services

On

"Mortgage Origination:
The Impact of Recent Changes on Homeowners and Businesses"

July 13, 2011

Good morning, Chairwoman Biggert, Ranking Member Gutierrez, and Members of the Subcommittee. My name is Tim Wilson and I am President of Affiliated Businesses for Long and Foster Companies and 2011 Chairman of the Real Estate Services Providers Council, Inc. (RESPRO®).

Long and Foster Companies is the third largest independent residential real estate brokerage firm in the nation, with 185 residential real estate brokerage offices and 13,000 real estate sales associates that engage in real estate sales and leasing in Virginia, Washington, D.C., Maryland, West Virginia, Delaware, Pennsylvania, North Carolina, and New Jersey.

Long and Foster offers mortgage services through Prosperity Mortgage, a joint venture co-owned by Long and Foster and Wells Fargo Home Mortgage with 311 employees that originated 12,500 residential mortgage loans in 2010. We also operate an independent mortgage banking firm, Walker Jackson Mortgage, with 113 employees in southeastern states from Georgia to North Carolina. Another wholly-owned company, Mid-States Title, runs several joint ventures with 200 employees that issued approximately 30,000 title policies and conducted over 18,000 settlements in 2010. We issued 3,898 homeowners insurance policies in 2010 through Long and Foster Insurance, a wholly-owned insurance agency.

RESPRO® is a national non-profit trade association of almost 200 residential real estate brokerage, mortgage, home building, title, and other settlement service companies that offer diversified services for home buyers through affiliated business arrangements that are regulated at the federal level under the Real Estate Settlement Procedures Act (RESPA).[1]

My testimony today will focus on how the "ability to repay" and risk retention standards in the Dodd-Frank Wall Street Reform Act of 2010 (Dodd-Frank) unnecessarily discriminate against affiliated business arrangements, which we believe would reduce mortgage competition and ultimately increase the cost of mortgage credit in many marketplaces throughout the country.

I. An Overview of Affiliated Businesses in the Home Buying and Financing Industry

Affiliated businesses are not new in the home buying and financing industry. According to the independent real estate research firm REAL *Trends*, Inc., the nation's 500 largest residential real estate brokerage firms closed 150,962 mortgage loans and conducted 358,172 title closings through affiliated companies in 2010.

---

[1] RESPA and RESPA regulations require any person who refers a home buyer to an affiliated settlement service company to:

- Disclose in writing that it may benefit from the referral.
- Disclose an estimate of market prices for the referred service.
- Advise the consumer that there may be lower prices available and that he/she should shop around
- Obtain a written acknowledgment from the home buyer that he/she has reviewed these disclosures.
- Not require the use of the affiliated service.
- Not pay or receive any referral fees from the affiliated company that are otherwise prohibited under RESPA.

In today's challenging housing market, firms like Long and Foster use our affiliated mortgage, title, and other settlement service companies to help assure that our real customers close on time and move into their new homes as scheduled. Because we own or partially own other companies needed to close the home purchase transaction, we can better ensure that they communicate promptly with each other and therefore resolve any service issues that arise more efficiently than we could with independent companies. Our affiliated businesses also help us reduce the cost of the entire mortgage transaction through cost efficiencies achieved from the sharing of facilities, management, technology, equipment, and marketing expenditures.

Since real estate brokerage firms began to offer mortgage, title, and other settlement services over 25 years ago, there have been several consumer surveys and economic studies to assess their impact on the home buyer. Economic studies over the years have shown that affiliated businesses are competitive in cost,[2] and consumer surveys consistently have shown that consumers who use their real estate brokerage firms' affiliated businesses have a more satisfactory home buying experience.[3]

II. The Potential Discriminatory Impact of Dodd-Frank on Affiliated Businesses

Unfortunately, the "ability to repay" and risk retention standards in Dodd-Frank unnecessarily discriminate against the affiliated business model in a way that we believe will reduce competition and ultimately increase the cost of mortgage credit in many marketplaces throughout the country.

Section 1411 of the Dodd-Frank requires mortgage lenders to determine the borrower's ability to repay the loan based on their compliance with a variety of specified practices. Section 1412 of the Act creates a rebuttable presumption that a mortgage lender has complied with the new ability to repay" standard for "Qualified Mortgages" (QMs), which are mortgages that have characteristics that are less likely to pose repayment or other problems for consumers.

