Testimony of

Anne C. Canfield

Before the

Subcommittee on Insurance, Housing and Community Opportunity

of the

Committee on Financial Services
United States House of Representatives

**"Mortgage Disclosures:
How Do We Cut Red Tape for
Consumers and Small Businesses?"**

June 20, 2012

600 Cameron Street, Alexandria, VA 22314
Telephone: (202) 617-2101 Fax: (202) 403-3926

Chairman Biggert, Ranking Member Gutierrez, and Members of the Subcommittee, I am Anne Canfield, and serve as the Executive Director of the Consumer Mortgage Coalition, the CMC, a trade association of national mortgage lenders, servicers and service providers.

The CMC appreciates the Subcommittee's attention to the Consumer Financial Protection Bureau's (CFPB's) "Know Before You Owe" initiative to streamline mortgage origination disclosures.

Along with its industry colleagues, the CMC has been a long-time and strong supporter of efforts to streamline mortgage disclosures. Mortgage disclosures should assist consumers in understanding their mortgage transactions to help them make informed and prudent decisions. A well-informed consumer will also help prevent abusive practices from taking hold.

The CFPB has an historic opportunity given that the regulatory authority over the two principal federal statutes, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) governing the mortgage origination process are now located in one Bureau.

It would be most unfortunate if the CFPB were to repeat the experience that occurred when the 2008 amendments to Regulation X were implemented. At that time, the confusion surrounding the 2008 rule necessitated eleven rounds of Frequently Asked Questions (FAQs) after the rule was final that never provided the clarity the industry needed, and required delaying enforcement of the regulation by four months. While this was an extremely difficult and expensive experience for the industry, more importantly, the 2008 amendments resulted in a set of mortgage disclosures that are even more confusing to consumers than any of the previous disclosure regimes.

A Methodical Process Is Needed

In order to get it "right," the CFPB must take a holistic and methodical approach to this project otherwise chaos is likely to ensue.

First, the CFPB should continue to examine the existing TILA, RESPA and related rules to determine where modifications to those rules might be needed so that any superfluous disclosures that are emanating from the existing rules can be either eliminated or modified.

Second, the Dodd-Frank Act includes a number of provisions that will result in additional mortgage disclosures. All of the Dodd-Frank Act rules that will drive additional mortgage disclosure requirements need to be finalized, including, but not limited to the Qualified Mortgage (QM) and Qualified Residential Mortgage (QRM) rules[1]. The

[1] The QM and the QRM rules will need disclosures to verify whether points and fees are under their 3% cap. It is important that the definition of what is included in the 3% cap be the same in both the QM and QRM rules, otherwise the disclosures will be incomprehensible to consumers.

disclosures will work only if they are designed together. Indeed, that was a main purpose in assigning to a single regulator the task of designing the disclosures.

Third, once all of the Dodd-Frank Act mortgage related rules that will result in additional mortgage disclosure requirements are finalized, those rules should be placed "on hold" until all of the new disclosure requirements are ready to be implemented. Both the substantive rule changes and the disclosure changes should be implemented *once*, at the same time.

Fourth, the new disclosures should then be designed to accommodate all of the existing and new disclosure requirements, along with the disclosure requirements set by the states, unless the CFPB agrees to preempt state disclosure requirements.

Fifth, once the new draft disclosures are designed, they need to be tested on actual closed loans across all available loan products to ensure that they actually work. Testing the disclosures on closed loans may reveal that changes will need to be made to the draft forms.

Sixth, once the format of the forms is finalized, a reasonable implementation period needs to be given so that the industry is given the necessary time to change its systems, train its employees, and monitor and audit the changes to ensure that the industry is in full compliance with the new requirements.

I would also like to reemphasize that it is extremely important that both the substantive rule changes and the disclosure changes be implemented *once*, at the same time. Otherwise, the industry will be required to repeatedly change, undo, and then redo its systems and individual company-designed disclosures to meet the substantive rules' disclosure requirements, and then overhaul the systems and disclosures when the CFPB finalizes its new disclosure requirements. Not only would such a confusing process be very expensive, but the disclosures resulting from this ever-changing rule and disclosure regime would be extremely confusing to consumers. Piecemeal disclosure changes are not consistent with well-designed disclosures.

- ***Dodd-Frank Act July 21st Proposed Rule for Revised Disclosures***

The Dodd-Frank Act requires that the CFPB propose a rule revising the mortgage disclosures by July 21, 2012. We recommend that the CFPB and the Congress agree that it would be prudent to delay the CFPB's compliance with this requirement. Since the CFPB cannot yet determine which substantive revisions need to be made to the existing Federal and State disclosure requirements because the Dodd-Frank Act substantive rules and their related disclosures have not been finalized, any disclosure revisions that the CFPB were to recommend by July 21st would not be useable.

As an alternative, the CFPB could propose an Advance Notice of Proposed Rulemaking (ANPR), but it would be more logical to simply delay the disclosure rulemaking until the Dodd-Frank Act substantive rules that will drive additional disclosure requirements are finalized. We have been urging that improved disclosures be implemented for many

years, so we do not want to delay this initiative unnecessarily. However, it is far more important that this project be done right, rather than quickly.

It is not unprecedented for Congress and the regulatory agencies to informally agree that deadlines that were set in the midst of the consideration of a very large and complex bill be delayed if it makes sense. In this case, Congress separately required two different deadlines. One is for several mortgage rules that will need disclosures. The other is for integrated disclosures. It makes sense to finalize the new Dodd-Frank rules first, and then design disclosures that integrate those new rules with and into the integrated disclosures. Doing it backwards will mean doing it ineffectively. The CFPB needs leeway to get disclosures right so that they work for consumers.

Four-Step Disclosure Regime

Even though the CFPB had not decided on what the rules governing the disclosures would be, it did release nine prototype disclosures and requested comment through an iterative process. The detailed comments filed by the CMC or the CMC and some of our industry colleagues are included in the Appendices attached to this testimony.

This task is difficult because it requires disclosing a complex set of related transactions that must all align at a single point in time so that the loan can close. Due to the Regulation X prohibition on lenders contracting to set third-party charges, the lenders must disclose third-party charges that the lender cannot control, and that can change at any time. That is, not only is the complexity due to the number of settlement services, but their prices can float. Designing disclosures that convey a large number of moving charges requires balancing the competing goals of comprehensive disclosures with consumer comprehension. Disclosing a large number of ongoing changes after the loan application has been made, but before the loan closes, may be comprehensive, but often leaves consumers confused.

We believe that a balance can be achieved by setting a reasonable number of disclosures, with the ability to handle the inevitable changes. We would like to recommend that the CFPB adopt a streamlined, four-step disclosure regime.

- ***Step One: Loan Estimate Within Three Days of Application***

A single disclosure would be sent to the consumer within three days of the lender receiving a completed loan application. (The CFPB is considering requiring the lenders to provide consumers with two disclosures – one disclosure before the lender has enough information to provide the consumer with a price quote, and another after the lender has sufficient information to provide the consumer with a price quote.)

- ***Step Two: Loan Estimate/ECOA Notice After Loan Approval***

After the loan has been underwritten and using the same disclosure form that was sent to the consumer initially, the consumer would receive a second, updated disclosure. After underwriting, the settlement charges are firmer and the loan terms are known. This

would eliminate today's problem where repeated re-disclosures are continually sent to consumers whenever a settlement charge changes. It would also allow the updated disclosure to be streamlined with the ECOA notice of action taken on the application, so the consumer would receive one disclosure at this stage in the transaction, instead of two disclosures.

- ***Step Three: Final Loan Estimate***

Again, using the same disclosure form, the third disclosure – a final loan *estimate* – would be provided to the consumer three days before closing. Lenders are currently subject to a zero tolerance with regard to their costs from the time the first disclosure is sent to the consumer to closing, so loan charges would not change throughout the transaction.

Settlement charges, however, can change until closing, although they are subject to a 10% tolerance – i.e., they cannot increase more than 10% from the time the initial estimate is provided to the consumer through closing. (The CFPB is considering imposing a zero tolerance on lenders from the time the initial loan estimate is provided to the consumer until closing for third party costs for services provided by affiliated businesses or by service providers that the lender selects. Since Regulation X prohibits the lenders from controlling third party costs, this proposal is not reasonable and may simply result in costs being driven up as lenders try to ensure that there is enough "cushion" to absorb any cost increases charged by settlement service providers during the transaction.)

With the zero percent tolerance on any change to the lender's cost being made and the 10% limitation on third-party costs already in place, there are not many costs that can change between the time of the final loan *estimate* and closing. Changes in costs can occur between the final loan estimate if the closing date changes because the odd days interest and tax charges would change. Also, changes can occur if the buyer and seller renegotiate items related to the property, but not the loan. (E.g., a seller decides not to sell the chandelier in the house and needs to provide compensation to the buyer for the chandelier.)

If the consumer decides at any point in the process to change the loan product, new disclosures would need to be provided and a new three-day waiting period would ensue from the time the final loan *estimate* is provided until the date of closing.

If a consumer is the victim of a "bait and switch" situation – where they believed they were supposed to get one type of loan and found at closing that they were receiving another loan product – that would constitute mortgage fraud. Current laws prohibit that practice. Clear disclosures will also help to ensure that the consumer is not victimized.

- ***Step Four: Final Closing***

Again, using the same disclosure form, the consumer would be provided with a final closing document – i.e., the revised HUD-1. Attached to the HUD-1 would be a loan

settlement sheet that would provide detailed information to closing agents so that they will know where to disburse the funds.

(The CFPB is considering imposing a requirement that the final closing documents be provided to the consumer at least three days before closing. In reality, this will likely result in at least a seven day requirement because lenders will need to provide the final closing documents. While well-intentioned, this would cause an enormous disruption in the home buying and closing process across the country. In addition, the CFPB does not have the statutory authority to impose this requirement for RESPA-related settlement service charges.

This experiment was tried – and it failed – in 1975. Congress repealed the requirement six months after it went into effect because of the dislocation that occurred. Home buyers were moving out of their homes, but because of the artificial waiting period that had been statutorily imposed, they and their families had to live in temporary lodging with the household belongings in moving vans until they could meet the twelve-day waiting period that was required to close on their loan. A brief review of the history of this idea and the statutory prohibition against it is attached at Appendix B.)

- ***Summary***

This four-step disclosure regime would –

- o Provide more clarity to the consumer by allowing them to compare the cost of their loan, using the same disclosure form, from the beginning of the transaction to the end;
- o Eliminate the problem created by the 2008 Regulation X that has resulted in a blizzard of disclosures being sent to consumers every time a settlement charge is changed;
- o Combine certain disclosures, allowing them to serve a dual-purpose in some instances; and
- o Help to prevent consumers from being victimized because they will receive mortgage disclosures that they can understand.

<u>The Design of the Disclosure Form</u>

While the content of the disclosure form will be driven both by the Federal and State statutory requirements, as well as requirements that both the regulators and the industry know is of importance to consumers, we recommend that disclosure forms be designed so that they can be customized to the loan product the consumer chooses.

Each loan has certain basic loan elements that would be always be disclosed, but then the form should be designed so that it can be customized to disclose the terms for the loan product the consumer chooses. For example, a consumer that selects a fixed rate loan product does not need to receive a disclosure form that has lines or space on the form that discloses ARM-related loan features.

This will help to eliminate unnecessary confusion and assist in preventing "bait and switch" situations from occurring.

Conclusion

The CMC has strongly supported streamlining mortgage disclosures for many years, and has been in full support of the CFPB's initiative on this issue. Improved, streamlined, and integrated disclosures – disclosures that work – have been needed for years. Now is the time to take the time to get it right.

Thank you for the opportunity to testify and I will be pleased to answer any questions you may have.

June 20, 2012

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600 Cameron Street, Alexandria, VA 22314
Telephone: (202) 617-2101 Fax: (202) 403-3926

Appendix A

ORIGINATION DISCLOSURES

TODAY	PROTOTYPE DISCLOSURES	RECOMMENDED
Truth in Lending (TIL) disclosure of loan terms, and Good Faith Estimate (GFE) of settlement charges, both within 3 days of receipt of enough application information to price the loan.	Loan Estimate within 3 days of receiving a borrower's name, address, credit report, and unverified property value and income. Without more, the lender cannot price the loan. The lender will not know the LTV, whether the home will be owner-occupied, the lien position, whether it is a purchase or refinance, etc. The Loan Estimate would disclose loan terms, although the lender cannot price the loan. It would also disclose settlement charges, some of which would be binding on the lender. When the application is complete, the lender will see how inaccurate the original disclosure was. Presumably, an accurate disclosure will then be required.	Loan Estimate including loan terms and settlement charges, within 3 days of receipt of enough application information to price the loan.
Revised GFE if certain settlement charges increase 10% in the aggregate.	Some disclosure will be required if a smaller range of settlement charges increase, but no prototype has been released.	When the loan is approved (30 days after the application is complete), an updated Loan Estimate, which integrates the required Regulation B / ECOA notice of credit action taken.

Within 30 days of a complete application, the lender must deliver the Regulation B / ECOA notice of credit action taken.	Within 30 days of a complete application, the lender must deliver the Regulation B / ECOA notice of credit action taken.	
Revised TIL 3 days before closing if there were changes in the loan, but not in the settlement charges. Per RESPA, the borrower may request the HUD-1 the day before closing, but only known settlement charges can be required to be disclosed.	A final Settlement Disclosure, including all charges, 3 days before closing. Congress required settlement charges to be disclosed before closing in the 1970's. This was unworkable, so Congress amended RESPA to prohibit it, only six months after its implementation.	Updated disclosure of loan and settlement charges three days before closing. Loan charges will be known at this point, but not all settlement charges. Per RESPA, the borrower may request the Settlement Disclosure the day before closing, but only known settlement charges can be required to be disclosed.
HUD-1 settlement statement at closing.	No new disclosure at closing.	Final Settlement Disclosure of all loan terms and charges.

Links to the "Know Before You Owe" Mortgage Prototypes

Round 1 Ficus Pecan	**Round 4** Jasmine Nandina Separate page	**Round 7** Sassafras Mimosa
Round 2 Redbud Dogwood	**Round 5** Pinyon Yucca	**Round 8** Honeylocust Butternut Hemlock
Round 3 Azalea Camellia	**Round 6** Hornbeam Ironwood	**Round 9** Tupelo Basswood

A RESPA LESSON LEARNED:

Is it about to be "relearned?"

The CFPB said it may require delivery of its Settlement Disclosure for consumer mortgage loans three business days before closing in all circumstances. The Settlement Disclosure would replace the existing HUD-1 settlement statement. Both the HUD-1 and the Settlement Disclosure contain detailed, specific information on all loan terms and on all settlement services. Settlement services include title examination, title insurance, owner's title insurance, hazard insurance, transfer taxes, recording fees, notary fees, etc. If adopted, this will wreak havoc in the mortgage marketplace.

This idea was actually tested in the 1970s, so it is important to understand and learn from the history of the Real Estate Settlement Procedures Act of 1974 ("RESPA") because it taught a valuable lesson.

Congress enacted RESPA on December 22, 1974,[1] with an effective date 180 days later (or June 20, 1975). This first version of RESPA required advance disclosure of settlement costs:

> "Any lender agreeing to make a federally related any lender agreeing to make a federally related mortgage loan shall provide or cause to be provided to the prospective borrower, to the prospective seller, and to any officer or agency of the federal government proposing to insure, guarantee, supplement, or assist such loan, at the time of the loan commitment, *but in no case later than twelve calendar days prior to settlement*, upon the standard real estate settlement form developed and prescribed under section 4, or upon a form developed and prescribed by the Secretary specifically for the purposes of this section, and in accordance with regulations prescribed by the secretary, *an itemized disclosure in writing of each charge arising in connection with such settlement*. For the purposes of complying with this section, it shall be the duty of the lender agreeing to make the loan to obtain or cause to be obtained from persons who provide or will provide services in connection with such settlement the amount of each charge they intend to make. In the event the exact amount of any such charge they intend to make. In the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided."[2]

The initial purpose was to ensure that consumers would know what they were required to pay at closing but, unfortunately, that was not the result. Instead, lenders and closing

[1] Pub. L. No. 93-533, 88 Stat. 1724.
[2] RESPA § 6, before RESPA was amended (emphasis added).

agents were unable to prepare disclosures because the necessary information was unavailable at the exact time it was needed. The result was that lenders and closing agents had to delay closings, and consumers were stranded in hotels and other temporary accommodations, with their belongings being held in moving vans, due to an artificial requirement that they receive their closing documents twelve days before closing.

Aside from the logistical problems this requirement caused, many consumers also incurred added costs because their interest rates increased; breach of contract issues ensued because the homebuyers were not able to fulfill their contractual obligations to close on a date certain; and more.

It is important to understand that mortgage transactions are different from other consumer transactions in that they are not limited to a single transaction, the loan. The mortgage transaction is actually two transactions – a loan and a real estate property purchase – where the HUD-1 (or the CFPB's new Settlement Disclosure) must include charges related to both the real estate property purchase and sale and the loan. Even if the loan is a refinance, where the purchase and sale of a property is not involved, there are still a number of settlement services involved – those related to the loan.

The original RESPA required disclosure of the cost of each settlement service, and that has not changed. After a lender makes a pre-closing disclosure, however, there is no law prohibiting a settlement service provider from changing its price. The regulation implementing RESPA, Regulation X, prohibits lenders from contracting with third-party settlement service providers to set the costs of their services, so the lender is unable to ensure that the third-party costs do not change. Thus, requiring lenders to provide consumers with a final settlement statement three days before closing where costs cannot change, is a physical impossibility that would reinstate the chaos that ensued in the mid-1970s.

Not surprisingly, Congress reacted to the mayhem that was taking place in the mortgage marketplace across the country:

> "Since the implementation of RESPA on June 20 of this year, this committee has received an enormous amount of complaints from all around the country from lenders, real estate agents, attorneys, and most importantly, from the home-buying public. The Subcommittee on Housing and Community Development conducted extensive hearings on October 28, 29 and 30, hearing testimony from lenders, realtors, title companies, consumer groups, attorneys, homebuilders, the General Counsel of the Department of Housing and Urban Development, and the Acting Chairman of the Federal Home Loan Bank Board and a member of the Federal Reserve Board…. The subcommittee was told by lenders that the period from formal loan application to loan settlement had been increased by an average of 11 ½ days, and that borrowers were disturbed because of the additional administrative procedures and additional time involved in obtaining the loan. Mortgage loan closings, the subcommittee was told, were substantially delayed, increasing red tape, with borrowers and lenders equally confused….The subcommittee was told that processing delays were causing buyers to lose earnest money and numerous transactions were terminated because of the complications

caused by the Act.[3]"

Then-Senator Proxmire (D-WI), Chairman of the Committee on Banking, Housing and Urban Affairs, described how he was informed of the chaos by his constituents:

> "On Saturday afternoon I was at the Wisconsin-Michigan football game and I heard people from Ohio, Michigan, Minnesota, Iowa, Wisconsin, all complaining about R.E.S.P.A. Several people just paraded around me saying "down with R.E.S.P.A."
>
> I went to the Green Bay Packers game, playing the San Francisco Forty-Niners on Saturday night. It was the same old cry. There was more interest in R.E.S.P.A. than in the Packers. R.E.S.P.A. is doing about as well as the Packers, I might add."[4]

Congress repealed the requirement for a preclosing settlement statement on January 2, 1976, just six months after it became effective.[5] Its 1976 revision added what is now RESPA § 4(b), which has since changed minimally:

> (b) Availability for inspection; exceptions
> The forms prescribed under this section [the settlement statements] shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that:
> (1) the Bureau may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and
> (2) the borrower may, in accordance with regulations of the Bureau, waive his right to have the forms made available at such time. Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.[6]

Congress corrected its initial error by requiring delivery of settlement statements "at or before settlement[.]" Additionally, if the consumer asks to see the statement one day before closing, the lender or settlement agent is required to disclose *only* known costs. In other words, Congress, having learned its lesson, prohibits requiring a completed settlement statement before closing. Moreover, RESPA allows consumers to waive receipt of the settlement statement "at or before settlement," assuring that settlements will

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[3] H.R. Rep. No. 94-667, at 2449-50 (1975), 1975 U.S.C.C.A.N. 2448, 1975 WL 12503 (Leg.Hist.).
[4] *Oversight on the Real Estate Settlement Procedures Act of 1974,* 94th Cong. 1 (1975) (opening statement of Senator Proxmire; cited in Robert R. Elliott, *R.E.S.P.A. Revisited (Upon You),* 62 ABA J. 1131 (1976). Mr. Elliott was General Counsel at the Department of Housing and Urban Development.
[5] Pub. L. No. 94-205 § 5, 89 Stat. 1158.
[6] RESPA requires disclosure of settlement charges. The Truth in Lending Act ("TILA") requires disclosure of loan terms. The RESPA prohibition on requiring settlement statements before closing does not apply to TILA disclosures.

not be delayed.

Congress amended RESPA to explicitly prohibit any requirement to deliver a settlement statement before closing. The late Senator Proxmire learned the hard way why settlement statements must be able to be amended until closing. While their efforts are well-intentioned, the CFPB should learn from the mistakes made in the past.

"Know Before You Owe" CMC and Joint Industry Comment Letters

April 16, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

Dear Director Cordray:

We read with great interest your interview with Kate Davidson in the March 26, 2012, issue of the *American Banker*, in which you stated, "We want to make sure we get that as right as we can, so we're trying to be careful."

The undersigned organizations are especially grateful that you are taking this approach. While this statement was about the Qualified Mortgage rulemaking, we want to help the Consumer Financial Protection Bureau get it right on all of the mortgage-related rulemakings, especially the Know Before You Owe project to integrate, streamline and simplify mortgage disclosures.

In order to get this particular rulemaking right, we suggest first that it be coordinated with other key rulemakings and that relevant guidance on rulemakings be followed. We also suggest that a rulemaking schedule be established, that an ANPR be considered and, finally, that the testing protocol be expanded to cover the range of loans in today's market.

The new mortgage disclosures not only need to integrate RESPA/TILA regulations but they also need to work hand in hand with the QRM, QM and HOEPA rules. However, the CFPB is designing the new mortgage disclosures before it has finalized those other rules. We are concerned that putting the cart before the horse is a recipe for unnecessary delays in the rulemaking process that will inhibit the Bureau's goal of making sure that, "the costs and risks of these financial products are made clear." In addition, this patchwork is likely to add unnecessary costs and delays to industry's implementation and compliance efforts and will confuse consumers.

The Office of Management and Budget's Office of Information and Regulatory Affairs highlighted the importance of regulatory scheduling in its March 20, 2012 memo[1] which instructs the heads of executive departments and agencies to ensure the: "coordination of timing, content, and requirements of multiple rulemakings that are contemplated for a particular industry or sector, so as to increase net benefits; and Consideration of the interactive and cumulative effects of multiple regulations affecting individual sectors as part of agencies' retrospective analysis of existing rules."

We recognize that this memo may not apply directly to the CFPB. Nevertheless, it does provide a useful framework for which to consider all of the new mortgage regulations required under the

[1] http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf

Dodd-Frank Act. We also recognize that CFPB is under strict statutory deadlines for publishing rules on other regulations. Below are a few suggestions, as indicated, for how the Bureau can balance these challenges:

1. Publish for comment an orderly rulemaking schedule. The schedule could lay out 1) the details of each regulatory proposal, 2) how they interact with each other, and 3) the order in which you plan on proposing, finalizing and requiring industry to implement each regulation. By providing this schedule CFPB can reduce uncertainty and help consumers and industry better plan for the future.

2. Consider using the Advanced Notice of Proposed Rulemaking (ANPR) process to satisfy the requirements under section 1032 of Dodd-Frank Act. This will allow the public to provide the Bureau with useful feedback that can be used to guide the drafting of all of these proposed rules.

3. Improve implementation by testing the draft disclosure forms on actual closed loans for a full range of loan products and for a wide range of local real estate practices. This testing would ensure that the forms are workable and include the right loan information, for a variety of states. Such testing would demonstrate where the forms are well designed and where they may need improvement. Thorough, real-world testing can reduce both the challenges and costs of implementation that are ultimately borne by consumers. This also would facilitate implementation of the new disclosure forms and prevent certain loan products from becoming unavailable because the forms and rules do not accommodate them.

Laying out an orderly schedule and testing will ensure that the Bureau meets the goals of Executive Order 13563[2]. In that Executive Order, President Obama urged agencies to "identify and use the best, most innovative and least burdensome tools for achieving regulatory ends." To implement this Executive Order, OIRA directs agencies to "take active steps to take account of the cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules." It also directs them to carefully consider, in the analysis of costs and benefits, the relationship between new regulations and regulations that are already in effect. This cost-benefit directive is especially important for the Bureau, whose regulations are subject to a statutory cost-benefit analysis under 12 USC 5512(b)(2)(A).

We appreciate that the Bureau has been as open as it has been so that stakeholders can offer input on the design of the new disclosure forms. As you noted, the Bureau has, "gotten a lot of feedback that needs to be sifted through" on the design of the forms. However, stakeholders have not had the same ability to offer input on the underlying regulations that will govern the forms and instruct our members how to properly fill them out. Our ability to offer useful feedback to the Bureau has been limited by this lack understanding of the underlying rules that will govern the use and application of the forms. The Bureau offered the public and stakeholders nine opportunities to offer comment on the design of the forms but just one opportunity to offer input on the underlying regulations that will govern them. More public comment on the regulations is necessary to ensure that we get this right.

[2] http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf

In addition to this letter, we intend to file more detailed comments on the Bureau's Small Business Regulatory Enforcement Fairness Act outline by April 16, as the Bureau has requested. At the same time, we urge the Bureau to recognize that consumers and industry will benefit from efforts by the Bureau to harmonize and streamline multiple rules and take steps to improve this process. We look forward to continuing our work with you to truly improve disclosures for consumers across the United States.

Sincerely,

American Financial Services Association
American Land Title Association
Community Mortgage Banking Project
Community Mortgage Lenders of America
Consumer Mortgage Coalition
Mortgage Bankers Association
National Association of Federal Credit Unions
National Association of Home Builders
National Association of Mortgage Brokers
National Association of Realtors
Real Estate Services Providers Council, Inc. (RESPRO®)
Real Estate Valuation Advocacy Association

American Bankers Association
American Escrow Association
American Financial Services Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association
National Association of Realtors
The Real Estate Services Providers Council, Inc. (RESPRO®)

April 16, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: **Know Before You Owe Mortgage Loan Initiative**

Dear Director Cordray:

The undersigned are pleased to have this opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on the rulemaking accompanying the Know Before You Owe (KBYO) mortgage loan initiative. This is an important initiative for our customers – consumers.

These comments represent our thoughts on the CFPB's memorandum dated February 21, 2012, entitled "Outline of Proposals Under Consideration and Alternatives Considered" (the Outline). We commend the CFPB for issuing this broad outline setting the regulatory context for the delivery of the reformed mortgage disclosures. It is important that all stakeholders work towards an improved mortgage disclosure system. In this sense, we believe that the objective of this reform process is not the mere issuance of a regulation. The real goal for all stakeholders is to ensure that we achieve a balanced and efficient set of rules to guide mortgage disclosures for the next generation. The true objective, as mandated by the Dodd-Frank Act, is to craft a solid and clear regulatory system that well accompanies a combination of two laws' disclosures to so that they properly inform and protect consumers.

This is very difficult work that requires careful consideration of current and pending laws and requirements, as well as the operations of the industry and the interests of consumers.

We therefore urge that the CFPB closely consider and analyze the impact of these proposals and our concerns with the substantive and procedural alternatives being discussed.

We support the CFPB's approach of reviewing the consumer's entire experience, from initially considering a loan, through application and after loan closing, as that approach will result in the best disclosures. This ability to consider disclosures holistically was absent prior to the Dodd-Frank Act because no regulator had authority to do so. Congress provided the CFPB with authority to design disclosures comprehensively for the first time.

The CFPB's iterative approach to developing the prototype disclosures has been a sound one, and we encourage the CFPB to use the same approach to developing the underlying rules because the underlying issues are significant, and deserve at least the same attention as the forms. In a recent meeting with CFPB staff, industry representatives were provided an opportunity to offer feedback on some of the rules. While we appreciated the opportunity to meet, there was insufficient time to fully review most of the issues raised. At this time, we urge continuation of those discussions.

This letter begins by setting out general comments on the KBYO initiative, including the need to coordinate it with related rulemakings for it to be successful, and highlighting the major items of concern mentioned in the Outline. The second section of this letter provides more specific comments on the revisions to mortgage disclosures and rules described in the Outline. In the third section, we recommend disclosure timing requirements, with particular attention to resolving the current problem of frequently revised Good Faith Estimates (GFEs) and minimizing unnecessary waiting periods for consumers needing to close their loans in a timely manner.

I. General Comments

A. Doing it Right Must Be the Overriding Goal

We urge the CFPB to take the time necessary to get the disclosures right. Congress prioritized the quality of the improved disclosures over getting them changed quickly,[1] and we recommend that the CFPB adopt the same approach.

[1] Congress directed the CFPB to publish a single, integrated mortgage disclosure in three places: RESPA § 4(a); TILA § 105(b); and in Dodd-Frank Act § 1032(f). Only in the third of these provisions did Congress address timing, making plain that the quality of the integration is more important than the timing. Further, even when it did address timing, Congress did not provide a due date for a final rule, which demonstrates that Congress did not want to rush the CFPB into yet another poorly designed disclosure.

Additionally, Congress required that the disclosures be validated through consumer testing, § 1032(b)(3), and provided the CFPB with the option of using trial disclosure programs, § 1032(e). Congress is aware that consumer testing and trial disclosure programs are time-consuming endeavors, but included them nevertheless. The Congressional intent to get disclosures that work, even if it takes time, is clear.

1. Congress Provided the CFPB With Broad Powers to Ensure a Successful Outcome

In creating the CFPB, Congress merged the rulewriters and gave the Bureau the broad exemptive powers under RESPA,[2] TILA,[3] and under Title X of Dodd-Frank[4] to ensure that consumers receive an integrated set of mortgage disclosures that enables them to better navigate the mortgage process. The CFPB has authority to exempt transactions from all of TILA,[5] allowing it to exempt transactions from individual provisions within TILA. Since the effective date provision for Title XIV of the Dodd-Frank Act is enacted in TILA, the CFPB has broad authority to revise the Title XIV effective dates where appropriate to ensure that the KBYO project has a successful outcome.

It is important that the CFPB consider all of the forthcoming rules in developing the KBYO disclosures because only then will the CFPB be able to identify, analyze, and address their interconnections, and prevent unintended consequences. This will prevent repeating the experience that occurred when the 2008 amendments to Regulation X were made. At that time, the confusion surrounding the 2008 amendments to Regulation X necessitated eleven rounds of Frequently Asked Questions (FAQs) after the rule was final, and required delaying enforcement of the regulation by four months.

2. QM and QRM Rules Need to Be Synchronized and Integrated

There are a number of other rulemakings in the pipeline that will impact the disclosures, including a final qualified mortgage (QM) rule and a final qualified residential mortgage (QRM) rule. Investors and originators will use the disclosures to determine whether a loan is a QM loan or QRM loan. Thus, it is important that the disclosures accommodate the QM and QRM rules. The CFPB can accomplish this by requiring disclosures that clearly delineate which charges are included within points and fees, as both the QM and the QRM rules will cap points and fees.

3. The Definition of the 3% Cap on Points and Fees Needs to be Finalized and Synchronized in Both the QM and QRM Rulemakings

During underwriting, lenders must be able to determine whether the points and fees exceed the QM and QRM caps. Few, if any, lenders will be willing to make non-QM loans because of possible TILA liability. Even if a lender were willing to make a non-QM loan, if during underwriting the points and fees increase to exceed the QM or QRM cap, the lender would likely need to reprice the loan and, presumably, redisclose a Loan Estimate. A lender also must then be able to determine if the increased rate or points makes the loan a high-cost Home Ownership and Equity Protection Act (HOEPA) loan

[2] RESPA § 19(a).
[3] TILA § 105(a), (f).
[4] Dodd-Frank Act § 1032(a).
[5] TILA § 104(5).

under the new Dodd-Frank HOEPA thresholds.

4. Mortgage Originators Need to be Able to Easily Determine if Loans Are QM Loans to Avoid Steering

Mortgage originators also will need to determine whether a preexisting loan is a QM loan when the consumer is shopping for a new loan, because originators are prohibited from steering a consumer from a QM loan for which the consumer is qualified to a non-QM loan.[6] For this reason, mortgage originators will also need to determine whether the prospective new loan will be a QM loan.

5. The Definition and Requirements for the APR to APOR Comparisons Need to be Made and Synchronized

In 2009, when the Federal Reserve proposed to revise the definition of finance charge to improve the usefulness of the APR, Dodd-Frank, and its requirement for APR to average prime offer rate (APOR) comparisons, had not been enacted. Any amendments related to the APR need to be thought through in the context of the seven new APR to APOR comparisons required by Dodd-Frank because they are interrelated. For example, if the CFPB were to include more items in the APR, it would presumably want to include the same items in its definition of APOR so that the comparisons will measure what they are intended to measure – the amount by which the rate on a particular loan exceeds the market rate, the APOR.

6. Potential Amendments to the Finance Charge Definition Would Need to Be Integrated (Outline pp. 17-20)

The CFPB has indicated it may consider removing some exclusions from the finance charge definition. The prototype Loan Estimate and Settlement Disclosures de-emphasize the APR and finance charge disclosures, so the need for such simplification is mitigated. The disclosure of the finance charge seems to be particularly unnecessary considering the fact that upfront fees are being categorized as "Settlement Fees" or "Settlement Costs" rather than as prepaid finance charges. Information on finance charges imposed after closing – mortgage insurance costs and interest – is disclosed in more detail than under current disclosures.

One possibility is to determine whether the finance charge remains useful and, if not, remove disclosures of it and of the APR.

The CFPB acknowledges that a more inclusive finance charge could result in increased APRs for many loans, thereby making more loans exceed federal and state high-cost loan thresholds. (Outline p. 20.) The definition of finance charge could also affect the calculation of points and fees in the QM and QRM rules, causing more to hit the cap on points and fees.

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[6] TILA § 129B(c)(3)(B).

We note that the 2009 all-in APR proposal pre-dated Dodd-Frank, which lowered the HOEPA thresholds. This exacerbates the interplay between these requirements. This is a prime example of why the disclosure rules cannot be considered in isolation from the substantive rules, including whether *bona fide* third-party fees are included in the definition of points and fees (which appears contrary to the intent of the Dodd-Frank Act.)

We urge the CFPB to refrain from adding more complexity to this reform system by revising the APR until we have seen how the forms might work. If the Bureau were to decide to move forward, it must consult with stakeholders, as this change would be costly and would affect various other rules, as indicated.

B. RESPA and TILA Remain Separate Statutes

Although their disclosures are being integrated, RESPA and TILA remain separate statutes. The CFPB has suggested that it may incorporate Regulation X FAQs into Regulation Z or its commentary. (Outline p. 12.) We recommend that they be incorporated into Regulation X to the extent they implement RESPA because Regulation Z only implements TILA.

Both the RESPA and TILA statutes and implementing regulations provide liability and remedies respecting their respective disclosures, but the liabilities and remedies are not the same. There is no basis under these statutes or Dodd-Frank to apply RESPA liability to TILA disclosures or *vice versa*. The CFPB should specify in its proposal which liabilities and remedies flow from each disclosure. If this is not clear, years of expensive and unnecessary litigation will ensue.

The CFPB is considering whether to propose a rule that requires use of standard forms under RESPA for mortgage loans subject to RESPA, but optional model forms for transactions that are subject only to TILA. Standard forms should only be required for the sections of the integrated disclosures that contain the RESPA-required disclosures, and there should be one standard form each for purchases, refinances, and home equity loans. We note that many model TILA forms will be needed to accommodate the wide range of loan products available today.

C. Implementation Should Be Efficient and Cost-Effective; Guidance Will Be Necessary

1. Guidance Will Be Necessary

We respectfully urge that when the final rule is published, the CFPB embark on a process for implementation that commits to providing timely guidance for the questions that will inevitably arise. Commentary developed and issued with the final rule is unlikely to address all of the issues that will arise as a result of such a massive and complicated

overhaul of the disclosure rules. The shorter and more difficult the implementation process, the more important timely guidance will be.

The CFPB may want to consider issuing proposed rules on both disclosures and substantive issues, soliciting comments on the proposed rules, then reproposing the rules for comment before issuing a final rule. This would allow both consumers and industry to see the major substantive decisions that the CFPB will be making, and identify areas where additional guidance is needed and where loopholes need to be closed.

2. Implementation Needs to be Efficient and Cost-Effective

The implementation period should provide sufficient time for training, systems development and the many operational changes that the rule will necessitate. For larger lenders, a considerable amount of time will be needed not only to integrate these changes but for the programming and testing of a large number of complicated, often legacy, systems and the data passed among them. Smaller lenders not only need time to train and make these same changes with fewer resources, but they must also await the completion of guidance from larger lenders, vendors, and secondary market aggregators. Smaller lenders need such guidance because, unless the final rules are absolutely clear on what is required to comply, large lenders will establish overlays of additional requirements to ensure that the loans they buy from smaller lenders comply. Different large lenders have differing overlays, making it more difficult for smaller lenders to make their loans and sell them in the secondary market. We also respectfully urge that the minimum time period for compliance be twelve months, and it should ensue after questions are answered and sufficient guidance is released.

3. Implementing Rules is Costly

Implementing revised mortgage disclosure forms is a costly, time-consuming task for all. The CFPB stated in its Small Business Panel outline that, "it is possible that routine systems updates would at least partially mitigate these one-time [implementation] costs since the costs would, in part, already be budgeted." (Outline p. 6.) It is true that lenders routinely update their systems, and that these costs may already be budgeted, but budgeting costs does not reduce these costs, it merely tries to anticipate them. More importantly, the cost of routine systems updates is minor in comparison to the costs of implementing major regulatory changes.

The CFPB also questions whether implementation costs would be mitigated by vendors that offer free updates and training to small entities. (Outline p. 6.) In checking with vendors, many have indicated that they will not offer a free update service for redesigning the GFE and HUD-1 because of the costs involved. Even if a vendor were to offer some training materials for which it has not yet billed directly, there will still be significant costs to our members for employee training. The more the rules change, the higher the implementation costs.

The CFPB's inquiry about free updates indicates that the CFPB needs additional information as to what is involved in systems changes, especially by changes that would redesign disclosure forms. For perspective, at one large lender, implementing the Regulation Z amendments that became effective October 1, 2009 required over 70,000 hours, while implementing the 2008 amendments to Regulation X took more than twice as much time. These costs are significant, and are ultimately borne by consumers. Careful planning of the timing of the rulemakings, accompanied by one set of changes to the disclosures, can greatly reduce costs and improve efficiencies, while delivering a more comprehensible disclosure regime to consumers.

4. *Integrating Disclosures Would Satisfy the Cost-Benefit Analysis Requirement*

Congress required that the CFPB's rules pass a cost-benefit analysis.[7] The CFPB stated in its Small Business Panel outline, "The proposals under consideration are not, *by themselves,* anticipated to require subsequent updates of software and compliance systems beyond the initial update." (Emphasis added). Viewing related rulemakings in isolation masks the actual costs, and that risks increasing the costs unnecessarily. Further, § 1022 does not permit the CFPB to assess the costs and benefits of each rule in isolation. It requires the CFPB to consider, among other things, "the impact of proposed rules[.]"[8] Congress used the word rules in the plural, and did not limit the impact analysis to CFPB rules. Thus, in the KBYO rulemaking the CFPB must consider the impacts of other proposed rules, including the TILA and the QRM rulemakings. We do not believe that a piecemeal implementation process would pass a cost-benefit analysis, in part because of its unnecessary costs, and in part because piecemeal rulewriting results in flawed disclosures, such as those in place today.

We urge that the CFPB use a holistic approach to viewing the consumer's experience, including a consideration of all the origination disclosures, and that it consider the regulatory burden of implementing all the new Dodd-Frank rulemakings as part of its cost-benefit analysis. This approach would both improve the disclosures and minimize implementation costs.

D. More Prototypes and Testing Are Needed

The mortgage market offers a range of loan products to address diverse needs. In order to ensure that these disclosures are useful, the CFPB should develop prototypes for all standard loan products of Fannie Mae, Freddie Mac, and the Federal Housing Administration, as well as construction loans and bridge loans.

The prototypes should be carefully tested in conjunction with lenders and settlement service providers to ensure that they accommodate the many issues that arise in mortgage lending and provide the correct information to consumers. Rather than simply testing the

[7] Dodd-Frank Act § 1022.
[8] Dodd-Frank Act § 1022(b)(2)(A)(ii).

prototypes with focus groups, factual situations derived from loans that have actually closed should be used to verify that the prototypes will work – that lenders will know how to complete them correctly and consumers will understand them – at every stage of the transaction from application through closing. This will reveal the flaws[9] that may exist in any disclosure regime.

E. Unnecessary Changes Should Not Be Made

In 2008, as you aware, HUD issued new RESPA rules to which the industry has just adjusted. Those changes included a new definition of application, the imposition of tolerances, and a revised disclosure regime. In the Outline, reviewed in greater detail in sections II and III below, the CFPB proposes to revise these new provisions to: establish more difficult tolerances; establish new waiting periods and responsibilities for disclosures; change the definition of application; and even possibly change the definition of the Finance Charge and the APR. We oppose this approach. As reviewed in this letter, reform can be accomplished by building on the strengths of the current system, without unduly revising the provisions that work. Reform should be focused where Congress intended – on combining the RESPA and TILA disclosures to finally enhance consumer understanding of their mortgage loans.

II. Specific Comments on Revisions to Rules and Disclosures

The Outline and the nine rounds of prototypes are subject to change as the CFPB works through the large number of responses it continues to receive. Notwithstanding that there will be changes, we note below some of the most significant issues.

[9] Under the prototypes, we do not know how a lender would populate the Projected Payments disclosure for a loan on which the payment could change more than four times before reaching its maximum. The prototypes have used up to four columns but never more than four. If a loan product would require more than four columns to show all the changes before the payment reaches its maximum, there would either be additional columns or some of the changes would not be shown. Either way, it is not clear that consumers would understand how the payment could change. Another area where testing is needed is on the revised Loan Estimate. It is not clear whether it would include only the items that change, or everything then known. Either way, consumers are not likely to understand the disclosure. Finally, we do not how the CFPB would require the prototypes to be prepared for no-closing cost loans or subordinate loans, nor do we know how the CFPB will treat preapprovals, such as whether a post-application identification of a property address would be a changed circumstance. We believe the rules should clearly permit "prequalification" programs. These programs are extremely important in the home-shopping process, but the rules applicable to them are unintelligible in today's RESPA regime. Prequalification programs allow prospective homebuyers to approach a lender, who will check their credit, verify income, and then provide assurances that will allow real estate agents to proceed with more precise searches for prospective homes. This permits buyers a better grasp of affordability, and possibly gain an advantage over other shoppers because they can reliably show the seller that they have the means to buy the house. Current RESPA rules, however, obfuscate the distinction between an "application" and a "prequalification" program.

A. Tolerances Should Not Be Tightened (Outline pp. 9-11)

The CFPB has indicated it is considering reducing certain tolerances from their levels under Regulation X. Since the tolerances imposed as recently as the 2008 Regulation X amendments largely solved the problem of unexpected cost increases at closing, we do not believe the tolerances need to be lowered yet again. We know of no data indicating that the ten percent tolerance on third party fees is insufficient. The CFPB should not lower the tolerances unless it has data that a tightening of the tolerances is necessary to prevent surprises at closing, and that unintended consequences will not result.

Specifically, the CFPB has indicated that it may apply a zero tolerance if the lender selects the settlement service provider. The CFPB explains that it may be appropriate to hold lenders to a higher standard if the lenders do not allow consumers to shop for the service provider. RESPA permits lenders to require consumers to pay for the services of attorneys, credit reporting agencies, or real estate appraisers "chosen by the lender to represent the lender's interest in a real estate transaction[.]"[10]

Lenders do not control the charges of third parties. A zero tolerance would make lenders liable for charges they do not control, which is unfair and unworkable. Currently, the zero tolerances apply to individual fees rather than to the aggregate of all fees in the zero tolerance category. Adding additional zero tolerance fees would be very problematic if each fee were considered separately.