Dodd-Frank also specified that a mortgage is <u>not</u> a QM if the total "points and fees" paid by the consumer in the transaction exceed 3% of the loan amount. The problem for affiliated businesses

---

2 A 2008 economic study on the costs of affiliated services vs. unaffiliated services involved an independent analysis of over 2200 HUD-1 Settlement Statements from transactions conducted in nine states (Alabama, Illinois, Maryland, Michigan, Minnesota, North Carolina, Ohio, South Carolina and Virginia) in 2003 and 2005. The study concluded that title premiums and title-related settlement closing charges are not higher when affiliated business arrangements are involved compared to when they are not. "Affiliated Business Arrangements and Their Effects on Residential Real Estate Settlement Costs" (2006), The CapAnalysis Group LLC. The CapAnalysis Study reached the same conclusion as a 1994 study performed by the national economic research firm of Lexecon, Inc., which found that title and title-related services for transactions performed by affiliated title companies in seven states – Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania, and California – were competitive with those provided by unaffiliated title companies. "Economic Analysis of Restrictions on Diversified Real Estate Services Providers", by Lexecon, Inc., January 3, 1995.

3 In a December 2010 Harris Interactive survey, home buyers said that using affiliates saves them money (78%), makes the home buying process more manageable and efficient (75%), prevent things from "falling through the cracks" (73%), and is more convenient (73%) than using separate services. "One-Stop Shopping Preferences 2010", Harris Interactive and the National Association of Realtors (NAR).

is that Dodd-Frank incorporated, with slight variations, the "points and fees" definition in the Home Owners and Equity Protection Act (HOEPA), which was enacted in 1994 as part of amendments to the Truth in Lending Act (TILA).[4] This definition counts title fees charged by a mortgage lender's affiliated title company towards the 3% threshold, but not fees paid to an independent third party title company -- even if the fees charged by the affiliated title company are no more than or less than the charges made by the unaffiliated third party.[5]

As a result, loans in which a mortgage lender's affiliated title company is used would more likely exceed the 3% threshold under the QM exemption under the "ability to repay" standards and the 5% threshold under HOEPA. It would be much more difficult for us to sell loans in which an affiliated title company is used in the secondary mortgage market, and Dodd-Frank elsewhere gives a consumer a perpetual right (without any time limit) to assert as a defense against the mortgage lender a violation of the "ability to pay" standard in any future action to collect the loan.

This same discrimination against affiliated businesses exists under the Dodd-Frank risk retention standards, which require mortgage lenders to retain 5% of the credit risk of loans that are securitized and sold unless the loan is a "Qualified Residential Mortgage" (QRM). Dodd-Frank directed federal regulators to create a QRM definition that is no broader than the definition of QM under the "ability to repay" standards. In their March 29 proposed rule to implement the Dodd-Frank risk retention standard, federal regulators proposed to use the same "points and fees" calculation that discriminates against mortgage companies with affiliated title businesses.

The total number of affiliated loans that would exceed the 3% threshold under the Dodd-Frank "ability to repay" and risk retention standards would depend on the average cost of mortgage origination and title services in each marketplace. The impact, however, clearly would be most significant for smaller loans that are predominant in low-income to lower-middle income marketplaces, since 3% of a $100,000 loan ($3,000) is more easily reached than 3% of a $300,000 loan ($9,000). At that point, companies with affiliated mortgage and title businesses like Long and Foster would need to discontinue offering title services in conjunction with those loans, discontinue offering mortgage services but continue to offer title services, or withdraw from the market altogether.

While I cannot predict the decision of each company faced with this choice, I believe that there would be legitimate reasons for a company with affiliated mortgage and title companies to choose to discontinue offering mortgages but to continue to offer title and title-related services if

---

[4] The U.S. House of Representatives had previously identified the discriminatory impact of the current HOEPA calculation of points and fees on affiliated businesses and had twice passed legislation correcting the discrimination (the 2007 Mortgage and Predatory Lending Act and the 2010 Dodd-Frank legislation) by exempting affiliated fees or premiums for title examination, title insurance, or similar purposes from the HOEPA points and fees threshold as long as the fees were reasonable and as long as the affiliated company complied with RESPA's affiliated business regulations. This provision of the 2010 House-passed Dodd-Frank legislation was inexplicably removed the Dodd-Frank House-Senate Conference.