The CFPB also suggests that the fees of third-party providers that consumers must select from a "list of service providers" provided by the lender also bear a zero tolerance. We suggest that this written list of service providers be eliminated. Notably, the Loan Estimate prototypes to date have not included or referenced lists of service providers. A lender should only be held to a ten percent tolerance if the consumer asks for recommendations for third-party services or the lender requires the third-party provider.

If the consumer selects the service provider without, or regardless of, a lender recommendation, the lender should not be held to a tolerance because lender has no knowledge of or control over the pricing set by such providers.

Further, a requirement for written lists harms small businesses. A lender will not place a provider on the list unless the lender is relatively sure of the provider's costs. The Regulation X FAQs indicate the lender may not include a provider on the list unless the provider is likely to be available. The more providers the lender includes on its list, the greater its risk of error. The tendency is for lenders to list a small number of large providers who offer their services over a wide area, to reduce tracking costs and ensure availability. This disadvantages smaller settlement service providers.

[10] RESPA § 8(c).

B. The RESPA Definition of Application Should Not Be Revised (Outline, p. 7-9)

As detailed further below in section III-A below, the definition of application under RESPA should not be revised to delete the clause that allows lenders to request additional information of their choosing at application. The definition should be applicable under TILA, as well.

There is a clear tension between providing applications early and providing applications that can be relied upon by the borrower and the lender. The undersigned believe the rules should assure that getting a reliable estimate is the greater imperative. Respectfully, we believe this is an area where a misplaced belief in the early disclosure as a shopping tool should not be permitted to lead to the wrong result.

C. Settlement Agents Should Deliver Settlement Disclosures (Outline p. 15)

Respectfully, we do not believe that the rules need to be revised to require that lenders themselves provide consumers with settlement disclosures. This requirement would be unduly burdensome, and would create unnecessary waiting periods for consumers needing to close their loans on a timely basis.

D. "In 5 Years" Comparison (Outline, Attachments B-1, B-2)

The Loan Estimate prototypes attached to the Outline contain an "In 5 Years" comparison. Dodd-Frank does not require this new terminology, and implementation of this comparison will require additional training and systems changes. The costs and benefits of implementing these new terms must be carefully evaluated. It is not apparent that this will meaningfully assist consumers.

E. The Loan Calculation Disclosures (Outline, Attachments C-1, C-2)

The Settlement Disclosure prototypes attached to the Outline contain three "Loan Calculations" disclosures that are of questionable value. They are the Total of Payments, Total Interest Percentage, and Lender Cost of Funds (also called the Average Cost of Funds).

The first two disclosures would always be inaccurate on an ARM loan and on any loan paid off before final maturity.

The Lender Cost of Funds (or Average Cost of Funds) is not a helpful disclosure and might be harmful to consumers because it could distract consumer attention away from relevant information. While we appreciate the CFPB's suggestion that the lender disclose a "publically available cost of funds index" (Outline p. 7), we do not believe that would be useful to consumers either. If this disclosure is included, explanatory language should disclaim its importance, explain that an index is used that does not specifically

apply to the loan, and, most importantly, that borrowers should the use interest rate and settlement costs and any other relevant concerns, such as the quality of service, as appropriate reasons to select a particular lender or settlement service provider.

We strongly urge that the CFPB use its authority under TILA to eliminate these disclosures entirely. If these disclosures are required, however, it is important that they not be designated a "material disclosure" under TILA to provides a basis for rescission. In addition, we recommend that their lack of accuracy and relevance be stated.

F. The Definition of "*Bona Fide*" Discount Points Needs to be Clearly Defined (Not discussed in the Outline, but it is important to note.)

It is particularly important to clearly define the term *bona fide* discount points[11] in order to remove any subjectivity. Any lack of clarity, even seemingly minor, will prevent loans from being made due to regulatory uncertainty, even to qualified applicants.

G. Guidance on Average-Cost Pricing Needs to be Coordinated (Outline p. 12)

The CFPB has indicated it is considering guidance to facilitate the use of average-cost pricing under RESPA. We support the use of average cost pricing. We recommend that the CFPB consider applying it to any APR exclusions as well.

H. Machine Readable Record Retention Requirements (Outline p. 17)

The CFPB is considering requiring lenders to maintain standardized, machine-readable, electronic versions of the Loan Estimates and Settlement Disclosures and the reasons for any changes to the information provided in those disclosures. It is not clear whether the costs and benefits of such a requirement would justify this change. For many lenders, major systems and other changes may be necessary. One possibility would be to make machine-readable records optional to allow lenders to migrate to this approach. Clearly, the comparative cost differences of paper versus automated data must be carefully evaluated before the CFPB seeks to introduce this as a requirement.

I. Several Overlapping Rules (Outline p. 21)

The CFPB has said it is not aware of any federal regulations, other than TILA and RESPA, that duplicate, overlap, or conflict with the proposals under consideration. The QM, QRM, and all Dodd-Frank Act amendments to TILA interact with the KBYO initiative. This letter provides the CFPB with a recommendation as to how it can integrate these rules, with Regulation B, into a streamlined, understandable disclosure regime.

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[11] TILA § 129C(b)(2)(C).

We note that under § 1024.7(a)(5) and the HUD FAQs at GFE #31, lenders may not require an applicant to provide documentation as a condition of providing the GFE and, the applicant must be given a ten-business day shopping period after the initial GFE is issued. § 1024.7(c). It is not clear whether documentation may be required during that ten-business day shopping period. Yet Regulation B §§ 1002.9 (a)(1)(ii) and (c) require action within 30 days after receipt of an incomplete application.

The CFPB should also consider Homeowners Protection Act (HPA) requirements. Before the Dodd-Frank Act, no regulator had the ability to issue HPA regulations. The CFPB now has the opportunity to clarify HPA requirements and integrate HPA disclosures with the RESPA and TILA disclosures. The Loan Estimate and Settlement Disclosure prototypes have significant amounts of information related to mortgage insurance. It would be useful for the CFPB to consider how the KBYO disclosures work with the HPA disclosures to avoid overdisclosures or other confusing disclosures.

III. Timing of Disclosures

The CFPB has a difficult task of designing disclosures that make clear a complex transaction that develops continuously over a period of weeks.

A. Pre-Disclosure Loan Estimate

The CFPB is considering requiring that any preapplication, consumer-specific, written estimate of loan terms or settlement charges contain a prominent disclaimer that the document is not the Loan Estimate required by TILA and RESPA. (Outline p. 9.) Preliminary estimates are useful to consumers for shopping prior to making a loan application, and we agree with this approach.

After application, which follows shopping, we suggest that the rules emphasize a clear, four-step disclosure timing regime that would provide consumers with information they need, when they need it, and without excessive overdisclosures. An advantage to emphasizing a four-step timing regime is that consumers would know when to expect their disclosures, and they would know what types of information would be included in each. This would help consumers understand the mortgage loan transaction as it develops. A finite number of disclosures would be easier for consumers to understand.

The form used in each of the four steps should be as consistent as possible so the consumer will be able to easily comprehend the information being presented as the transaction moves forward through the process. The CFPB's prototype Loan Estimate and Settlement Disclosures are more similar than the current GFE and HUD-1 and we support efforts to make them as similar as possible.

B. Step 1: Loan Estimate Three Days After The Lender Receives an Application

Within three business days of a lender's receipt of an application, the lender would deliver a Loan Estimate. This timing is similar to the timing under current rules, but there is one new wrinkle caused by combining RESPA and TILA disclosures.

With the combination of RESPA and TILA disclosures and the advent of a more detailed form, mortgage brokers may be unlikely to be able to provide the Loan Estimate within three days because brokers do not have a good portion of the necessary information about the loan terms. Brokers will need to rely on lenders to provide this information. If brokers are to be effective in assisting consumers, they will need time to do so. The lender will need up to three days to prepare the Loan Estimate, measured from the date the lender receives the application from the broker. Otherwise, if a broker were to take two days to select a lender, it would be difficult for the lender to prepare the Loan Estimate in one day. Too short a time could result in rejecting the application, even if the applicant were a qualified consumer.

As noted earlier, there is a clear tension between providing disclosures early and providing disclosures on which the consumer and lender can rely.

At this early point in the transaction, important information is unknown. How much is known will depend, in part, on what the CFPB defines to be an application. The CFPB has indicated that it may revise the Regulation X definition of application, which triggers the requirement for a Loan Estimate, so that the application is limited to only six items: the consumer's name; monthly income; social security number; the property address; an estimated property value; and the loan amount sought. (Outline pp. 7-9.) This would remove from the Regulation X definition the seventh item, "any other information deemed necessary by the loan originator."[12] With only this information, a significant amount of the information required to be disclosed by the prototype Loan Estimates would be unknown when the disclosure is required.

For example, the lender would not know:

- Whether the borrower will occupy the home as a principal residence;
- Whether the loan will be a first or junior lien;
- Whether the loan is a purchase or refinance;
- If it is a purchase:
    - The purchase price;
    - The amount of transfer taxes;
    - The real estate broker's fee; and
    - Any seller credits or employer-paid items;

[12] 12 C.F.R. § 1024(2)(b).

- Whether the consumer prefers an adjustable-rate (ARM) loan;
- Whether the consumer wants to pay discount points to reduce the interest rate and, if so, how many;
- What loan term (in years) the consumer wants;
- Whether the consumer wants a balloon loan;
- Whether the consumer prefers a prepayment penalty in exchange for a lower rate;
- Whether the loan would have an escrow;
- The cost of homeowners' insurance;
- Whether the property is a condominium and if so, the amount of the dues; and
- Whether the consumer will retain an attorney.

The latest prototype Loan Estimate requires disclosure of all of these items, and for good reason. A robust Loan Estimate requires this information. A consumer's estimate of the property value may be inaccurate, but the loan-to-value ratio is a significant determinant in the pricing of the loan. HUD included the seventh item, "any other information deemed necessary by the loan originator," in its 2008 RESPA reform rule because of its recognition that the GFE would be binding and subject to tolerances. For this reason, HUD permitted the lender to seek any needed information needed before it was bound.

Also, the lien position and whether the property would be owner-occupied would have an impact on the pricing of the loan.

If the lender has only six items of information, it will not be able reliably estimate the loan costs. Therefore, the Loan Estimate would need to be revised when the lender has enough information to solidify the earlier estimate. This would both be confusing to the consumer and add unnecessary costs to the transaction.

We recommend the CFPB incorporate into its definition of application the reasoning behind Regulation C, which requires lenders to collect and report, among other things, the loan type applied for; the loan purpose; the property type; and whether the lien is first or subordinate.[13] These are all necessary for pricing. The lender needs to collect this information in any event, and the method most consistent with the policies behind the Home Mortgage Disclosure Act (HMDA) and Regulation C would be to permit the lender to collect necessary information during application intake.

Additionally, under the new ability-to-repay requirements, lenders are likely to require more, not less, information to protect consumers. For example, many lenders are likely to seek information on residual income or debts beyond those contained in credit reports. We do not want a situation where RESPA-TILA requirements could hamper compliance with the ability-to-repay rule.

The process should provide consumers the time they need to decide whether to apply for an ARM or fixed-rate loan, or to decide how many discount points to pay. Encouraging

[13] 12 C.F.R. § 1003.4(a).

dialog between the lender and consumer on these important decisions would be the better consumer protection policy. Therefore, the three-day clock should begin when the lender has the information it needs from the borrower, because otherwise the lender may need to reject the application, even if the applicant were qualified.

Therefore, we recommend that the CFPB define application as under RESPA currently, for the Loan Estimate so that the lender can collect any information the lender deems necessary to accurately price the loan and populate the Loan Estimate before the three-day clock begins to run.

C. Step 2: Disclosure Upon Loan Approval; Combine With Regulation B Disclosure

Regulation X has an unintended consequence that results in revised GFEs whenever a settlement service charge, which is subject to a ten percent tolerance, changes, due to borrower-requested changes or permissible changed circumstances. The CFPB has expressed concern that repeated redisclosures may harm consumers if the third-party charges can increase ten percent with each revised GFE. The CFPB has indicated it wants to resolve this overdisclosure problem by requiring a redisclosure only when the charges subject to a ten percent tolerance, in the aggregate, exceed the tolerance due to changed circumstances or borrower-requested changes. (Outline p. 11.)

The CFPB's statement in the Small Business Panel outline that "available compliance software likely offers the functionality to track the timing and reasons for changed circumstances" (Outline p. 13) is not the main issue. Rather, the main issue is that there are too many revised GFEs today. Tracking possible changes in costs on a continual basis is burdensome. Many settlement service providers are small businesses, for whom tracking transaction-specific charges is burdensome.

Settlement service charges are numerous and they are dynamic, yet consumers need a static disclosure. Even if the CFPB were to require a revised Loan Estimate when certain charges had increased more than ten percent, charges would still be dynamic.

A workable approach would be to require lenders to redisclose the Loan Estimate at a certain *point in time*, rather than when the charges reach a certain *dollar amount*. Beyond the initial disclosure, that point in time should be when the costs have firmed up sufficiently that a redisclosure would be useful. Some charges would still be dynamic, but the number of revised disclosures would be reduced. We believe that the appropriate point in time is when the lender delivers the Regulation B notification of action taken, which is no later than 30 days after receipt of a complete loan application.[14] This approach would remove the problem of excessive redisclosures, would be operationally workable, and would dovetail well with Regulation B disclosure requirements, making a clean disclosure that consumers could understand. It would also further streamline the disclosures by integrating the KBYO disclosures with other origination disclosures.

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[14] 12 C.F.R. § 1002.9(a)(1).

Of course, certain changes in the loan product will always require revised Loan Estimates regardless of settlement services and regardless of Regulation B. For example, changing from a fixed-rate loan to an ARM, changing from a QRM to a non-QRM loan, or adding a balloon payment or other risky feature will always require a new disclosure. These disclosures would need to be Step 1 disclosures because they will require repricing the loan.

D. Step 3: Disclosure At Least Three Days Before Scheduled Closing

The CFPB is considering requiring delivery of a Settlement Disclosure three business days before closing. (Outline p. 14.) Our suggested timing would be that lenders provide a third Loan Estimate at least three days before closing. This disclosure would not provide the specific disclosure that would be provided in Step 4, yet it would provide consumers with important information that will let them know whether the charges are within the tolerances and the amount of cash that will be needed to close the mortgage loan transaction.[15]

Requiring a final Settlement Disclosure three days before closing would lead to negative unforeseen consequences. It would require the lender to assure, three days prior to scheduled closing, that the financing has been secured as described in the closing documents. This, in effect means that the transaction becomes "wet" in advance of the settlement date. Having a "wet" transaction means the loan must be "booked" in the lender's pipeline, and the funds made available at that earlier date. This means that the loan is in the warehouse "pipeline" a full three days longer than required in today's operations—but unlike today's loans, the loans would be "booked" but yet continue to carry risks that costs and conditions are still subject to change.

This three-day advance booking of loans has several deleterious effects. First, the lender is taking on contractual risks on any changes that may occur (and changes are fully expected to occur as the negotiations between buyer and seller can advance) in the three-day waiting-period. These risks are largely unpredictable. Second, having wet transactions in the pipeline for three additional days means that, to do the same level of transactions that lenders do today, lenders will have to increase warehouse capacity by a considerable amount. We are still estimating the precise amount of the increase necessary to absorb the effects of this rule, but some lenders have preliminarily forecasted that they expect a 30-40 percent more warehouse capacity. The impact to warehouse capacity means, of course, that the added costs and risks will be reflected in

[15] RESPA § 4(b) provides, "Upon the request of the borrower to inspect the forms prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day." The CFPB does not have authority to require a settlement statement three days before closing.

loan pricing to the consumer. In addition, it should be noted that lenders cannot augment warehouse line capacity unless they increase net worth—for many banks, such increases is impossible in the short and mid-range term. It is costly in the long run. This would put smaller lenders at a significant disadvantage.

Additional waiting periods due to revised disclosures would exacerbate this warehouse problem greatly, as the lender would incur extra costs for each waiting period. This would be especially inappropriate for waiting periods due to changes in a purchase transaction rather than the loan transaction.

Providing the updated Loan Estimate at least three days before closing would avoid establishing unnecessary waiting periods that delay closings, and it would avoid unnecessarily upending current business practices.

It is important not to trigger waiting periods unless they would provide a tangible consumer benefit.

Waiting periods should be required only for loan-related changes, not purchase-related changes. The buyer and seller may negotiate details of their transaction up to closing without advising the lender. Requiring a waiting period for these changes is unnecessary because the borrower negotiated and agreed to the change.

The CFPB suggests that a waiting period should only be triggered if: the APR increases by more than 1/8 of 1 percent, an adjustable-rate feature, prepayment penalty, negative amortization feature, interest-only feature, balloon payment, or demand feature is added to the loan; or the cash needed to close increases beyond an unspecified tolerance. (Outline p. 14.)

We agree with the CFPB that a minor increase in the APR should not require a waiting period. A change that benefits the consumer, such as a decrease in APR, should never require a waiting period. Short of adding a risky feature to a loan product, any change due to a consumer request should not require a waiting period because the consumer would benefit from it. For example, the consumer may elect to revise the deductible on the homeowner's insurance policy and thereby change the premium. The consumer would have already discussed this with the insurance agent, so there would be no need for a waiting period.

We do not agree that a change in the cash needed to close, by itself, should trigger a waiting period – a new Loan Estimate can provide that information without an unnecessary delay. Waiting periods themselves can significantly increase the cash needed to close.

Cash to close can change for a large number of reasons, some unrelated to the loan, some minor, and some that are the consumer's choice. These do not warrant a waiting period in all cases. Prorated charges and daily interest change daily, but these changes do not warrant waiting periods because they are predictable.

The trigger for a waiting period should be loan-related changes to the consumer's detriment that are significant enough that the consumer needs three days to decide whether to abandon the loan. At this stage of the transaction, the consumer has a financial stake in getting the loan closed, and this needs to be weighed in determining whether a waiting period is appropriate.

Whatever the choice of circumstances to support a waiting period, the rule should permit consumers the ability to waive a waiting period whenever they choose.

Nevertheless, the triggers for waiting periods and for their waiver need to be very clear while not unnecessarily restrictive. Today, consumers can waive their waiting periods if they have a "*bona fide* personal financial emergency[.]"[16] Lenders are unable to determine when such an emergency exits, so they cannot permit waivers. If the trigger for a waiting period or waiver is in any way unclear, lenders will require waiting periods to avoid liability. If the rule it is unduly restrictive, borrowers will in too many cases be unduly delayed.

If the CFPB were to require unnecessary waiting periods, these would become the new unwelcome surprise just before closing.

E. Step 4: Final Disclosure at Settlement

After the last waiting period, or, in most cases where there is no waiting period at all, the person conducting the settlement would provide the Step 4 disclosure, the Settlement Disclosure. It would be easiest for consumers if the disclosure looked the same in Steps 1 through 4, with the difference in the final disclosure being the amount of itemization.

We also suggest that the pages be re-ordered so that the loan-specific information appears in a section separate from the settlement information.

The CFPB is weighing whether the lender or the settlement agent should be responsible for preparing the RESPA-required information. (Outline p. 15.) If it is to be the lender, the lender would need to get final information from the settlement agent at least a week before the closing. We believe this approach would increase waiting periods unnecessarily. Further, the lender should not be responsible for verifying the accuracy of the settlement agent's charges because that would delay closings even further.

From the consumer's point of view, it would be better to have the settlement agent prepare the settlement-related information.

[16] 12 C.F.R. § 1026.19(a)(3).

IV. Conclusion

We greatly appreciate the CFPB's work, and look forward to a result that will truly improve the mortgage process for consumers. For the reasons discussed, we strongly urge the CFPB to design and implement all of the disclosure changes, including those required as a result of Dodd-Frank, comprehensively. Done correctly, this will ensure that the regulations and disclosures are well-designed and benefit consumers.

This is an historic opportunity to finally put in place a mortgage disclosure regime that enables consumers, our customers, to make informed credit decisions. We share in the CFPB’s and Congress’ mutual goal of ensuring that this project comes to a successful conclusion.

Sincerely,

American Bankers Association
American Escrow Association
American Financial Services Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association
National Association of Realtors
The Real Estate Services Providers Council, Inc. (RESPRO®)

American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association

April 3, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Mortgage Loan Prototypes Round 9, and Potential Changes to the Underlying Mortgage Disclosure Regulations

Dear Director Cordray:

The undersigned are pleased to submit comments on the Round 9 prototypes of Know Before You Owe mortgage origination disclosures. In addition to releasing Round 9 prototypes, as part of convening its Small Business Review Panel for the redesign of these disclosures, the CFPB has provided the first indication of its thinking about how it may amend the substantive regulations underlying the disclosures.

During the Know Before You Know iterations, we have submitted a large number of comment letters that walk the CFPB through a large number of very technical, but important details. We have been disappointed that many of these issues have not been addressed or corrected.

In the appendix to this letter, we address the Round 9 prototype disclosures themselves. The CFPB released the Round 9 prototypes just after February 15, when the undersigned submitted a lengthy joint letter commenting on Rounds 7 and 8. We recognize the CFPB did not have time to react to all the suggestions in that letter, and some of the matters about which that letter commented remain in this final round. We do not repeat here all the concerns expressed in the February 15 letter, although we continue to note some of the issues that are more significant.

Additionally, we along with other trade associations have written to encourage the CFPB to use an iterative approach to redesigning its regulations as well as the disclosure forms because both the regulations and forms work together. In this connection, we will provide comments shortly on the issues raised in the Small Business Review Panel materials, which we hope are only the first step in such an iterative process.

We look forward to continuing to provide feedback as the CFPB continues with its Know Before You Owe and other initiatives.

Sincerely,

American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Mortgage Bankers Association

APPENDIX

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I. Partial Escrows

The Round 8 Butternut prototype had the best disclosure of partial escrows to date. In contrast, the Round 8 Hemlock prototype had a partial escrow disclosed in a manner that could mislead borrowers about material facts. In Round 9, the underlying loan again has a partial escrow, with a disclosure slightly better than in Hemlock, but not as clear as in Butternut.

The Round 9 Basswood escrow disclosure is improved from the Hemlock escrow disclosure. In Hemlock, page one under Projected Payments discloses the Estimated Escrow as $422.94, then discloses under Information about Escrow for Taxes, Insurance & Assessments again as $422.94. It states, "Your escrow payment covers the taxes, insurance & assessments listed in Section F on page 2." This may lead the borrower to believe the escrow payment includes homeowners' association (HOA) dues when it does not. It does not alert the borrower to the important fact that HOA dues will need to be paid in addition to the escrow payment.

Basswood is improved from Hemlock in that Basswood shows, under Projected Payments, the Estimated Escrow is $699.50, while the Escrow Information for Taxes, Insurance & Assessments is a different, higher, dollar amount. This difference in dollar amount, lacking in Hemlock, can alert the borrower to the fact that at least one item is not included in the escrow payment.

Basswood lacks, however, the Butternut disclosure that the dollar amounts differ *because* the loan has a partial escrow. Butternut adds, "Your escrow payment only covers the property costs in Section F on page 3. *Some of your costs are not in escrow."* (Emphasis added.) The emphasized sentence adds a great deal of clarity. The check-box for a partial escrow does as well, by distinguishing between a total escrow, a partial escrow, and no escrow. Partial escrows are common. It is important for borrowers to understand what their escrows cover, and just as important to understand what they do not cover. The Butternut approach is a much clearer disclosure about important information.

For these reasons and for the reasons detailed in our February 15 letter, we urge the CFPB to adopt a Butternut-style disclosure for partial escrows in both the Loan Estimate and the Settlement Disclosure.

II. ARM Disclosures

A. ARM Disclosures Need to Include the Fully-Indexed Rate

The underlying loan in Round 9 is a 5-year, interest only, 5/3 adjustable-rate mortgage (ARM) loan. There are a large number of ARM products in the market, and it is very difficult to determine from the few prototypes that have been released whether the prototypes will provide consumers with sufficient ARM information, and whether creditors will have rules that clearly define how to complete the forms.

Most ARM products cap the interest rate adjustments based on the initial interest rate. The initial interest rate is not necessarily based on the index and margin used to set future rates. If two loans had the same initial interest rate and caps, the disclosures would look nearly identical even if one loan had a deeply discounted initial rate and the other loan had a premium initial rate. It is critical that this difference be readily apparent to consumers at the Loan Estimate stage and through closing.

An example may help illustrate how misleading the Round 9 Loan Estimate prototype could be. In the Round 9 transaction, the borrower would see that after the initial interest rate of 4.375% expires, the rate could increase by 3% after 5 years to 7.375%, and then could reach its maximum of 8% after another three years. But the borrower would not know how likely that would be. There is a disclosure that the Index + Margin is LIBOR + 4%, but the consumer would not know what the current index value is.

Assume this borrower is comparing two loans that are identical except that one loan uses LIBOR as an index and that the LIBOR value is currently 1%, while the other loan uses a different index that is currently 4%. It very likely that the second loan will be substantially more expensive than the first, but the only differences between the Loan Estimates for the two loans would be the one word description of the Index on page 2 and the APR and TIP disclosures on the last page. Multiple costs are included in the APR, and Tupelo explicitly states that the APR "is not your interest rate." Reliance on the APR disclosure to inform consumers about their interest rate would not be clear. We suggest that the CFPB test this pair of examples with consumers to see if they are able to consistently identify the second loan as substantially more expensive.
It is important that consumers are clearly informed about what the rate and payment would be if the index did not change. This disclosure should be revised to make clear that the second loan may be much more expensive than the first.

B. Acronyms Are Not Clear

Tupelo and Basswood both on page one refer consumers to the "AIR" and the "AP" tables on page four. These are unfamiliar acronyms and their meaning will not be apparent. We suggest spelling out the names. If there is insufficient space, the words "for details" could be eliminated without detracting from the meaning.

C. Number of Columns in Projected Payments

In the Round 9 loan, it appears that four columns are sufficient to show the initial payment and every change due to (1) the loan switching from interest-only (IO) payments to payments of principal and interest; (2) each rate change that could occur until the loan reached its maximum payment; and (3) termination of mortgage insurance.

However, with other loan programs, far more columns could be required to show all of the possible payments. There needs to be clear rules on the maximum number of columns that should be displayed and, if the maximum number of columns is not

sufficient to show all of the changes in payments, which columns should be displayed and which should be omitted.

D. Minimum Rate and Payment

The prototypes in Round 9 disclose a 4.375% initial interest rate, but a 5% minimum interest rate. That is contradictory and confusing.

The Round 9 prototypes do not address how to disclose the minimum payment if the interest rate can decrease below the initial interest rate. This is possible in the vast majority of ARM loans.

E. Adjustable Payment Table

The Adjustable Payment Table does not make clear that it covers only principal and interest payments while excluding mortgage insurance payments.

The table discloses that the loan has no "optional payments" but does not explain what this means. If this is meant to disclose whether there are optional payments on a loan with negative amortization, the disclosure is unnecessary because page one states that the loan amount cannot increase after closing. Nearly every IO loan and ARM loan permits the borrower to pay more than the scheduled payment without penalty, so the "No" answer here is confusing.

In the Round 9 loan, the IO period ends at the same time the first rate adjustment occurs. If the IO period were to end at a different time, would additional rows showing additional changes in amounts be required?

F. Adjustable Interest Rate Table

The Adjustable Interest Rate Table discloses the index is "LIBOR." There are multiple LIBOR indices. How completely does the lender need to describe the index?

The table does not indicate what index value the lender used in preparing the disclosure. The date of the index should be included so it will be easy to verify.

This table may be a good place to disclose the fully-indexed rate.

III. Loan Estimate

A. The Loan Estimate Needs to Disclose a Mortgage Broker's Fee for Shopping Purposes

Each lender and broker agree on a fee among themselves, but individual brokers can reach different agreements with different lenders. Consumers need to know the broker's fee for shopping purposes, so it needs to be on the Loan Estimate.

B. Consistent Headings Are Helpful

Page two of the Loan Estimate has a new heading, "Closing Cost Details." This is the same as the heading used in the Settlement Disclosure. The consistent terminology is an improvement because it will help consumers use the disclosures together.

C. "In Five Years" Should Exclude Settlement Fees

On page three, the Loan Estimate discloses the amount paid in five years. It includes the $5,963 in settlement fees. This is not an accurate description of loan costs in part because it is an initial cost rather than a cost for the time value of money. Moreover, it includes some costs that are unrelated to the loan. A major portion of it is for owner's title insurance coverage, which is not required for the loan, and which the buyer likely would have paid in a cash transaction. We believe no settlement fees should be included in the amount paid in five years. Consumers can see the settlement costs already, and there is no point in repeating them.

IV. Settlement Disclosure Page Two

A. Elimination of "Financed in Loan Amount" Column

The "Financed in Loan Amount" column that appeared in Round 8 was eliminated in Round 9, and the closing costs that were considered to be financed in the loan amount in Round 8 are now considered as paid by the borrower at closing. These are sensible improvements.

The closing costs that are financed in Round 8 were based on an arbitrary assumption that any cash the borrower brings to closing is applied first to a down payment rather than to closing costs. Our February 15 letter details the issues with this arbitrary assumption. In a purchase transaction, there is no reason to apply the amount the borrower brings to closing to a down payment before applying any of it to closing costs. We recommend that the Closing Costs Financed equal the total borrower-paid closing costs due at closing minus the cash the borrower brings to closing.

B. Payment of Broker Fee by Lender in "Paid by Others" Column

Round 8 was a retail loan, so it was not clear how a mortgage broker's compensation would be shown. In Round 9, the broker's fee is shown on a separate row with the payment by the lender shown in the "Paid by Others" column. This should be an adequate disclosure for the Settlement Disclosure.

C. "Paid by Others" Column/Identification of Payer in First Column

Both the mortgage broker's fee and the Texas Title Guarantee Fee are shown in the Paid by Others column, and the first column identifies that the fees were paid 'by Lender." Aside from questions of space, it may not be difficult to identify the lender in the first

column as the payer, but it may be more difficult if the payer is an employer or government agency providing closing cost assistance.

D. Shaded Text Can Be Hard to Read

Basswood uses shaded text boxes that contain transaction-specific information on the first three pages. Tupelo also does on the first two pages. What we learned from the 2008 amendments to Regulation X is that information amounts contained in a shaded area does not fax well, and can be illegible. Settlement Disclosures are frequently faxed. We recommend removing shaded text boxes.

E. Additions Should Read Down Rather Than Across

It would be preferable for numbers that are added together to be placed vertically rather than horizontally.

V. Settlement Disclosure Page Three

A. Elimination of "Increase Over Limits" Table

The Increase Over Limits table has been eliminated. It is not clear how the consumer would know whether there was a tolerance violation or how the lender could reflect whether any violation has been cured. This information is important and in need of inclusion on the form.

B. Elimination of "Interest Rate Changes" Table

This table was not particularly useful and was potentially very confusing, so its elimination is welcome.

C. Calculating Cash to Close

The Calculating Cash to Close table now has a third column, "Did This Change?" indicating yes or no and describing why amounts changed. If a row says yes, the amount changed, it is not clear whether the explanation for that row should always be the same. For consistency, we believe it should.

D. Summaries of Transactions

The table labeled Summaries of Transactions in Round 9 has a subheading, or sublabel, that says, "Use this table to see a summary of your transaction." This is unnecessary because it is self-evident. It also is inconsistent with the table, which summarizes two transactions.

The Summaries of Transactions no longer contain the row for Closing Costs Financed in Loan Amount. This change makes the summary of the borrower's transaction easier to understand.

The prototypes scatter in several places the adjustments to the purchase price between the buyer and seller. This could be streamlined and made easier to use by including all the adjustments in one table, as we recommended in our February 15 letter. This would greatly simplify the Cash to Close disclosure and the Summaries of Transactions, while streamlining the Settlement Disclosure. It would also narrow the differences between a Settlement Disclosure used on a refinance and that used on a purchase transaction, which is helpful.

VI. Settlement Disclosure Pages Four and Five

A. Presentation Could be More Consistent

There is added a new heading on page four, "Additional Information About This Loan." While the heading is consistent with the Loan Estimate, there could be greater uniformity in presenting the disclosures that appear on both forms. The Settlement Disclosure lists under "Loan Calculation" what the Loan Estimate includes under "Comparisons." The Settlement Disclosure includes under "Other Disclosures" what the Loan Estimate includes under "Other Considerations." These could be more uniform.

B. Partial Payments

The partial payment information has a new sentence that reads, "If this loan is sold, your new lender may have a different policy." This change is helpful, but it would be more accurate to say, "If your loan or servicing were sold, the policy may change."

C. Security Interest

The property address would now be inserted on blank lines, rather than appearing in a string of text. This would be easier to implement, and would allow the borrower to see the same information.

D. Escrow Account Information

The disclosures continue to combine information about loans with and without an escrow. We believe the suggested disclosures we submitted with our February 15 letter on Rounds 7 and 8 would be clearer.

The dollar amounts are now disclosed in a table rather than a narrative, which is easier to implement, and is a helpful change.

Under "In the future," the disclosures could be clearer about what the lender may do if the borrower fails to pay any of the property costs. The prototype lists adding the unpaid

amount to the loan amount, adding an escrow, or requiring the borrower to pay for insurance the lender buys. All of these are true, but the information is not complete. We recommend adding that the lender may "require you to pay the amount to the lender in full immediately." We also recommend adding that, "Failure to pay your nonescrowed property costs is a default on your loan, even if you make your loan payments in full and on time."

E. Total of Payments

The Total of Payments amount on an ARM loan is necessarily based on assumptions about future interest rates, but the assumptions are unclear. In the Round 9 transaction, how the amount was calculated is unclear. It may contain escrowed or nonescrowed property costs. If so, that would be inappropriate because the borrower would pay those amounts even in a cash purchase. Those costs are not loan costs. It is possible that the total amount includes future increases in the interest rate, but the borrower will not see how they were calculated.

F. Approximate Cost of Funds

This disclosure is renamed Approximate Cost of Funds, from Average Cost of Funds or Lender Cost of Funds in Round 8. The CFPB has indicated that it will use a publicly available cost of funds index because of the difficulties in calculating the cost of funds. This is an improvement. We agree that calculating, or even defining, the cost of funds is disproportionately complex in relation to any consumer benefit. This method also avoids requiring disclosure of trade secrets or proprietary information, such as what warehouse lenders charge.

We continue to question how disclosing a cost of funds could possibly benefit consumers. As we have explained earlier, the cost of funds may be one factor in loan pricing, but is certainly not the only one, or even the most significant factor.

Not only does the disclosure not benefit consumers, it may lead them to use the cost of funds as a shopping tool. What if consumers are lead to believe they are better off with a lender who discloses a lower cost of funds but charges a higher interest rate on the loan? This disclosure risks causing affirmative harm and offers no benefit. We continue to urge that the CFPB remove it from the form.

G. Appraisal

This section now refers to the contact information below, so that it will not be necessary to provide an address in this section. That is a positive change because it makes the form easier to prepare without sacrificing the quality of the information.

H. Lender's Contact Information

Tupelo contains a different lender's address than Basswood. It is unclear whether the CFPB intends that the address be the branch address where the originator is located, where the application was taken, or where the lending bank maintains the legal or home address. If it is to be the place of application, the location will need to be defined when applications are electronic. It would be preferable to use the address information that is most helpful for consumers when they need to call or contact the lender with questions, either before or after closing. Lenders should be permitted to list the address that is the service center address and toll-free phone number that can best route calls.

American Bankers Association
American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

February 15, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Mortgage Loan Prototypes, Rounds 7 and 8

Dear Director Cordray:

The above-named trade associations have long supported reform of the mortgage disclosure process because we believe that American consumers and the industry will benefit from clearer and more understandable disclosures. We applaud your efforts and appreciate the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Rounds 7 and 8 of the "Know Before You Owe" prototype integrated mortgage disclosure forms. Our joint comments on these prototypes are detailed in the Appendix to this letter. We are also submitting additional comments on the new Honeylocust Loan Estimate.

We note that the first five rounds of the Know Before You Owe project for mortgage lending focused on the Loan Estimate, while three rounds have focused on the Settlement Disclosure Form. We also note the difficulty in fully evaluating these forms without the accompanying rules.

The Real Estate Settlement and Procedures Act (RESPA) and the Truth in Lending Act (TILA) requirements have never been integrated before, so many of these issues, including the timing of disclosures and re-disclosures, and attendant remedies and penalties, are novel and have not been considered through any public comment procedure before the CFPB's Know Before You Owe initiative.

The creation of the forms also demands attention to how the forms will work with mortgage technology so that their introduction can be as efficient and economical as possible. Notwithstanding, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) deadline for a formal proposed rule is fast approaching.

Given the benefits of an iterative process, the complexity of the issues, and the short statutory deadline for such an ambitious integration proposal, it is important that the CFPB act very soon to solicit input on the issues to be addressed in the accompanying regulations. In a recent letter to the CFPB (attached), the undersigned and other trade associations made recommendations for such a process.

We recognize that the CFPB may not yet be prepared to publish a full proposed rule, but any guidance and dialogue about the regulations would be most welcome. It would be helpful if the CFPB could indicate how dynamic the forms will be. Will disclosures inapplicable to a particular transaction be removed or left blank? This information would be helpful for implementation planning because dynamic forms can be more difficult to implement, especially for smaller lenders.

We also urge the CFPB to test the latest forms across the full range of product types through varying lenders and settlement service providers in different areas of the country. For example, the prototypes would benefit from being applied to loans with temporary buydowns, bridge loans, construction/permanent loans, subordinate loans, and credit sales. (When a lender sells a foreclosed property and finances the sale, disclosure of the sales price is required.) We will need to see examples of how the CFPB would complete the prototypes across all the standard loan products of Fannie Mae, Freddie Mac, FHA, and VA to understand what is required. Preparing these examples would reveal areas where the prototypes need further development, and would focus the CFPB's attention on areas where the rules themselves need to be integrated and otherwise improved. We would be very pleased to assist this effort.

Additionally, we suggest the Bureau engage a cross-section of large, mid-size, and small lenders in pilot testing these forms in real world transactions, before the forms are finalized and implemented. A pilot program would provide an opportunity for the Bureau to make necessary clarifications, and resolve unforeseen problems before the forms are used universally.

We agree that it is extremely important for the CFPB create a new disclosure scheme that works to inform consumers of important information without unnecessary complexity. But were the CFPB to finalize these forms before resolving the key issues including those raised in this letter and its appendix, the project will fail, leaving consumers with suboptimal disclosures, as is the case today.

Again, we appreciate the opportunity to offer detailed comments on the latest Know Before You Owe iterations, and we look forward to providing input to improve this effort going forward.

Sincerely,

American Bankers Association
American Financial Services Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

APPENDIX

I. Overview of Comments on Rounds 7 and 8

1. _Length of Form_. The prototypes are longer than they need to be. We suggest a number of areas where they can be shortened without removing helpful information.

2. _Who Prepares the Form_. If a lender closes a loan directly, the lender will prepare the Settlement Disclosure. Often, though, a settlement agent will close a loan. In this event, it is unclear whether the lender or the settlement agent will prepare and deliver the Settlement Disclosure. It is also unclear when the form is to be provided, at, a day before, or three days before closing. If there is a settlement agent, we believe the settlement agent should provide the form with information from the lender.

   We also urge the CFPB not to require unnecessary waiting periods because they can be costly and disruptive for consumers. Minor amendments to the Settlement Disclosure, and amendments that benefit the consumer, should not require waiting periods. The consumer should have a reasonable ability to waive the waiting period without the lender or settlement agent having to make judgments about whether the consumer has a *bona fide* personal emergency. These issues are only some of the many that will require resolution in rules accompanying the forms.

3. _Consistency Between the Forms_. It is important that the Loan Estimate and Settlement Disclosure forms be consistent so consumers and lenders can use them together. We appreciate that in Round 8 the CFPB has included both a Loan Estimate and Settlement Disclosure prototypes so we can see how well they are integrated. We believe there remain unnecessary differences that we discuss below. The Cash to Close calculation on both the Loan Estimate and the Settlement Disclosure needs to be revised because it omits important information. Both forms should use the same calculation so that the forms are consistent and easy to compare.

4. _Consumers Need to Distinguish Loan Costs and Purchase Costs_. The prototypes too frequently mix the costs of purchasing a property with the costs of a loan. Unless consumers can see clearly which costs are for the loan and which are for the purchase, consumers will have a hard time understanding their final loan costs and comparing them to the estimated loan costs.

   This distinction needs to begin in the Loan Estimate because different lenders estimate purchase costs differently. The cost of hazard insurance or homeowners association (HOA) dues, for example, at the Loan Estimate stage, is nothing more than a guess. If purchase costs are intermingled with loan costs, identical loans

from two lenders could appear to have different loan costs because of estimated purchase costs. That would be a poorly designed loan disclosure. The distinction between the purchase and loan costs needs to be carried over into the Settlement Disclosure for the same reason, and so the Settlement Disclosure will integrate with the Loan Estimate.

5. *Closing Costs Financed in Loan Amount Should Be Simplified*. The Dodd-Frank Act does not require this disclosure, and for that reason we recommend it not be required. If the CFPB retains it, we recommend simplifying it.

   The disclosure of Closing Costs Financed in Loan Amount appear in multiple places, and it is not clear how the amount is calculated. We suggest that the amount be disclosed once, in the Closing Costs section at the bottom of page one. We suggest that the amount disclosed as Closing Costs Financed in Loan Amount should equal the amount by which closing costs the borrower pays at closing exceed Cash to Close. This would be streamlined and would include all relevant information.

6. *Cash to Close and Summaries of Transactions in Purchases*. Both the Loan Estimate and Settlement Disclosure for purchase transactions could be simplified if the items affecting the "Amount Owed by Buyer to Seller" were disclosed on a separate table so that a single number could then be entered into the Cash to Close and Summaries of Transaction tables. This would make it much easier to see whether changes were due to the loan transaction or to the purchase transaction. It would also reduce differences between the format of the disclosures for purchases and refinances. This table and seller-related information would simply be left blank on a refinance.

7. *Consistent Nomenclature*. The Round 7 and 8 prototypes use the similar terms Settlement Fees, Settlement Costs, and Closing Costs to mean different things, which is confusing. We suggest using Loan and Title Fees in lieu of Settlement Fees for clarity.

8. *Escrows, Partial Escrows, and Loans Without an Escrow*. There are positive changes in Rounds 7 and 8 concerning escrows, including the addition of a place to show the aggregate adjustment that RESPA requires to determine the initial escrow deposit. Butternut has the ability to show a partial escrow, which is important because partial escrows are common. However, information on taxes and escrow appears in different places on the forms and could be streamlined.

   Importantly, the forms still do not make it easy for the consumer to compare loans with different escrowed items, or to understand that they need to budget to make large quarterly or annual payments of non-escrowed items. Also, escrowed items appear double counted.

9. *Corrected Tolerance Violations*. The Round 8 prototypes, in the Increases Over Limits section, show a tolerance violation, but do not tell the consumer how the violation will be or was corrected. If the violation is not corrected at settlement,

then we suggest that there should be a statement to the effect that the consumer should "Contact the lender for a refund of the Over Limit amounts." More often, however, lenders will make the correction at or before closing. The rules should confirm that the lender may correct the error by reducing the amount of the Origination Charges (if the violation relates to those charges) or by paying a portion of the charges as shown on the Closing Cost Details page (by paying a specific fee or in the case of a 10 percent category violation, by either paying a specific fee or an amount towards the category). These corrections should reduce the borrower paid amounts in the "Final" column so that "No" would appear in the Over Limit column.

10. *Risky Feature Disclosures Belong Together*. The prototypes contain disclosures about prepayment penalties and balloons on page one, and about negative amortization and a demand feature on page four. These disclosures could be provided more efficiently. The demand feature could be added after the prepayment penalty and balloon payment rows on the first page. Alternatively, the prepayment penalty, balloon payment, and demand feature could be included on a subsequent page. Disclosing the absence of negative amortization should not be necessary when page one makes clear that the loan amount cannot increase.