[5] Standing alone, HOEPA's "points and fees" definition has a less significant impact on affiliated businesses since Dodd-Frank set the HOEPA threshold at 5% of the loan amount. However, it still would prevent companies like Long & Foster from offering both mortgage and title services on small loans which are most predominant in lower-income areas.

it believes that the cost of both services could exceed 3% of the loan amount. Because of the negative consequences of originating a loan that is not a QM under the Dodd-Frank "ability to repay" standards or a QRM under the risk retention standards, it would be important to have certainty as to which loans would exceed the applicable thresholds. The cost of mortgage origination services is highly dependent on the customer's individual decisions and is more difficult to predict on an aggregate basis, while title fees and premiums are either regulated or filed in the majority of states.

Consequently, if the Dodd-Frank "ability to repay" and risk retention standards take effect as passed, RESPRO® believes that competition for mortgage loans would decrease in many low- and lower-middle income marketplaces predominated by smaller loans because of the withdrawal of affiliated businesses from those marketplaces. Consumers would have fewer choices and the cost of mortgage credit would increase.[6]

III. Congress Should Exclude Affiliated Title Fees from the HOEPA "Points and Fees" Threshold that Was Incorporated in the Dodd-Frank "Ability to Repay" and Risk Retention Standards

RESPRO® believes that Congress can prevent this negative impact on competition and the cost of mortgage credit in the mortgage marketplace by amending the Truth in Lending Act to create a narrow exemption for affiliated fees or premiums for title examination, title insurance, or similar purposes from the 3% HOEPA threshold that was incorporated into the Dodd-Frank "ability to repay" and risk retention standards.

It is our understanding that Congress originally included a variety of affiliated fees in the "points and fees" threshold in HOEPA because of its concern that mortgage companies might attempt to circumvent HOEPA by moving fees to affiliated companies, which would reduce the possibility that a loan would be determined to be a "high cost" loan that was subject to HOEPA.

However, HOEPA already states that any charge that is not "reasonable" must be <u>included</u> in the applicable points and fees threshold, thereby requiring that any affiliated charges must be reasonable in order to be <u>excluded</u> from the threshold. If Congress amends the Truth in Lending Act to create a narrow exemption for affiliated fees or premiums for title examination, title insurance, or similar purposes from the "points and fees" threshold; this requirement would remain. Federal regulators would be able to readily determine if affiliated title fees are "reasonable" because the majority of states require that title insurance rates be set by the state, approved by the state, or filed with the state.[7]

---

[6] Even if a company chooses to continue offering mortgages but to discontinue offering affiliated title services with loans in which the 3% threshold would be reached, RESPRO® believes that consumers would be harmed because (1) the withdrawal of affiliated title services in a marketplace would create an upward pressure on title fees and premiums; and (2) cost efficiencies from the sharing of facilities, management, technology, equipment, and marketing expenditures among affiliated businesses would be eliminated.

[7] 44 states require that title insurance rates be set by the state, approved by the state, or filed with the state. Of the remaining six states and the District of Columbia, two states (Iowa and West Virginia) do not recognize title insurance and one state requires that the rates be posted. A.M. Best, Report to National Association of Insurance Commissioners (NAIC), 2006. In addition, RESPA prohibits a mortgage lender from requiring a consumer use its affiliated title company, so federal regulators would be able to compare

III. Summary

In summary, we urge Congress to correct the discrimination against mortgage companies with affiliated title businesses in the Dodd-Frank "ability to repay" and risk retention standards that would unnecessarily result in the withdrawal of affiliated mortgage or title services from many marketplaces in the country to the detriment of consumers.

Thank you for the opportunity to testify on behalf of RESPRO®'s members.

---

the costs of loans in which the affiliated title company was used to those in which it was not used by reviewing the closing documents of mortgage lenders with affiliated title companies which would include both affiliated and unaffiliated title costs.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Tim Wilson, President Affiliated Businesses, Long & Foster Companies; and Chairman, Real Estate Services Providers Council (RESPRO)	Long & Foster Companies; RESPRO

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:

Please attach a copy of this form to your written testimony.