    Loans without a demand feature, prepayment penalty, or a balloon are common. We suggest the disclosure in this case might read: "This loan does not permit the lender to demand early repayment of the loan or to charge a prepayment penalty if you prepay the loan. The scheduled payments will repay all interest due each month and do not include any large balloon payments."

    If the risky features are explained in detail on a subsequent page, the question arises whether the description may be omitted on loans that do not have the risky features. Some lenders prefer the ease of a standard form, while others would prefer not to disclose in every loan information about features they do not offer or offer only rarely. Additional dialog on this question is important.

11. *Loan Terms Should be Grouped Together, Followed by Fee Disclosures*. The prototypes first disclose loan terms, then jump to fee disclosures, and then jump back to loan terms. For the consumer's ease, it would be clearer to group the loan terms together, then show the fees. This would also make it easier to coordinate preparation of the disclosure between the lender and settlement agent, because the lender generally has information on loan terms while the settlement agent generally has information on settlement fees.

12. *Useless Items Should be Removed*. We recognize the Dodd-Frank Act has imposed conflicting goals on the CFPB – to provide streamlined, integrated disclosures while simultaneously adding new disclosure requirements, without removing old disclosure requirements. However, we urge the CFPB to use its exception authority to remove or shorten disclosures that consumer testing shows are not useful or that are unnecessarily duplicative.

We do not believe the Total Interest Payment or Average Cost of Funds disclosures are useful. Neither are the Amount Financed and the Finance Charge. We would support the CFPB's use of its exemption authority to remove all of these from the form.

13. *MISMO*. To improve and automate the inefficiencies of paper-based processes and to maintain clarity, consistency, and accuracy, the mortgage industry has moved significantly towards the use of "intelligent" electronic data and document creation and dissemination. The mortgage industry has coalesced around the development and adoption of standards managed by the Mortgage Industry Standards Maintenance Organization (MISMO). Among the standards developed by MISMO is a document-creation format known as SMART Doc®. The SMART Doc standard provides many advantages, including:

    a. **Improved Loan Quality**: It enforces superior data and loan quality and integrity because all systems and users apply the same language and meaning (standard data and descriptions).
    b. **Greater Accuracy:** Documents are created once, with no re-keying or input, which significantly reduces errors. Data and calculations are consistent across documents. Key data relationships, such as the collected fees on the settlement statement, automatically map and accurately reflect the same calculations on earlier disclosures.
    c. **Flexible Views and Representations:** Documents may have differing presentations on a computer screen and on paper. These differing representations may be customized to meet usability or other requirements. Consumers can interact with the electronic form because the information is not limited the hard coded form.
    d. **Current and Compliant**: It ensures greater compliance. The industry will not be required to map to static, hardcoded templates and forms to keep up with rapidly changing regulations and will not be required to maintain thousands of forms in a forms library for each different term or condition.
    e. **Less Cost and Maintenance**: Electronic documents are data-driven. Compliance updates and changes do not require determining what has changed on the physical forms.

    As the CFPB moves forward with this project, we urge it to consider the practical nature of how documents are generated and populated, and that MISMO and SMART Doc® be part of that consideration. Industry experts are available to assist the CFPB in this effort.

14. *Proposed Disclosures*. We include a number of proposed disclosures at the end of this appendix.

15. *Substantive Rules*. As indicated in the transmittal letter, the substantive rules to accompany these forms are crucial. As the CFPB drafts substantive rules, we believe the following principles should apply:

- Loan costs should be separate from purchase costs.

- Loan costs should not include costs of services that the lender does not require (such as home inspections that borrowers choose to obtain) or that borrower would normally incur as a prudent homeowner (such as hazard and flood insurance).

- If fee tolerances will apply, fees in the same tolerance categories should be grouped together to the extent possible.

- If disclosure of a "Finance Charge" continues to be required, it should be clear which fees are and are not finance charges, without adding another table.

- It should be clear which fees are and are not included in the "points and fees" for Qualified Mortgages (QM) under the Ability to Repay rule and for loans exceeding Home Owner's Equity Protection Act (HOEPA) triggers without adding another table. If the QM points and fees definition were not identical to any points and fees definition for Qualified Residential Mortgages (QRMs) in a Risk Retention rule, the CFPB's challenges in improving mortgage disclosures would be more complex than they already are.

- If changes in fees will require redisclosure and a new waiting period, then costs beyond the creditor's control, or that are affected by a change in the closing date, should not be subject to the new waiting period. This would include, for example, purchase costs, fees controlled by the settlement agent or title company, prepaid taxes and insurance, prepaid interest, and any initial escrow deposit. This would help prevent unnecessary disruptions that would seriously inconvenience consumers and that could be very costly to them.

- All terms on the forms, such as borrower and settlement date, will need clear definitions in the instructions and rules.

II. Page One

Several changes to the first page are improvements, but concerns remain.

1. *Settlement Information*
    - The name of the Settlement Agent in Round 8 is changed to a company name rather than the name of an individual, which is preferable. The person could change at the last minute, and redisclosure in that event would be wasteful.
    - File # is now included here, which is a helpful change.
    - The Location information has been deleted in Round 8. This is helpful because it was not clear whether the location that was required to be disclosed was the location of the settlement agent's office or the location of the settlement. The settlement agent's office address is now shown on the last page in the Contact Information section in Round 8. This is the information the consumer needs to retain after closing.

2. *Transaction Information*
   - The sales price in Round 8 is no longer shown here but is moved to Settlement Information. This is preferable. There is a sales price only on purchase transactions and, operationally, it would be preferable to limit differences between disclosures on purchase transactions and refinance transactions to those that are reasonably necessary. The sales price does not need to appear on the first page because the consumer is well aware of the sales price, primarily from having signed a contract that sets the price, likely after the consumer actively negotiated it. The dollar amount is large, so it is likely the consumer would remember it very well.
   - In some purchase transactions, not all of the buyers are borrowers. In refinances, a non-borrowing co-owner needs to receive the disclosures for right to cancel purposes. Should only borrowers be listed or should non-borrowing co-owners be separately identified?

3. *Loan Information*
   - The Lender's address is no longer shown here but on the last page in a Contact Information section. We support this because it is more streamlined. The lender's mailing address is not important enough to appear on the first page.
   - File # is no longer shown here but under Settlement Information. This is a helpful change.

4. *Loan Terms*
   Round 7 added a helpful notation under the Monthly Principal & Interest directing the borrower to the Projected Payments for a Total Mortgage Payment. It is retained in Round 8, which we support.

5. *Projected Payments and Escrows*
   While both Rounds 7 and 8 contain improvements in the escrow disclosures, they remain materially misleading. The disclosures should make clear what is and is not escrowed, what each of the items cost regardless of whether they are escrowed but without double-counting, and the consequences of not escrowing them. We discuss the issues, then include a suggested disclosure.

   a. What is and is not escrowed.
   In the transaction depicted in Round 8, it appears that the borrower is escrowing all items except for HOA dues. In Round 8, under Payment Calculation, in the Estimated Escrow line, the non-escrowed HOA dues are excluded. It appears, then, that all non-escrowed items are excluded from that line. (In Round 7, there is no mention of HOA dues, but it is not clear whether this is because there are no HOA dues, or whether it is because there are HOA dues but they are not escrowed.)

   Butternut shows the escrow exclusion far more clearly than Hemlock. Disclosing what is excluded from an escrow is just as important disclosing what is included because the consumer has to pay both escrowed and non-

escrowed items. It is especially important for consumers without escrows, or with partial escrows, to understand their total housing expenses because they need to budget for the non-escrowed items.

The Projected Payments section on the first page should show a loan payment and the mortgage insurance payment, as all prototypes in Rounds 7 and 8 do. They each also show the monthly escrow payment, which is appropriate.

However, Hemlock, in the Information About Escrow for Taxes, Insurance, and Assessments, shows the escrow payment of $422.94 per month. It does not state that some items are not escrowed. Rather, it shows that the loan has an escrow. If the consumer reads the text after the checked Escrow box, the consumer would see that the escrow payment covers the taxes, insurance, and assessments listed someplace on page two. At this point, the consumer may not see a reason to look up the items on page two, because the consumer was told that "Your escrow payment covers the taxes, insurance, *& assessments* . . . ." Hemlock does not appear to alert the consumer to the fact that HOA dues need to be paid separately, which is clearly a shortcoming.

In contrast, Butternut shows the escrow payment is $422.94, then shows below that "Estimated Taxes, Insurance & Assessments" are $551.25 per month. Already, this consumer sees that at least one cost is not included in the escrow payment. Next, Butternut tells the consumer that there is a "Partial Escrow[,]" and that "Some of your costs are not in escrow." Now, the consumer has a reason to go look up on page three what is included and excluded. Butternut is better than Hemlock at showing what is and is not escrowed. The Partial Escrow box and explanation are important improvements, especially so because partial escrows are common.

Hemlock makes the property or loan appear cheaper than the property or loan in Butternut, but they are the same. This is misleading. It is especially a concern in the Loan Estimate stage, because a consumer may compare two Loan Estimates, one showing more and the other showing fewer escrowed items. The loan with fewer escrowed items would appear to be the cheaper loan, even if it is more costly. We therefore recommend including the Butternut-type approach in Loan Estimates as well as in Settlement Disclosures.

The projected payment disclosure should include *all the same* items regardless of whether they are escrowed because the consumer still has to pay them all, regardless of whether they are escrowed.

b. Double-counted escrowed items

Escrowed items are included in the Payment Calculation in Round 8. However, Butternut and Hemlock each include the escrowed items again in the line below the Estimated Total Monthly Payment. This appears to double-count the escrowed items. If two loans were identical except that one

escrowed more items, the Round 8 prototypes would make the loan with more escrowed items appear more costly.

c. Escrow information is scattered
In both Rounds 7 and 8, information on escrows, taxes, and insurance appears in multiple places. It would be preferable to consolidate the information, except on the first page of the form, in the Initial Escrow Account Disclosure Statement so it will be in one place and would not need to be repeated.

d. Title of line
In the left column of the page one line about escrowed items, Mimosa and Sassafras read, "Information About Escrow for Taxes & Insurance[.]" Butternut reads, "Estimated Taxes, Insurance & Assessments[.]" On Hemlock and Honeylocust, it reads, "Information about Escrow for Taxes, Insurance, & Assessments[.]" If the title is getting too long, it could be revised to simply "Escrow" with the disclosure rather than the title communicating the necessary information.

Suggested disclosure
We recommend replacing the Projected Payments and Closing Costs sections with the disclosure in the Proposed Disclosure at the end of this Appendix. It includes the word "housing" in the title to emphasize that the costs must be paid regardless of the loan. It uses the Round 8 transaction.

6. *Cash to Close*
In both Rounds 7 and 8, the Cash to Close item is a single row, but it tries to communicate two different concepts. It tries to show both how much cash the borrower will need to bring to closing, and it tries to show the amount of Settlement Fees included in Closing Costs.

Settlement Fees include settlement fees that the borrower paid before closing, which is confusing in a Cash to Close disclosure. We suggest breaking this down, as below.

We are not sure what goes into the category of Settlement Fees or why those specific fees are so relevant to the consumer that they need to be included in a large font on the first page. Some relate to the loan, but not all loan costs are included. Some are unrelated to the loan, but not all non-loan costs are included. If the intent is to highlight the loan costs, the amount in this row should not include any purchase costs. We suggest "Settlement Fees" be renamed "Loan and Title Fees" for clarity.

It would be preferable to split this disclosure into three rows:

- A Settlement Fees row that shows $5,519.53.
- A Cash to Close row that shows the $27,625.00, with a cross reference to that calculation.

- A Closing Costs Financed in Loan Amount row that would show the amount of financed closing costs, and have two check boxes for the source of the closing costs payment.

This would be consistent with the tax treatment of discount points on a purchase transaction. The IRS deems discount points as not financed in the loan amount (and therefore possibly deductible in the year paid) if the amounts the borrower paid at or before closing equal or exceed the discount points.

There is a closing costs disclosure in the Proposed Disclosures at the end of this Appendix.

III. Closing Cost Details: Sassafras and Hemlock Page Two, Mimosa and Butternut Page Three

1. *Line Numbers.*
   Mimosa has line numbers on pages two and three. Butternut uses faint line numbers on pages two and three. We are not sure whether the faint numbers are to be visible to the consumer or what their purpose is. Line numbers can be helpful in populating forms.

   However, there are so many possible settlement services that it would not be practical to assign a name and a specific line number to each. Moreover, many third-party service providers use inconsistent terminology. The lender does not control all the service providers and cannot require them to adhere to specific language. Moreover, rigid language would require rule changes for even minor marketplace developments. It is important to have room for blank fields because there are many possible settlement services.

   Additionally, the substantive rules will likely treat the same fee differently depending upon transaction-specific factors, such as whether the borrower shopped for a service. Listing fees in fixed numerical order would frustrate listing them in the order that makes the most sense to the borrower.

2. *Settlement Fees, Settlement Costs, and Closing Costs*
   The names of these fees in both Rounds 7 and Round 8 are not descriptive. What Mimosa terms Closing Costs in Sassafras is Settlement Fees, while Butternut and Hemlock use the term Closing Cost Details. Settlement Fees means something different in the prototypes than Settlement Costs. Fee and cost have similar meanings, so the distinction between the terms in the prototypes is unclear. We suggest using Loan and Title Fees in lieu of Settlement Fees for clarity.

   Both Rounds 7 and 8 use the same basic categorization of settlement fees + settlement costs = closing costs. The logic behind these terms and categorizations is unclear.

3. *Columns*
Instead of showing amounts paid outside of closing by the borrower or seller in the far right hand columns as Sassafras did, Hemlock and Butternut now show them as sub-columns under borrower paid and seller paid. The far right hand column now only covers amounts paid by others, and does not appear to require that the timing of the payments by others be disclosed. These are all very positive changes in Round 8. This will make it much easier for both the borrower and seller to confirm that they are being credited for amounts paid before closing and that they understand what amounts are being paid at closing, which is extremely important.

We are glad that Mimosa's "Paid By/To/When" column is removed in Round 8. It would have been difficult to fill out because: (1) there is not sufficient room to list who is paying the amount; (2) the "to" appears unnecessary because who is receiving the payment should be apparent from the left hand column (other than the identification of the payee as an affiliate, but this is not a clean way of providing that information); and (3) it requires distinguishing whether amount was paid "at" closing or "before" closing. On the last point, if the amount is being paid by someone other than the borrower or seller, there is no apparent benefit to the borrower or seller in disclosing whether the amount was paid at closing or before closing. The elimination of this column is helpful.

We are pleased that the Mimosa Closing Cost Summary is removed in Round 8 because it was highly confusing. It attempted to show closing costs or settlement fees financed in the loan amount. If some settlement fees had been disclosed as financed in Loan Amount on this table, it is not clear how that would be shown on page three in Closing Costs. The last row of Mimosa's Closing Costs Summary table shows the amount of $3,614.79, with the explanation that it is the Settlement Costs minus Seller Credits. However, "Settlement Costs" shown on page three are $3,741.40 paid by the Borrower at settlement and $24.00 paid by the Seller at settlement with no settlement costs paid outside of settlement. This does not reconcile with the $3,614.79 amount. It appears that this amount was calculated by determining the Cash to Close amount of $16,331.79 minus the $9,000 remaining down payment due, minus $3,717.00 in "Settlement Fees Paid in Cash at Closing." Consumers would not understand this.

4. *Closing Costs Financed in Loan Amount*
Sassafras, Butternut, and Hemlock have a "Financed in Loan Amount" column. This is very problematic because it is arbitrary, confusing, and does not seem to have a purpose.

In the Round 8 transaction, the borrower is bringing $27,625.00 to settlement, while the total borrower-paid closing costs are only $13,613.04. The only amount that the borrower appears to have paid before closing is a $3,000 deposit toward the purchase price.

Butternut and Sassafras apply the cash that the borrower brought to closing first to a down payment rather than to closing costs, which is arbitrary.

The prototypes are also completely arbitrary about which closing costs are considered financed and which are not. Itemizing which closing costs are financed and which are not is not useful to the consumer. Unless the borrower paid an amount prior to closing towards a specific fee, it is not clear what logic a lender should use in determining which fees are financed.

For example, in Hemlock on page two in section B, the Paid at Closing column contains $335 for the appraisal. In the Financed in Loan Amount column, there are fees totaling $335 (the lender's attorney's fee and the flood monitoring fee). If the latter two fees were moved to the Paid at Closing column and the appraisal fee were moved to the Financed in Loan Amount, the transaction would be economically exactly the same, but the disclosure would be rather different. Similarly, the Paid at Closing column contains $75 for the Title - Closing Protection Letter, while the Financed in Loan Amount column contains three fees totaling $75 (tax status research, flood determination, and tax monitoring fees). If these amounts were each moved to the opposite column, the transaction would be exactly the same but the disclosure would be different.

The total amount the consumer finances is relevant, but because money is fungible, trying to categorize which fees the borrower finances and which the borrower pays at closing is futile. The consumer will not benefit from such a meaningless disclosure.

Mimosa does not have a Financed in Loan Amount column, but it does have unclear categorizations. On page three, Mimosa distinguishes between "Services in Connection with Your Loan" and "Title Charges." Title charges may be services in connection with a loan, so this distinction is unclear and appears somewhat arbitrary. Mimosa includes the lender's title policy as a title charge, even though it is a service the lender requires for the loan. Mimosa also includes a document preparation fee as a service in connection with the loan, but it is not clear who charged this fee. If it were the settlement agent, would the fee be a title charge or a service in connection with the loan?

The analogous Sassafras page two distinguishes between settlement fees based on whether the borrower shopped for them, but it is not always clear how to make a distinction based on the fact of shopping. Sassafras includes among services the borrower did not shop for an owner's title policy. Lenders do not require owner's title policies, so the borrower must have elected this item. Electing to purchase an optional service may be viewed as having shopped for it, even if the lender provided the name of the title insurer. For owner's title insurance, the borrower must elect the amount of coverage to purchase, which is a type of shopping. A structural inspection fee is disclosed as a fee the borrower shopped for although the seller paid it. If the seller shopped for this service, would it still be included with services for which the borrower shopped?

6. *Down Payment*

In Round 8, the down payment amount of $18,525.00 is arbitrary. The buyer actually only paid $3,000.00 prior to closing, and may therefore have difficulty

grasping a disclosure that the down payment was substantially higher. If the down payment were changed to $3,000.00, there would be no practical or economic impact on either the buyer or seller, but the amount of Closing Costs Financed in Loan Amount would be $0. On the other hand, if the down payment were changed to $27,307.41, there would be no practical or economic impact on the buyer or seller, but the Closing Costs Financed in Loan Amount would be the entire $13,613.04 in borrower-paid closing costs.

Further, there seems to be no bar to disclosing a higher down payment in the Loan Estimate, and it is not clear what would be done in those situations.

In the Round 8 transaction, the buyer owes additional amounts to the seller due to adjustments for taxes and HOA dues prepaid by seller. Adjustments could also go the other way when the adjustments are for items unpaid by the seller. It is not clear how such adjustments affect the calculation of Closing Costs Financed in Loan Amount or the down payment.

On Mimosa, the Down Payment Summary table should be deleted. On Sassafras, the "Calculating Borrower's Cash to Close" table should be deleted.

The amount disclosed as Closing Costs Financed in Loan Amount should equal the amount by which closing costs the borrower pays at closing exceed Cash to Close. Closing costs the borrower paid before closing are not financed in the loan amount. This would provide a consistent disclosure based upon the actual amounts of the loan, the closing costs, and the cash the borrower provided at closing. It would avoid a hypothetical down payment that the borrower never made. It would avoid the complications of how to deal with the adjustments for taxes and assessments between the buyer and seller. It is also more logical because the buyer has to first obtain the loan to pay the seller, and closing costs have to be paid before the remaining loan proceeds can be paid to the seller.

7. *Sub-Totals of Borrower-Paid Fees.*
In Sassafras, the sub-total of all the fees the borrower paid for each category on page two is shown on the first row of the category in the left hand column. In Round 8, these amounts have been moved to the middle of the Borrower-Paid column. However, because the Borrower-Paid column has three sub-columns, these amounts now look like they are shown in the Borrower-Paid/Paid Before Closing column, which is confusing. It is not immediately apparent that this is the total of all borrower paid amounts, rather than just the amounts paid before closing. Sassafras is preferable in this regard.

   a. *Real Estate Broker Fees*
   Real estate broker fees in Round 8 are moved down to the last category of fees, the new G, Other Costs. This is a welcome change. It will better align the categories of fees shown on Settlement Disclosure with the categories of fees shown on the Loan Estimate. It will also remove real estate broker fees from the Settlement Fees that are disclosed on the first page of the form. This change makes comparisons with the Loan Estimate easier, and it moves

Settlement Fees closer to being the costs of the loan rather than the costs of the purchase transaction.

b. Mortgage Broker Charges

Neither Butternut nor Hemlock shows a mortgage broker fee. Any mortgage broker fee should be shown on a row under Origination Charges, regardless of whether the borrower or the lender pays it. A separate summary, as in Mimosa and Sassafras, is not necessary. Moreover, disclosure of a mortgage broker fee as part of the lender credit is unnecessary. HUD developed that approach before to the issuance of the Federal Reserve's Loan Officer Compensation Rule. There should be a place to show whether the lender or consumer paid a mortgage broker fee, to disclose and document that there was no dual compensation. A simple check-box should suffice.

c. Appraisal Management Fee

We note that this fee is listed separately from appraisal fees in Round 8. The Dodd-Frank Act permits this separation, but we oppose it. Consumers cannot shop for appraisers or appraisal management companies, so breaking down the fee would not help them shop. It would unnecessarily confuse their important task of comparing the Loan Estimate to the Settlement Disclosure. The total cost would help them shop and help them compare the forms, and, for those reasons, should be the required disclosure.

d. Title Insurance Premiums

While Sassafras listed the premiums for the lender's policy and the owner's policy separately, the Round 8 prototypes show them as a lump sum. Given that lenders generally do not require a borrower to purchase an owner's policy, this is not a positive change. Additionally, we do not know whether there will be a change in the substantive rules such that title insurance premiums that are now excluded from the finance charge would be included. There would be little justification for including the cost of an optional owner's policy in the finance charge because it has nothing whatever to do with the loan.

e. Title Insurance Coverage

The amounts of coverage for both the lender's policy and owner's policy are now shown on a row separate from the premiums. This is an improvement because, while Sassafras showed the amounts of coverage, it did not explain what those amounts were.

f. Settlement Fees Calculation.

There is a row for lender credits. If a lender pays an amount, it is not clear when the amount should be shown as a lender credit on this row (and if so, in which column) or whether it should be shown in the "Paid by Others" column.

g. Prepaids/Property Taxes

Sassafras had shown "(current period)" for property taxes while then new forms show "(___ mo)", which is consistent with how other prepaid items are shown.

h. Initial Escrow Payment at Closing/Aggregate Adjustment
Mimosa, Butternut, and Hemlock provide a space for the aggregate escrow adjustment. We strongly support this addition because it is consistent with the statutory escrow accounting requirements, and because aggregate escrow accounting is a consumer protection.

i. Other Costs
This new category was added in Round 8, and it appears to address a number of troublesome issues. It includes fees for services that lenders do not require and that are not loan costs, including: (1) real estate broker fees; (2) fees for inspections, home warranties, and the borrower's attorney; (3) the additional costs of a mobile signing agent; and (4) costs related to the property that are beyond the lenders control, such as HOA fees. It would be helpful if another title, such as Non-Loan Related Costs, were used in the interest of clarity. We request confirmation that the intent was to include these non-loan costs here because the lender does not require, elect, or control them.

On the Closing Costs Details page, we recommend showing the Initial Escrow Deposit at Closing as a single line and a single dollar amount. We recommend consolidating all the escrow information on page 5, as in the Proposed Disclosure at the end of this Appendix.

IV. What Changed & Summaries of Transactions: Sassafras and Hemlock Page Three, and Mimosa and Butternut Page Two

1. *Calculating Cash to Close*
The calculation of cash to close should be consistent between the Loan Estimate and Settlement Disclosures. The Honeylocust calculation leaves out the loan amount, the purchase price of the property (and in a refinance would probably leave out the payoff of the loan being refinanced and/or the amounts that would be disbursed to others), and the amount of closing costs that the borrower is likely to pay prior to closing, such as the appraisal fee.

2. *What Changed, Estimate and Final*
   - While Sassafras only showed final figures, the Round 8 prototypes show the previous estimates as well as the final amounts. This is a positive change because it will make it easier for the consumer to compare the Settlement Disclosure with the Loan Estimate.

   - In the Final column, the amounts that have changed are shown in bold type, while the amounts that have not changed are not bolded. Switching between bold and unbold based on a transaction-specific reason may be operationally difficult and disproportionately costly to implement, so we recommend against requiring it.

a. Bold Type/Category Totals
In Butternut, the columns cannot be totaled because they show both the total for all categories of Settlement Fees and Settlement Costs, as well as the individual amounts for each category. It would easier to understand, and easier to compare with the Loan Estimate, if the totals for Settlement Fees and Settlement Costs were shown in bold type, and the individual category amounts not in bold type.

b. Down Payment – Closing Costs to be Financed
In Round 8, these rows are substantially similar to Sassafras. It would be preferable on both the Settlement Disclosure and the Loan Estimate to calculate and disclose the Amount Owed by the Buyer to Seller on a separate table so that a single number could then be entered into the Cash to Close and Summaries of Transactions tables.

c. Increase Over Limits
This section shows a tolerance violation in Round 8. If the violation is not corrected at settlement, then we suggest that there should be a statement to the effect that the consumer should "Contact the lender for a refund of the Over Limit amounts." There may not be a need for such a notation if the violation is corrected pre-closing.

3. Interest Rate Changes
There is a new Interest Rate Change section in Round 8. It is not clear what this is meant to accomplish. For a fixed rate loan, no changes in the rate could occur after closing. That would be shown prominently on the first page of both the Loan Estimate and the Settlement Disclosure, so there is no need to show it again, or to include the row concerning adjustable rate terms.

For ARMs and step rate loans, it is hard to conceive of how this section could be completed, or what it would communicate to consumers. There is a need for additional prototypes disclosing these types of loans so that the disclosures can be improved through testing on more complex loan products.

4. Summaries of Transactions
In Round 8, there are added two Other Credits & Adjustment rows in the summary of the borrower's transaction, one above the Items Prepaid by Seller that are Due from Borrower row, and the other above the Adjustments for Items Unpaid by Seller row. The new rows are meant to be headings for the materials shown immediately below them, but they need to be reformatted to make that readily apparent to a consumer. The purpose for adding these headings appears to be to make it easier to understand what the Other Credit and Adjustments amount is, that appears in the What Changed section at the top of the page. The Borrower's Transaction section does not total up of all of the credits and adjustments, so the borrower may not realize that the $3,317.59 amount shown in the What Changed section is the sum of the $3,030.09 and $287.50 amounts shown below. There may also be adjustments due to the seller and credits to the borrower in the same transaction, which would make it even harder for borrowers to understand.

It would be preferable to show all credits and adjustments in the suggested Amount Owed by Buyer to Seller section.

The Proposed Disclosures at the end of this Appendix suggests how these disclosures can be streamlined.

IV. Loan Disclosures Page: Page Four

1. Left Hand Column

- We appreciate that the word "home" is changed to "property" in Round 8.
- It would be helpful if demand feature and negative amortization disclosures could be removed entirely on loans that do not have those features.

2. Partial Payments

The Rounds 6, 7, and 8 prototypes have disclosure about partial payments. They give the lender two options, disclosing that the lender will or will not accept partial payments. Partial payments involve many issues. We cannot comment on the partial payment iterations because we do not have the underlying rules. It is unclear how a lender would prepare a form with a rigid yes-or-no disclosure because a servicer may sometimes accept partial payments and other times not, depending on a number of circumstances. This is one area where more iteration would be constructive.

2. Right Hand Column

The Escrow Information in Mimosa, Sassafras, and Hemlock is in a lengthy, dense narrative form. Butternut uses a much-improved concise table. It is easier and faster to find the pertinent information in Butternut. Butternut's table would be easier for creditors to complete than inserting numbers into the middle of a narrative.

3. In the Future

All the Round 7 and 8 Settlement Disclosures have an "In the future" paragraph that mixes information relevant to a loans with and without an escrow account. It would be preferable to consolidate this information under the escrow or no escrow sections above.

V. Loan Calculations & Other Disclosures: Page Five

1. Total of Payments

Butternut and Hemlock include a Total of Payments of $354,038.18, described as the total the borrower would have paid after making 360 scheduled payments. It is not clear how the total was calculated. The total divided by 360 is $983.44. In both Butternut and Hemlock, the scheduled principal and interest payment is $548.25, a significantly lower number. It is possible that the calculation was made including some portion of escrowed items in the Total of Payments.

Again, the disclosure would communicate to consumers that loans with escrows cost more than loans with no escrows, which is inappropriate. If this Total of Payments disclosure survives, it should be calculated without any escrowed property taxes, insurance, or HOA fees.

On an ARM loan, this disclosure would always be inaccurate, possibly very much so. Almost no loans last anywhere near 30 years, so it is unclear what benefit this disclosure adds. For these reasons, we recommend removing this disclosure.

2. Loan Calculations/Lender Cost of Funds/Average Cost of Funds
This section in Round 8 is similar to that in Round 7, except that Butternut discloses an "Average Cost of Funds" rather than a "Lender Cost of Funds" and discloses the cost of borrowing from the Federal Home Loan Bank of San Francisco.

There are fundamental problems with this disclosure. First, it is not clear that this disclosure will provide information to borrowers that will be helpful to them for any purpose. Second, it assumes that the lender bases its loan pricing on its cost of funds at the time of origination. The lender's current cost of funds may be one element of loan pricing, but it is certainly not the only factor. The price at which the lender sells, or expects to be able to sell, the loan can be just as important. Supply and demand, for both loan originations and loan sales, are also significant factors in any loan pricing. The amount of fees Fannie Mae and Freddie Mac may charge for a loan is often a consideration, but these fees are not related to the lender's cost of funds. The cost of complying with applicable laws also affects the cost of loans, but is unrelated to the lender's cost of funds. Any disclosure of the lender's cost of funds would imply that the loan pricing is based on the lender's cost of funds, which would be rather misleading at best.

Because we do not know the substantive rules behind this disclosure, we do not know whether all lenders would disclose the same rate even if they are not eligible to borrow from Federal Home Loan Bank of San Francisco. Consumers may not see how the Federal Home Loan Bank of San Francisco has anything to do with a mortgage loan in Pennsylvania. If the intent is to use a cost of funds that does not require difficult definitions and expensive calculations, we suggest using a rate that will not cause consumer confusion.

We urge the CFPB to consider how difficult it would be for lenders to define and measure their cost of funds and for consumers to interpret these confusing amounts. Overall, we believe the limited benefits of any cost-of-funds disclosure would be outweighed by the costs of providing the disclosure and by the disadvantages of using an inherently misleading disclosure.

3. Other Disclosures/Appraisal Copy
This section in Round 8 is the same as in Sassafras, except that in Appraisal Copy the phone number to contact the lender is shown in a sentence rather than below the section. Because Round 8 uses a concise Contact Information section, it would be much easier to state, "If you have not yet received it, please contact the lender at the

phone number shown below." This provides the same information with less regulatory burden.

4. Contact Information
A new Contact Information section consolidates the contact information for the lender, mortgage broker, real estate brokers, and settlement agent. This is much clearer and easier to find and use.

5. Originator Fee Summary
Sassafras involved a mortgage broker and contained an Originator Fee Summary showing who paid the fee. On loans with a mortgage broker, we suggest including the broker's compensation under the origination charge (on page 3 of Sassafras), with a check box to show who paid the broker. The Sassafras approach takes up more space than should be necessary. Butternut and Hemlock do not involve a mortgage broker and do not contain any disclosure of an Originator Fee. We support this also, because when there is no mortgage broker, there is no need to disclose compensation to loan originator employees. That compensation would be complex to define, extraordinarily complex to calculate, and would not offer any consumer benefit.

VI. Honeylocust Loan Estimate

We appreciate that Round 8 includes both a Loan Estimate and Settlement Disclosures. We assume the Loan Estimate will go through additional changes before the integration project is complete. We look forward to the next iteration. In the interim, we make the following comments.

Page One

1. Payments for Taxes, Insurance & Assessments
The same changes suggested above for Project Payments should be made to the Loan Estimate.

2. Closing Costs/Cash to Close/Closing Costs Financed in Loan Amount
The same changes suggested above should be made to the Loan Estimate.

Page Two

1. Amount Owed by Borrower to Seller
As suggested above, in purchase transactions there should be a separate table calculating the amount owed by the borrower to the seller.
2. Calculating Cash to Close
The cash to close calculation should be simplified by using the Amount Owed by Borrower to Seller to eliminate numerous lines from this calculation and make the calculation for both purchases and refinances more alike.

Page Three

1. In 5 Years/Total of Payments
Instead of showing the In 5 Years comparison in the Loan Estimate and the Total of Payments in the Settlement Disclosure, whichever disclosure the CFPB believes is

most useful to the consumer should be shown on both the Loan Estimate and the Settlement Disclosure and the other eliminated.

The “In 5 Years” comparison double-counts principal payments, making the loan look more expensive than it actually is. A more clear disclosure would be:

$29,073	Interest, mortgage insurance and fees you will have paid.
$9,465	Principal you will have paid off.
$38,538	Total you will have paid in 5 years.

2. Headings

The Loan Estimate uses the headings of Comparisons and Other Considerations while the Settlement Disclosures use the headings Loan Calculations and Other Disclosures. The headings should be consistent.

Proposed Disclosures

Page 1 changes: Replace the Projected Payments and Closing Costs sections with the following (examples use Butternut/Hemlock transaction figures):

Projected Housing Payments

Payment Calculation	**Years 1-7**	**Years 8-30**
Loan Payments Principal & Interest Mortgage Insurance	 $548.25 $55.82	 $548.25
Taxes Insurance & Assessments *Amounts can increase over time.* Estimated Escrow Estimated Amount You Pay Directly	 $422.25 $128.31	 $422.25 $128.31
Estimated Total Monthly Housing Payments	**$1,154.63**	**$1,098.81**
Escrow *See Details on Page X.*	**[ ] Escrow.** Your escrow payments cover all of your taxes, insurance & assessments. **[ ] Partial Escrow.** Your escrow payments only cover some of your taxes, insurance & assessments. You must pay other costs directly, possibly in one or two large payments a year. **[ ] No Escrow.** You must pay all taxes, insurance & assessments directly, possibly in one or two large payments a year.	

Closing Costs

Loan and Title Fees	**$5,519.53**	*See Closing Cost Details on Page 3.*
Cash to Close	**$27,625.00**	*See Summary of Borrower's Transaction on Page 2.*
Closing Costs Financed in Loan Amount	**$0**	[x] Your Closing Costs will be paid from your Cash to Close. [ ] Your Closing Costs paid at closing are more than your Cash to Close. The excess will be paid from your Loan Amount.

Page 2 changes:

Summary of Borrower's Transaction/Changes to Cash To Close

	Estimate	**Final**
Loan Amount	$104,975.00	$109,805.63
Less Loan & Title Fees	$5,170.00	$5,519.53
Less Settlement Costs	$4,406.37	$8,093.51
Less Disbursements to Others		
Less Adjusted Purchase Price	$123,500.00	$126,817.59
Plus Deposit from [RE Broker]	$3,000.00	$3,000.00
[ ] Cash to Borrower [X]Cash to Close	**-$25,101.37**	**-$27,625.00**

Summary of Seller's Transaction

	Final
Adjusted Purchase Price	$123,500.00
Less Loan & Title Fees	$0
Less Settlement Costs	-$8,645.00
Less Disbursement to Payoff of First Mortgage	-$79,162.87
Less Disbursement to Payoff of Junior Mortgage	
[ ]Plus [ ]Less Other	
Less Excess Deposit from [RE Broker]	
Equals [X] Cash to Seller [ ]Cash From Seller	**$39,009.72**

Changes in Closing Costs and Interest Rate

Closing Costs Increase Over Limits?	Estimate	Final	Over Limit?
Costs that Could Not Increase			
A. Origination Charges	$2,769.00	$2,810.90	**YES** $41.90
D. Transfer Taxes	$2,470.00	$2,470.00	NO
Cost That Could no Increase by More than 10% in Total			
B. Services You Did Not Shop	$2,276.00	$2,583.63	
D. Recording Fees	$370.00	$370.00	**YES**
Total	$2,646.00	$2,953.63	$43.03

Contact the Lender for a refund of the Over Limit Amounts

Adjusted Sales Price

Sales Price of Property	$123,500.00
Plus Personal Property	
Items Prepaid by Seller Due from Borrower	
City/Town Taxes 1/24/12 to 12/31/12	+3,030.09
County Taxes ____ to _____	
Assessments _____ to _____	
HOA Dues 1/24/12 to 3/31/12	$287.50
Adjustments for Items Unpaid by Seller	
City/Town Taxes _____ to _____	
County Taxes ____ to _____	
Assessments _____ to _____	
Less Existing loan(s) assumed or taken subject to	( )
Adjusted Purchase Price	**$126,817.59**

Move Loan Calculations and Other Disclosures to Page 4. On Closing Cost Details page, show Initial Escrow Payment at Closing as a single row showing the amount of the deposit. Move Escrow Account Information to Page 5 and revise as follows to show all escrow information in one place:

Taxes, Insurance & Assessments (Property Costs)

Estimated Property Costs. Your property costs are estimated. In the future, it is likely that your property costs will change and that the amounts that you pay will change, whether they are paid from escrow or you pay them directly.

Year 1 Estimated Property Costs	Annual	Monthly
Paid From Escrow	$5.075.28	$422.94
You Pay Directly	$1,539.72	$128.31
Total	**$6,615.00**	**$551.25**

The monthly amount shown for property costs You Pay Directly is the monthly average of these property costs. These costs may actually be due in one or two large payments a year.

[ ] Paid From Escrow. $422.94 Monthly Escrow Payment
You will have an escrow account, also called an "impound " or "trust " account. We will pay the property costs listed below from your escrow account. If we fail to make a payment, we may be liable for penalties and interest.

Initial Escrow Payment at Closing *This payment is a cushion for your escrow account. The Aggregate Adjustment reduces the amount of the cushion.*	
Homeowner's Insurance $56.83 per month for 3 months	$170.49
Property Taxes $269.44 per month for 3 months	$808.32
Flood Insurance $96.67 per month for 3 months	$290.01
Less Aggregate Adjustment	-$422.00
Total	**$846.82**

[ ] Paid Directly. $1,539.72 Annually
The property costs listed below will be paid directly by you.

Property Costs You Pay Directly *You must directly pay the property costs listed below, possibly in one or two large payments a year.*	
HOA Dues	$1,539.72
Total	**$1,539.72**

[ ] You loan will not have an escrow account because:
[ ] We do not offer escrow accounts
[ ] You declined an escrow account. The fee for no escrow account is [$]___________[%].
Contact us if you wish to have an escrow account now or in the future

In the future, if you fail to pay property costs directly (including if you fail to pay after cancelling your escrow account), we may

- Add the amounts to your loan balance,
- Add an escrow account to your loan, or
- Require you to pay for property insurance that we buy on your behalf, which likely would be more expensive and provide fewer benefits than what you could buy on your own.

If you fail to pay property taxes, your state or local government may:

- Impose finance and penalties or
- Place a tax lien on this property.

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

January 27, 2012

Dear Director Cordray:

We, the undersigned organizations, are writing to urge you to adopt an expanded rulemaking process in the Consumer Financial Protection Bureau's (Bureau) very important work to synchronize and simplify disclosures and forms required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA).

We appreciate the efforts the Bureau has made to make the combining and streamlining of the forms an open process. The regular give-and-take between the Bureau, industry, and the public has been positive and holds the promise of better, more thoughtful, forms.

At this point in the process, however, it is becoming clear that the accompanying rules that will govern the use and application of these forms are every bit as important as the content of the forms themselves. Among other things, the rules will govern the timing and reliability of the forms and provide remedies for misdisclosure. Notwithstanding, no input on these rules has been invited. For this reason and to ensure a more workable proposal, we encourage you to use a similarly open and interactive process to arrive at the accompanying rules.

Specifically, we believe that the Bureau should adopt an iterative rulemaking process in advance of the July 21, 2012 statutory deadline for a proposed rule, under which it publishes an outline of potential underlying rules to accompany the disclosures and seeks written comment from the public on the content of the outline. It should then provide opportunities for similar input as the outline is revised leading up to a proposed rule.

Through this iterative process, the Bureau can develop its proposed regulation ahead of time and prevent unforeseen vagaries that will require extensive guidance after the rule is proposed. While we are cognizant of the July 21, 2012 statutory deadline for the proposed rule, we believe it is more important to get this right rather than simply getting it done. We do not believe the rule should be bifurcated in any manner resulting in unnecessary costs. Housing and mortgage markets remain under stress and considerable costs have been borne by consumers as a result of past reform efforts. The effort to harmonize RESPA and TILA must not add confusion or contribute unnecessary friction or costs. An iterative rulemaking process will help avoid both outcomes while giving the Bureau appropriate feedback from industry and the public as it moves toward a proposed rule.

Before the rule is proposed, the CFPB also should test its prototypes or draft disclosure forms on actual closed loans for a full range of loan products and for range of local real estate practices. The exercise of populating the forms with complete loan information for a variety of states and

loan types, would demonstrate whether the forms are well designed and where they may add avoidable confusion for consumers. Early testing of this nature would prevent the possibility that after the rule is final, certain loan products will become unavailable because the forms and rules do not accommodate them or other potentially serious problems that could arise as a result of the diverse settlement practices found around the country. We would be happy to provide you with data and the names of lenders and settlement service providers for testing purposes.

Finally, we urge you to publically announce that you will convene a Small Business Advocacy Review panel as outlined by the Snowe-Pryor amendment (Section 1100G) to the Dodd-Frank Act (P.L. 111-203). To make this process as beneficial as possible to the Bureau and small businesses, we encourage the Bureau to make public its procedures for implementing and conducting these panels. Providing this level of transparency will help us and our members to offer useful information to the Bureau to ensure that the final product does not burden small business and will maximize consumer choice in settlement service providers.

Thank you for your time and consideration. We look forward to continuing our work with you to finally improve disclosures for consumers across the United States.

Sincerely,

American Escrow Association
American Land Title Association
Community Mortgage Banking Project
Consumer Mortgage Coalition
Community Mortgage Lenders of America
Mortgage Bankers Association
National Association of Home Builders
National Association of REALTORS®
Real Estate Service Providers Council, Inc. (RESPRO)
Real Estate Valuation Advocacy Association
The Realty Alliance

American Financial Services Association
Community Mortgage Banking Project
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

December 5, 2011

Mr. Rajeev Date
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Prototypes, Round 6

Dear Mr. Date:

The above-named trade associations appreciate the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Round 6 of the "Know Before You Owe" prototype integrated mortgage disclosure forms. We continue to support the CFPB's goal of developing clear and transparent disclosures that will benefit consumers. We appreciate the CFPB providing opportunities for comment as these forms are developed and tested. We look forward to continuing to work with the CFPB on this important task of creating clear and understandable mortgage disclosures.

In this letter, we comment on the Hornbeam and Ironwood prototype Settlement Disclosure Forms, which appear to be based on the existing HUD-1. We include a suggested Closing Costs statement and suggested Transaction Summary forms for your consideration, one for a purchase transaction and another for a refinance transaction. Many of our members, who have seen them, believe the suggested forms are more streamlined than the current HUD-1 and the Hornbeam and Ironwood prototypes, and they work better with the most recent Loan Estimate prototypes. The suggested forms are populated with information drawn from the Hornbeam and Ironwood prototypes and should be considered in revising the prototypes.

The suggested Closing Costs and Transaction Summary forms would all be dynamic, deleting items that are not used in an individual transaction, and adding them when needed. In a refinance transaction, for example, the seller's disclosures could be eliminated just as they are on the optional HUD-1A. In the suggested forms, we include

lines and items that are not used to show how the forms would work in a variety of transactions, but we believe unused items could be eliminated.

At the same time, we do not believe the CFPB should require unused lines to be removed because the time and resources necessary to make the systems changes to implement such a requirement would be quite substantial for many lenders, while the difference to consumers would be negligible.

We understand that the first round of prototypes were developed using the existing statutory and regulatory requirements. As such, the prototypes do not indicate how the CFPB will handle disclosures required under state law. Some states require disclosures in addition to those required under RESPA and TILA. Ideally, when the CFPB's redesigned forms are complete, they will present clear, complete, relevant information and there would be no need for additional disclosures in some but not all states by some but not all lenders. We urge the CFPB to create a uniform nationwide disclosure system and preempt inconsistent state laws. In the alternative, the forms will need to be able to allow incorporation of a variety of state law requirements.

Additionally, we ask the CFPB to consider the disclosures in light of advances in technology. Years ago, consumers may have used good faith estimates as loan shopping tools but, today, technology advances have enabled consumers to shop for loans long before ever approaching any lender. This change obviates the need for shopping information in the CFPB's disclosure forms provided at the time of application.

Overview of Hornbeam and Ironwood Prototypes

We agree with the CFPB that disclosure forms should be clear, transparent, and understandable for consumers. While the first page of these disclosures is similar to the initial disclosure and provides some clarity concerning the loan terms, we are concerned about the organization and length of the Hornbeam and Ironwood prototypes. For example, there are disclosures about the interest rate on pages one and four; disclosures about the payment amount are on page one in two places, page three in the escrow payment breakdown, and on page five, with the escrow payment; disclosures about escrows are on page one in two places, page three in the escrow payment breakdown, and on page five; loan term disclosures are on pages one, four in the AIR table, and page five; and there are cost disclosures on every page. Additionally, page three of Hornbeam contains more columns than would fit on a piece of paper after the columns are populated. In an effort towards clarity, we suggest several ways to improve the forms while making them shorter. We attach forms that suggest clarifications, and below is a list of questions and suggested improvements to the disclosures.

Who Will Prepare the Settlement Disclosure Form?

Currently, creditors prepare final TILA disclosures while settlement agents prepare HUD-1s. The TILA disclosure is related to the loan, while the HUD-1 relates to a purchase and sale if there is one, and details about settlement charges and disbursements.

The Settlement Disclosure Forms are integrated, so it is not clear who would prepare them.

If creditors will prepare the forms, it will be imperative to require settlement agents to provide creditors, at least seven business days before closing, all necessary final closing costs to avoid redisclosure and a new waiting period. Otherwise, the redisclosures and new waiting periods could continually delay closings, which would be very inconvenient and costly to consumers, especially those who rely on the closing date for purposes of moving from one home to another. For this reason, it would be more practical to have settlement agents prepare the forms.

Consistent Terminology

It is critical that the Settlement Disclosure form work well with the Loan Estimate form. While the CFPB is still developing both forms, we have found that the Hornbeam and Ironwood prototypes do not work well with the most recent Loan Estimate prototypes. This is undoubtedly because the CFPB is still developing the disclosures. However, we suggest in this letter several ways the forms could be made to work together better because this will be important to consumers. One would be to use consistent terminology in Loan Estimates and Settlement Disclosure Forms. Here are some examples of inconsistent terminology:

- Both the Hornbeam and Ironwood prototypes, at the top of page two, refer to the "creditor." The Pinyon and Yucca prototypes that the CFPB issued in Round 5 of the Know Before You Owe initiative do so as well, at the top of page three. In several other places, the prototypes refer to the "lender."
- Both Hornbeam and Ironwood refer to a mortgage broker as a "broker" on page three and as an originator on page five. If this were a table-funded loan, would the broker be the lender, or would the funder of the loan be the lender and the broker be the originator?
- Pinyon and Yucca include a Loan ID, while Hornbeam and Ironwood use a Loan No. We suggest both should be designated "Loan ID No."
- Pinyon and Yucca disclose settlement costs, while Hornbeam and Ironwood disclose settlement fees.
- Hornbeam and Ironwood have categories called "Services in Connection With Your Loan" and "Title Charges." At least some title charges are in connection with a loan, so these category titles are not completely clear. Yucca and Pinyon have "Services You Can Shop For" and "Services You Cannot Shop For." Consumers certainly shop among lenders, so it is not accurate to say they "cannot" shop for services. We suggest using the titles "Services Selected by Lender" and "Services Borrower Shopped For" (or can shop for) in both the Loan Estimate and in the Closing Costs statements.

Loan and Purchase Transactions Should not be Blurred

On purchase transactions, both the Hornbeam and Ironwood prototypes do not consistently distinguish loan costs from property purchase costs, which we believe is confusing to consumers. The prototypes include personal property purchases added at the table, and pro-rated property rental income with loan term disclosures. This is confusing. We continue to urge that the purchase and loan transactions not be mixed together.

Headings on Pages One and Two

The headings at the top of pages one and two are crowded and would not accommodate long fields. We suggest creating space at the end of the form for contact information for the loan originator and mortgage broker. It should include the originator's and broker's names, phone numbers, e-mail addresses, and NMLS numbers. This would be similar to Pinyon and Yucca. It may also be helpful to include the NMLS website, http://www.nmlsconsumeraccess.org/.

Including the name of the settlement agent's employee who conducts the settlement should not be required. It is unnecessary, and it can change at the last minute. Redisclosure would be disproportionately disruptive.

The settlement information at the top of page one includes a location. The location should be the settlement agent's address rather than where the closing occurs because the borrower will need to retain the settlement agent's contact information.

The "File No." at the top of page one is vague. It should be "Settlement ID No." and should be under Settlement Information.

MIC should be spelled out as "Mortgage Insurance Case No." so consumers will understand what it is.

The heading on page two relates to the loan officer and lender, while page two relates to the purchase and sale transaction. Moreover, the information is largely redundant. This heading should be removed. The NMLS ID number should be included with the other lender contact information.

Monthly Payment

For many consumers, the most important information is the total monthly payment, which is the amount that includes principal, interest, taxes, and insurance. On both the Hornbeam and Ironwood prototypes, this information appears towards the bottom of page one as it is presented in the Pinyon and Yucca prototypes. We believe this critical information should instead be moved towards the top of the page, along with the other loan terms, perhaps with a reference to the related escrow information under the Projected Payments heading.

The form needs the flexibility to be able to handle daily simple interest loans. On these loans, the first payment amount is commonly larger than later payments.

Cash to Close

The Cash to Close is calculated very differently than the estimated Cash to Close on the Pinyon and Yucca prototypes. Hornbeam and Ironwood calculate the Cash to Close on page two as the sum of the contract sales price plus closing costs, less the deposit and loan principal, with an adjustment for taxes. Pinyon and Yucca calculate it on page two as the sum of origination charges, services the borrower can and cannot shop for, taxes, prepaids, and the initial escrow deposit. This difference is unnecessary and would be confusing.

The calculation of Cash to Close in Hornbeam and Ironwood implies that any amounts shown on lines 100-302 of the Settlement Disclosure Form would need to be estimated in preparing the Loan Estimate. These would include, for example, amounts the borrower pays for personal property as shown on line 102, assignments of the seller's escrow account in an assumption, rent due from a tenant of the property (currently shown on lines 104 or 105), the adjustment for taxes and assessments unpaid by seller listed in lines 210-212, and adjustments for unpaid utilities listed on lines 213-219. The intent may be to reflect these adjustments in the "Other Credits and Adjustments" line in the Calculation of Cash to Close in the Loan Estimates. However, creditors will not have this information when they prepare the Loan Estimate.

Closing and Disbursement Dates

The first page should contain both the closing and disbursement dates.

Page Two, Summaries of Borrower's and Seller's Transactions

Most of this information will not be relevant for a refinance or for a home equity loan. We suggest making this the last page, and eliminating it on refinances and home equity loans.

Page Three, Appraisal Fee

Both Hornbeam and Ironwood include in Line 906 a single entry for an appraisal fee, which we support. From the consumer's point of view, this is the best disclosure because it is short and free of clutter. We realize that one letter has expressed support for breaking the fee into the amount paid to an appraisal management company (AMC) and the amount paid to an individual appraiser. The reasons for that position are unrelated to the information consumers need.

Consumers need to know the amount of the charge, and if the CFPB will use tolerances, they will need to know whether the amounts subject to the tolerance, including this fee

exceed, the tolerance. It makes no difference to consumers whether 60 percent of the fee goes to the appraiser and 40 percent to the AMC, or the reverse.

Consumers receive copies of the appraisal so they can see the level of analysis that it entailed. The fee does not determine the level of analysis. Many factors affect appraisal fees, such as local supply and demand, and the complexity of the appraisal.

Requiring a single disclosure is one way in which the CFPB can minimize the information overload in mortgage disclosures to avoid harming consumers.

Requiring two separate disclosures would greatly increase litigation risk if the charge were disclosed incorrectly, even in the absence of consumer damages or losses.

Page Three, Closing Costs

The fee disclosures in the Closing Costs statement should be consistent with their disclosure in the Loan Estimate. That is, page three of Hornbeam and Ironwood should have the same layout as page two of Pinyon and Yucca.

The escrow deposit should not be itemized. The borrower will receive an escrow analysis, so itemization is not necessary. RESPA requires aggregate accounting.

Page three does not make readily apparent that settlement costs are the sum of the 800, 900, and 1000 series.

Page Four, AIR Table

ARM loan disclosures should include the fully-indexed rate. The table does not disclose that if the index remains unchanged, the rate would increase or decrease to the fully-indexed rate. Nor does it disclose what the payment would be at the fully-indexed rate. The table should be revised to include these facts. We remain very concerned that consumers would not notice the difference between two loans with similar initial rates and lifetime ceilings, where one loan had a premium initial rate and the other loan had a deeply discounted initial rate. These would be very different loans, and the consumer needs to see and understand the difference.

In Yucca, Hornbeam, and Ironwood, this table is included with information on settlement charges. (Pinyon was a fixed-rate loan). This table shows information central to understanding the loan terms for ARM loans, and should be included with loan terms rather than settlement charges.

The acronym AIR should be deleted because consumers may not know what it means, on pages one and four. To the extent this table includes substantive information, it should appear on the first page because it is information about the loan terms, not closing costs. There should also be more information regarding the index because most consumers will not be familiar with “LIBOR” and how the index is calculated. We recommend that

more information be provided, perhaps in the form of a link to the CFPB website that would provide additional information.

Page Four, Tolerances

It is not clear where the credits for the interest rate chosen would be included.

The refund due to the borrower should be more apparent. We recommend that there be a refund disclosure that refers to the 200 series, or state that the borrower will receive the refund separately.

Page Five, TIP Disclosure

In our view, the "Total Interest Percentage (TIP)" disclosure is completely unnecessary, will confuse, and even may harm, consumers. Unless consumer testing shows otherwise and that the disclosure is helpful, it should be eliminated. Currently, the interest rate and the annual percentage rate (APR) must be disclosed. Adding a third rate, the TIP, will confuse consumers because they are unlikely to understand that this rate is unrelated to the interest rate and APR. They also are unlikely to understand why the TIP rate is high or how to calculate it. As interest rates rise, this disclosure will become even more alarming, taking consumers' attention away from more relevant loan terms.

We also do not understand how a TIP rate can be calculated meaningfully if the interest rate can change over the life of the loan and if the future rates are not known at the time of application. Moreover, the calculation would apparently be based on an assumption that the loan is outstanding for its full term, although that is an extremely rare occurrence.

Considering all of these factors, we are especially concerned that consumers may choose a loan product because it has a lower TIP when another loan product would be more appropriate.

We understand that the TIP information would be required under § 1419 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 Act ("Act"). However, § 1405(b) of the Act allows the CFPB to exempt or modify disclosure requirements if the CFPB determines that an exemption or modification would be "in the interest of consumers and in the public interest." We strongly urge the CFPB not to require a TIP disclosure.

If the CFPB does includes a TIP disclosure, we urge the CFPB to provide consumers relevant information about it, including that it is unrelated to the interest rate and the APR even though it is expressed as a percentage rate. This statement should be clear on both the early and the late disclosures. Other information would also be necessary, such as the unusual assumptions underlying the calculation. This would best be handled by providing a link to a page on the CFPB website that explains this additional information.

Page Five, Cost of Funds

Similarly, the "Lender's Cost of Funds" disclosure is completely irrelevant to a consumer's choice of a loan, and is likely to be confusing. The prototypes state, "This is not a cost to you[,]" acknowledging the irrelevance of this disclosure.

The cost of funds disclosure is presumably based on the Dodd-Frank requirement that disclosures include the "the approximate amount of the wholesale rate of funds in connection with the loan[.]"[1] The Act did not define the wholesale rate of funds, when or how to measure it, or how it is "in connection with" a loan.

It would be very difficult operationally for lenders to calculate, or even define, their cost of funds. We strongly believe this disclosure should be eliminated because it has no borrower benefit and would draw borrowers' attention to information that is irrelevant to their borrowing choice.

If the disclosure is retained, we recommend that the CFPB calculate and publish the cost of funds rather than requiring lenders to calculate their cost of funds. Otherwise, the regulation would need to define the cost of funds, the period of time during which to measure it, whether it includes hedging costs and if so how, and so on. This regulatory definition and measurement would need to survive a § 1022 cost-benefit analysis, which would be difficult because the disclosure is entirely irrelevant to consumers' loan decisions, while, at the same time, presenting a significant, ongoing compliance burden.

Pages Five and Six, Other Disclosures

Generally, these pages include several disclosures that until now have been provided separately. If these disclosures are to be provided on the settlement disclosure form, we strongly urge that the CFPB undertake the necessary rulemaking so that these disclosures need not be given elsewhere in the process. Otherwise, the forms risk overburdening the consumer unnecessarily and diverting attention from the more important information on these forms.

Moreover, integrating numbers or variable rate fields into a paragraph of text as in the escrow account and security interest disclosures and in several disclosures in Hornbeam is difficult. If these disclosures will be used, they should be in tables. Tables would be easier for borrowers to understand and very significantly easier for lenders to implement.

Ironwood discloses the APR and finance charge on page five. TILA § 122(a) requires that these items be disclosed "more conspicuously than other terms[.]" If the CFPB will include these terms late in the disclosure, its regulation should be extremely clear that this is not a TILA violation.

[1] Dodd-Frank Act § 1419, TILA § 128(a)(17).

The "Escrow" disclosure on page five cannot accommodate loans in which some but not all items are escrowed, although this is common. The escrow disclosure should allow the disclosure contemplated by TILA § 106(c) that the borrower may select the hazard insurance provider so that it will be excluded from the finance charge.

The "Demand Feature" and "Negative Amortization" disclosures on a loan that lacks these characteristics is unnecessary. These disclosures should be required only for loans that have these characteristics. When required, the disclosure should be on the first page of both the Loan Estimate and the Settlement Disclosure Form. We note that the Yucca and Pinyon forms disclosed the absence of prepayment penalties and balloon payments. It is not clear why the absence of these particular features apparently would always be disclosed, but other risky features would apparently be treated differently.

The "Partial Payment Policy" needs a third option. "We will put partial payments in a suspense account. When we receive enough additional payment(s) to equal a full payment, we will remove the full payment amount from the suspense account and apply it to the loan."

The "Security Interest" disclosure on page five should refer to the property disclosed on the first page of the disclosure. It should use the word "property" rather than "home" because the property may not be the borrower's home.

The "Appraisal Copy" disclosure should not need to repeat the lender's contact information because it complicates preparing the disclosure without adding any consumer benefit. It could simply refer to the location of the contact information.

The disclosure about "Liability After Foreclosure" is misleading. This liability varies from state to state, and the two options provided may not be accurate under every state's law. Additionally, whether there is the possibility for personal liability after foreclosure may be fact-dependent. If this disclosure is required, then it should be rewritten to alert the borrower to potential, rather than certain, liability.

The "Tax Deductions" disclosure also could be misleading. There are other fact situations where mortgage interest may not be tax deductible beyond borrowing more than the home is worth. We suggest adding as the second sentence of this disclosure: "In some instances, mortgage interest may not be tax deductible regardless of the home's value."

The Ironwood "Closing Cost Summary" does not indicate how the lender should calculate the settlement fees that are considered to be financed in the loan amount.

The Ironwood "Total of Payments, Finance Charge, and Amount Financed" do not appear on the Loan Estimate. If these disclosures are not helpful to the consumer at the time of application, they are not helpful at closing, so it is not clear why they are in the Settlement Disclosure Form. Moreover, these disclosures appear unnecessary because

the Loan Estimate discloses the Loan Amount, Settlement Costs, and the Five Year Comparison.

Finally, we recommend numbering the several disclosures.

Suggested Closing Costs Statement

The Hornbeam and Ironwood prototypes devote a large amount of space to costs paid outside closing and to tolerances. Our suggested Closing Costs statement streamlines these disclosures. It also removes line numbers, using instead letters for blocks to save space. We note that some lenders may find removing line numbers to be a very significant implementation hurdle, so we recommend that the CFPB permit but not require eliminating line numbers.

Aggregate Origination Charge

The suggested Closing Costs statement aggregates origination charges other than discount points and a mortgage broker's fee. It includes a line for a credit to the interest rate. There appears no benefit, either to consumers or lenders, to itemize origination charges more than this.

Real Estate Brokers' Fees

We moved "Total Real Estate Broker Fees" to the purchase money Transaction Summary for two reasons. First, the fees only apply to purchase transactions, so in refinances they would add unnecessary clutter. Second, real estate broker fees are not on the Loan Estimate, so removing them from the Closing Costs statement makes it easier for the consumer to use the Settlement Disclosure Form together with the Loan Estimate. Another alternative would be to list Total Real Estate Broker Fees as the last category in the Closing Costs statement rather than the first, because that would make it easier to compare with the Loan Estimate.

Costs the Lender Does Not Require

We added "Additional Closing Costs Not Required by Lender" as Block H on the Closing Costs statement because the prototypes have no place to put services that the lender does not require. Hornbeam and Ironwood show fees for a survey, pest inspection, and borrower's attorney, but we do not know whether the lender required these. It is highly unlikely that the lender required the borrower to have an attorney. If the lender did not require the services, including them as part of the "Settlement Fees" disclosed on the first page could mislead the consumer into believing that they are loan costs when they are not. We continue to urge against blurring loan costs with costs not required for the loan. By making clear to the consumer that a service is not required for the loan, the consumer will be able to decide whether to obtain the service, and who to negotiate with for that service. If the costs are mixed together, the consumer may miss this opportunity to make a decision.

We grouped together fees subject to the 10 percent tolerance, and label them as limited to the 10 percent tolerance disclosed on the loan Estimate. This shows tolerance information and tolerance cures clearly in the Closing Costs statement, ties the disclosure explicitly to the Loan Estimate for ease of comparison, and entirely eliminates the need for the page 4 "Limits on Increase" table.

We moved Recording Fees into "Services Selected by Lender" because they are currently subject to the aggregate 10% tolerance.

If there were a potential violation of the aggregate 10 percent tolerance, this suggested form would allow a lender to correct it in either of two ways. The lender could pay all or a portion of a specific charge, and show it on the row for that charge in the Paid by Others columns. Or, the lender could show a Lender Credit on a separate row with a credit to the borrower in the Paid by Borrower At Closing Column and the amount paid by Lender shown in the Paid by Others columns.

Costs Paid by Others

It is important to show whether borrower-paid and seller-paid items are paid at or before closing. The suggested Closing Costs statement has sub-columns for both the borrower and seller showing the amount of each fee paid at closing and paid before closing. It is not necessary to show to a borrower or seller whether items paid by others (including by the lender) are paid at closing or before closing. To save space in the suggested form, the "Paid by Others" columns show the amount of the payment and who paid it, but not the timing. This streamlines the statement and removes the table at the top of page 4 in Ironwood, without eliminating relevant information.

Lender Credits

The suggested Closing Costs statement has a Row D called "Lender Credits." It is in the same sequence as in the Yucca and Pinyon Loan Estimates page two, as the last item in settlement fees. On the Loan Estimate, we recommend labeling Lender Credits as "D" and relettering D through F as E through G, so the Loan Estimate and Closing Costs statement will work together. In all cases, we believe the titles of all rows should be consistent between the Closing Cost statement and the Loan Estimate.

Transfer Taxes

We include a Row E, Transfer Taxes, and note the tolerance. Again, we distinguish between transfer taxes on the mortgage and transfer taxes on the purchase transaction. It is important that the consumer be able to see the difference. Making clear which taxes are not a loan charge will better enable the purchaser to negotiate with the seller about who pays the taxes.

Escrow Deposit

The Initial Escrow Deposit, Row G, shows the amount transferred from an existing escrow account in a refinance transaction. In an assumption where the seller's escrow account is transferred to the buyer, that would be shown as an adjustment to the Net Amount Owed by Buyer to Seller, in the Transaction Summary, and not as a transfer in Row G of the Closing Costs statement.

Totals

The totals at the bottom show which items are included in Settlement Fees (A through D), which are in Other Closing Costs (E through H), and the amount the borrower and seller pay at closing, in bold.

Credit Insurance

There is also no disclosure of credit insurance premiums. We believe this is an important disclosure for consumers. We also note that under section 106 of TILA, credit insurance premiums must be disclosed in order to be excluded from the finance charge.

Suggested Transaction Summary (Purchase Money)

Simultaneous First and Second Mortgages

The suggested Transaction Summary form for a purchase transaction accommodates simultaneous first and second mortgage loans. In these cases, each loan would have its own Closing Cost Detail and loan term disclosures, but only one Transaction Summary.

Assumed Loans

This suggested Transaction Summary accommodates two loan assumption circumstances. The buyer may assume a loan that is the subject of the disclosure, or the buyer may assume a different loan. The assumed loan always reduces the net amount the buyer owes the seller. In the Summary of the Buyer's Transaction, in calculating the amount of cash to or from the buyer, closing costs associated with assuming one or more loans are added, but the amounts assumed are not subtracted.

Net Amount Owed by Buyer to Seller

In the Hornbeam and Ironwood prototypes, the net amount the buyer owes the seller is calculated twice, once in the Summary of the Buyer's Transaction and in the Summary of the Seller's Transaction. We save space and make the form simpler by calculating this only once. We similarly suggest showing the adjustments for taxes and assessments once rather than twice.

Real Estate Brokers' Fees

We put the real estate brokers' fees on the Transaction Summary for a purchase transaction because that is where they are most relevant. As noted above, another alternative would be to list them as the last category of fees on the Closing Cost statement.

Summaries of Transactions

We reordered the information in the Summary of the Borrower's Transaction and the Summary of the Seller's Transaction.

Transaction Summary (Refinance)

As with the Transaction Summary for purchases, this form can accommodate simultaneous first and second mortgages. Deleting inapplicable information simplifies the form considerably.

This form provides the same information as the current HUD-1A, but in a format consistent with the Purchase Money Transaction Summary and in a slightly different order. The final line is the cash to or from the borrower.

Conclusion

Again, we appreciate the opportunity to provide comments on these disclosures as they are being developed. We are pleased that the CFPB continues to improve the mortgage disclosures. We look forward to continuing our dialogue on future iterations.

Sincerely,

American Financial Services Association
Community Mortgage Banking Project
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council
Mortgage Bankers Association

Attachments

cc: P. McCoy
B. Olson

CLOSING COSTS

Lender:	**Loan ID _________**	
☐ First ☐ Second Mortgage	☐ New Loan ☐ Assumption	☐ Purchase ☐ Refinance

	Paid by Borrower		Paid by Seller		Paid by Others	
	At Closing	Before Closing	At Closing	Before Closing	At/Before Closing	Paid By
A. Origination Charges Amount paid by Borrower limited to $2,510.00 disclosed on Loan Estimate						
Origination Charge	1,300.00					
Discount Points 1.00%	1,210.00					
[Credit for Interest Rate]	( )					
Broker Fee to Friendly Mortgage Broker Co.					2,420.00	Lender
Credit - Reduces origination charges paid by borrower to limit	( )					
B. Services Selected by Lender Combined charges paid by Borrower limited to $1,753.95 (10% over the $1,594.50 disclosed on Loan Estimate)						
Credit Report to Creditco		12.00				
Tax Status Research Fee to Collateral Research Inc.	55.00					
Flood Determination Fee to Collateral Research Inc.	25.00					
Tax Monitoring Fee to Monitoring Services Inc.	35.00					
Flood Monitoring Fee to Monitoring Services Inc.	40.00					
Appraisal Fee to Local Appraisal Co.		675.00				
Document Preparation Fee to Collateral Research Inc.	125.00					
Settlement or Closing Fee to ABC Settlement Co.	350.00					
Abstract or Title Search Regional Title Co.			275.00			
Title Examination to Regional Title Co.	200.00					
Title Insurance to Treasurer State of Iowa Coverage: Lender $121,000/Owner $135,000	110.00					
Recording Fees: Deed 27.00 Mortgage: $92.00	119.00					
Credit - Reduces combined charges paid by borrower to limit	( )					
C. Services Borrower Shopped For						
[None in this example]						
D. Lender Credits						
[None in the Example]	( )					
E. Transfer Taxes Amount Paid by Borrower limited to $0 disclosed onLoan Estimate						
Purchase: 216.00 Mortgage: $0			216.00			
F. Items Paid In Advance						
Hazard Insurance Premium (12 mo.) to XYZ Ins. Co.	596.00					
Flood Insurance Premium (12 mo.) to Natl. Flood Co.	1,695.00					
Daily Interest Charges (11/9 to 11/30)@9.66 per day	202.86					
G. Initial Escrow Deposit						
See Initial Escrow Account Disclosure Statement *[Deposit reduced by transfer of $__________ from Borrower's escrow account on refinanced loan.]*	1642.42					
H. Additional Closing Costs Not Required by Lender						
Survey Fee to Surveyors Inc.	105.00					
Pest Inspection Fee to Home Pest Co.	200.00					
Borrower's Attorney to Tyler & Brady LLP	400.00					
Settlement Fees (A+B+C+D) $4,256.00 Paid by Borrower at or before closing.	3,569.00	687.00	275.00		2,420.00	
Other Closing Costs (E+F+G+H)	4,841.28		216.00			
Total Closing Costs	**8,410.28**	687.00	**491.00**	0	2,420.00	

TRANSACTION SUMMARY [Purchase Money]

Loan Identifications:

First Mortgage Lender: Hornbeam Bank	Loan ID: 1111111111	[X] New Loan [ ] Assumption
Second Mortgage Lender:	Loan ID:	[ ] New Loan [ ] Assumption

A. Net Amount Owed by Buyer to Seller

Sales Price		135,000.00
Plus Personal Property		
Adjustments - Plus items paid in advance by Seller, Less items unpaid by Seller		(1,038.84)
City/Town Taxes _____ to _____		
County Taxes 7/1/11 to 11/9/11	(1,038.84)	
Assessments _____ to _____		
Less Existing First Mortgage assumed or taken subject to		( )
Less Existing Second Mortgage assumed or taken subject to		( )
[ ] Plus [ ] Less Other:		
Net Amount Owed By Buyer to Seller		133,961.16

B. Summary of Real Estate Brokers' Fees

Name of Real Estate Broker	Amount	
Reliable Realty Co	4,375.00	
Realty Pros LLC	4,375.00	
Real Estate Broker Fees Paid by Buyer		
Real Estate Broker Fees Paid by Seller		8,750.00

C. Summary of Buyer's Transaction

Net Amount Owed by Buyer to Seller (from A)		133,961.16
Plus Real Estate Broker Fees Paid by Buyer (from B)		
Plus First Mortgage Closing Costs		8,410.28
Plus Second Mortgage Closing Costs		
Plus Disbursements to Others		
Name	Amount	
Less Deposit Held by [RE Broker]		(4,000.00)
Less New First Mortgage Loan Amount		(121,0000.00)
Less New Second Mortgage Loan Amount		( )
[ ] Plus [ ] Less Other:		
Equals Cash [ ] To [X] From Buyer		17,371.44

D. Summary of Seller's Transaction

Net Amount Owed by Buyer to Seller (from A)		133,961.16
Less Real Estate Broker Fees Paid by Seller (from B)		(8,750.00)
Less First Mortgage Closing Costs		(491.00)
Less Second Mortgage Closing Costs		( )
Less Disbursements to Others		
Name	Amount	
		( )
Less Excess Deposit from [Name of RE Broker]		( )
[ ] Plus [ ] Less Other:		
Equals Cash [X] To [ ] From Seller		124,720.16

TRANSACTION SUMMARY (Refinance)

Loan Identifications:

First Mortgage Lender: Hornbeam Bank	Loan ID:	[X] New Loan [ ] Assumption
Second Mortgage Lender:	Loan ID:	[ ] New Loan [ ] Assumption

Summary of Borrower's Transaction

First Mortgage Loan Amount		
Second Mortgage Loan Amount		
Less First Mortgage Closing Costs		( )
Less Second Mortgage Closing Costs		( )
Less Disbursements to Others		( )
Name	Amount	
[ ] Plus [ ] Less Other		
Equals Cash [ ] To [ ] From Borrower		

October 31, 2011

Rajeev Date
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Know Before You Owe Prototypes, Round 5

Dear Mr. Date:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Round 5 of the "Know Before You Owe" prototype integrated mortgage disclosure forms. We continue to support the CFPB's iterative approach to redesigning these important disclosures.

We want to begin this letter, though, by noting that the prototypes may not be well suited for the ways in which consumer shopping is adapting to modern technology. Recently, software available on mobile web access devices such as smartphones and tablets has streamlined the home and mortgage shopping process. This technology is evolving rapidly. With mobile devices, consumers can find detailed information about homes for sale, including those located near where the consumer is at the time of a search. Mobile devices can retrieve information about homes, their cost, price history, comparable sales nearby, current loan rates, and an approximate monthly loan payment. Consumers can retrieve information about estimated loan payments based on loan terms the consumer selects, and they can receive estimated property taxes and insurance. They can receive competing quotes from multiple lenders. Software can connect consumers to lenders or real estate agents with a click. Very detailed information is available by a few clicks long before a consumer ever approaches a lender and receives a Loan Estimate.[1] The amount of information available to consumers will increase in the future.

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[1] "Zillow takes its Mortgage Marketplace Mobile;" "Intuit"s Mint.com, 'Way to Save' compares home loan options to a person"s income, debt ratio and credit." "Mint.com works with CreditSesame.com on the product, which provides bank-level analytics to produce loan options for consumers. The Credit Sesame analytics engine creates a financial profile against thousands of products from lenders and brokers, producing a customized list of loan options." http://www.americanbanker.com/issues/176_196/zillow-PFM-mortgage-mobile-1042960-1.html?zkPrintable=true

Given this reality, it does not appear that the Loan Estimate disclosure will be used as a shopping tool because the consumer will have finished shopping by the time they apply for a loan. Therefore, we would encourage the CFPB to recognize the technology tools that are available today and focus its disclosure project on streamlining the disclosures that are needed once the consumer applies for a loan, rather than trying to use the Loan Estimate disclosure as a shopping tool.

When the project to streamline mortgage disclosures first began in 1995, technology and the electronic tools that were available to consumers at that time were almost nonexistent. The Consumer Mortgage Coalition recommended that technology tools be developed to assist the consumer in shopping for mortgage loans. With time, however, technology moved faster than the policymakers and the regulations. We are very fortunate today that technology is enabling consumers to have a robust shopping experience before they apply for a loan.

Page One

Closing Costs and Estimated Cash to Close

The statement that "All other estimated closing costs expire on 10/31/2011 at 3:30 p.m. MDT" implies that, if the borrower acts before that deadline, these other closing costs are subject to tolerances.

At the bottom of the first page, there are two labels for the same item, "Closing Costs" and "Estimated Cash to Close." This amount includes items for which tolerances would be inappropriate because they are not subject to the lender's control or even influence. The lender should not be subject to tolerances for items that borrower or seller control or elect. Nor should the lender be subject to tolerances for purchase transaction charges.

This amount includes owner's title insurance, homeowner's insurance premiums, homeowners' association fees, down payment, and seller credits. These items are all related to the property purchase transaction because they would be payable in a cash purchase. The total amount also includes transfer and recording taxes and other government fees. This apparently would combine taxes and fees on both the property purchase and on the mortgage. The lender should not be subject to tolerances for charges unrelated to the mortgage transaction.

Loan Estimate

The disclosure of the "Product" will need to be defined with specificity.

Loan Terms

This part of the prototype has important improvements. We support changing the term "Monthly Loan Payment" to "Monthly Principal and Interest" because the new term is more specific and clearer without adding confusion, an important improvement. The

Round 5 prototypes refer the reader to the "Payment Calculation" on the same page so all items that go into the payment are plainly detailed.

We also support the removal of "Cash to Close" from the first page and its replacement with "Estimated Cash to Close." The amount is estimated, so adding that word is very important.

Separating the estimated cash to close from the "Key Terms" is also helpful because some of the items included in the estimated cash to close relate to the property purchase rather than the loan amount. These items are not loan terms at all, and it is important that consumers are aware of this distinction.

Similarly, we support changing the title from "Key Terms" to "Loan Terms" and limiting the "Loan Terms" to terms that are indeed only loan terms.

In the Yucca Bank prototype, an ARM loan disclosure, under the "Interest Rate" is a reference to the "AIR table on page 2." We recommend spelling out the table's name rather than using an acronym. The term "AIR table" is not familiar to consumers, so spelling out the term will make it easier to understand, and will make it easier for consumers to find the table on page two.

Projected Payments

The Pinyon Bank prototype shows the principal and interest, the mortgage insurance payment, and the estimated taxes and insurance, noting that these can increase over time. It shows that the loan will have an escrow. It also shows that mortgage insurance premiums will terminate after year seven. These disclosures are clear.

The Yucca Bank prototype is the first Know Before You Owe prototype that relates to a loan without an escrow. It shows that the estimated taxes and insurance are zero. This is materially inaccurate, it is to the consumer's detriment, and we cannot support it.

It is very important that the consumer not be misled to think that a loan with no escrow is less expensive that a loan with an escrow, because the cost overall is the same. A consumer comparing the Pinyon Bank and Yucca Bank prototypes may think the Yucca Bank loan is far cheaper that the Pinyon Bank loan, while they are only slightly different. The difference is apparent only if the consumer were to notice the boxes checked to show "Escrow" or "No escrow." Some consumers may not know the term escrow. This important effect of the escrow is too obscure.

Some loans escrow multiple items, some loans escrow no items, and some loans escrow some but not all of the same items. The disclosures will need to accommodate each possibility.

For all of these reasons, we strongly recommend the following changes:

Change the title of the "Estimated Taxes & Insurance" row to "Estimated Escrowed Taxes & Insurance." This row would show the estimated monthly amount of the escrowed items, but not the monthly amount for items that are not escrowed.

Change the title of the "Escrow Information for Estimated Taxes & Insurance" row to "Estimated Taxes & Insurance You Will Pay Directly." This row would show the dollar amount of items that the borrower would pay directly.

This section would appear for Yucca Bank (no escrow), Pinyon Bank (escrow), and for a third loan on which some items are escrowed and some are not, as follows:

Yucca Bank:

Estimated Taxes & Insurance You Will Pay Directly	$212.00 a month	No escrow. You must pay your taxes and insurance separately from your loan payments.

Pinyon Bank:

Estimated Taxes & Insurance You Will Pay Directly	$0 a month	Escrow. Your monthly payments include your taxes and insurance.

Third loan, assuming that taxes and assessments of $105 will be paid from escrow and homeowner's insurance of $100 would be paid directly:

Estimated Escrowed Taxes & Insurance	$105.00 a month	Partial escrow. Your monthly payments include an escrow payment.
Estimated Taxes & Insurance You Will Pay Directly	$100.00 a month	Partial Escrow. Your monthly payment does not include all of your taxes and insurance. You must pay some taxes and insurance separately from your loan payments.

Closing Costs

The "Closing Costs" item is moved out of Key Terms, and is labeled as "estimated." Both are improvements.

Page Two

The prototypes do not yet make clear where certain third party charges are to be included, and this will certainly need to be very clear.

Loan Number

Including the loan number of the form is helpful. Consumers very commonly call with questions after they receive a disclosure, and having the loan number handy makes authenticating the consumer's identity easier.

Origination Charges

We support putting the discount points or premium credit for the selected interest rate on a separate line. This is an important item for consumers to understand.

Otherwise, there is no reason to itemize the origination charges in section A. The total cost to the consumer is the same, and none of the items are shoppable. This is one area where streamlining the forms can remove clutter without interfering with the consumer's shopping process.

We support moving lender credits from this section to the "Calculation" of estimated settlement costs. This is a more logical and clear location.

Services You Can Shop For

This section itemizes title charges that current RESPA rules aggregate. This would not be helpful for either the consumer or the lender.

The prototypes contain an itemization of "Title – Owner's Policy (optional)." We recommend removing this item because lenders do not require owner's title insurance. There are many optional items that lenders do not require, and these optional items should not be required to be disclosed in the Loan Estimate. The decision whether to purchase owner's title insurance should be included in the CFPB's consumer education materials, and interested consumers should be directed to title insurers for information. Lenders are not able to estimate the cost of owners' title policies as accurately as title insurers.

Prepaids

The term "Prepaids" is confusing because it implies that the included items are prepaid finance charges, although they may or may not be. Additionally, the term implies that the items are paid before closing, while they may be paid at closing. We suggest that the section instead be titled, "Items Paid in Advance."

Initial Escrow Payment at Closing

The prototypes continue to break down the escrow deposit into separate charges for separate items. If the Loan Estimate requires showing how much is deposited into an escrow for each item separately based on the monthly cost, the total of these amounts will not equal the amount actually deposited into the escrow. While it would be possible to devise and disclose an adjustment to reconcile the disclosure with the actual escrow deposit, a reconciling adjustment would be confusing. The cleaner approach would be to show the total amount actually deposited into the escrow.

Limits on Increases

This section does not accurately reflect the current RESPA tolerances. For example, current good faith estimate does not itemize the components of the lender's origination charges as the Round 5 prototypes do, and the zero tolerance applies to the origination fee as a whole. The Round 5 prototypes imply that the limit applies to the items individually.

These prototypes do not reflect the fact that interest rate-dependent charges can change until the rate is locked. There is no indication that the ten percent tolerance only applies to shoppable services if the borrower chooses a provider not identified by the lender.

The statement that certain charges "generally" cannot increase by certain amounts is unclear. The statement that increases are limited is followed by a statement that "We will notify you if a change causes an increase above these limits" seems to contradict the statement that there are limits.

Calculation of Estimated Cash to Close

We recommend that settlement costs that the consumer pays before closing not be included on the same line as the down payment.

It is unclear where to put credits paid by a third party, such as the consumer's employer. Is this item to go in "Other Credits and Adjustments" or in "Funds from Borrower"?

At closing, there is often an adjustment for taxes that the seller paid in advance (for periods after the closing date), or for taxes that the seller has not paid (for periods before the closing date). Are lenders to estimate these adjustments? If so, where are they to be disclosed?

The Uniform Residential Loan Application presents "Details of Transaction" in a different format than the prototypes calculate the Estimated Cash to Close. Consumers would benefit if these were more consistent.

A problem under current rules is that consumers receive far too many redisclosures before a loan closes. The Estimated Cash to Close is one item that will routinely change many times after application and before closing. As the CFPB considers the substantive rule changes, we strongly recommend this item not require repeated redisclosures. This item does not involve loan terms, and redisclosing it repeatedly will not assist shopping.

Adjustable Interest Rate Table

It is not clear whether this table will be the only required disclosure of ARM terms and conditions. The table does not show the current index value or the fully-indexed rate.

The Yucca Bank prototype describes the index as simply "MTA," which is not a household term. How specifically will the index need to be identified?

Page Three

Comparisons – In Five Years

We continue to believe that it does not make sense to show the amount of principal paid on both the first line ("Total you will have paid") and the second line ("Principal you will have paid off"). This double counts the principal paid. It would be preferable to show three lines: (1) interest, mortgage insurance and fees, (2) principal, and (3) total. In comparing loans, the borrower's main concern should be that line (1) be as low as possible.

Comparisons – APR

The APR disclosure alone will not be helpful because the consumer does not how it is calculated or what "your costs" include. Further, for ARM loans, the prototypes do not make clear which rates are used in the APR calculation, as the disclosures include the minimum and maximum rates but not the fully indexed rate.

Comparisons – Lender Cost of Funds

This disclosure is presumably "the approximate amount of the wholesale rate of funds in connection with the loan," required by Dodd-Frank Act § 1419.[2] It is not clear where the lender would obtain the percentages to disclose. We note that both Yucca and Pinyon are banks, both prototypes have the same issuance date, yet the percentages disclosed are different. The Dodd-Frank Act does not require an exact disclosure. It requires only disclosure of the **approximate** amount. We suggest that each lender should not have to calculate its own cost of funds, but instead be able to use a rate published by the Federal Reserve Board or the CFPB, similar to the average prime offer rate.

Other Considerations – Servicing

This section requires the lender to select between "We intend to service your loan" and "We intend to transfer servicing of your loan." The lender may also intend to transfer servicing to its affiliate. In these cases, we recommend this be treated consistently with Regulation X § 3500.21(d)(1). This treats a transfer of servicing between affiliates from the consumer's point of view, which is most appropriate. A transfer to an affiliate is not treated as a transfer as long as the payee, payment address, account number, and payment amount do not change.

Other Items

The Round 5 prototypes no longer contain the items on "Security Interest," "Contract Details," and "Tax Deductions." Have they been eliminated?

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[2] Dodd-Frank Act § 1419, Pub. L. No. 111-203, 124 Stat. 1376, 2155, Truth in Lending Act § 128(a)(17).

Signature lines have been added in Round 5. Requiring signatures on disclosures mailed to consumers would be impractical. We assume they will be optional.

Implementation Testing

We recommend that the CFPB test how to complete the prototypes with actual loan products. This testing process will make apparent the many implementation issues that inevitably arise with new disclosures. It would be far better to find and address the issues before the CFPB formally proposes forms in a rulemaking. We suggest trying to use the prototypes for a variety of loan products, including each of the Fannie Mae and Freddie Mac products, so that the CFPB will be fully aware of all the issues that new disclosure forms will entail.

Conclusion

We are pleased that the CFPB continues to improve the Loan Estimates through an iterative process, and we will continue to provide feedback where we can.

Sincerely,

Anne C. Canfield
Executive Director

August 8, 2011

Mr. Rajeev Date
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1801 L Street, N.W.
Washington, D.C. 20036

Re: Know Before You Owe Prototypes, Round 3

Dear Mr. Date:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on Round 3 of the "Know Before You Owe" prototype integrated mortgage disclosure forms.

We understand that testing to date is limited to the layout and design of the forms rather than the substantive underlying rules. The two are intertwined, so that if the substantive rules are changed, the disclosures will need to change. Nevertheless, we offer comments where we can.

Page One

We support moving the rate-lock information to the first page. Whether the rate is locked may require the consumer's immediate attention and action, especially in a rising rate environment. We assume the CFPB will permit different language to cover other circumstances, such as a loan on which the rate is locked, or when the creditor's policies affect the timing of the lock.

We are pleased to see that the circles and arrows are removed from page one under Loan Terms. This is important because the industry does not today have the capacity to include those types of graphics in automated, transaction-specific disclosures, and they are not meaningful to consumers. We do notice that the new Page 1 introduces triangles under Projected Payments. We do not believe these graphics would survive the cost-benefit analysis required by section 1022(b)(2) of Dodd-Frank. They impart no meaning to consumers and would be a huge, unnecessary expense for the industry to bear.

We continue to have concern about the disclosures of the APR and about the amount the borrower will have paid after five years. In Rounds 1 and 2, we were concerned that this

would imply incorrectly that the loan had a fixed rate. In Round 3, the loan does have a fixed rate. However, the Round 3 loan has a balloon payment after seven years. The APR disclosure says it describes the loan costs over 30 years. With Round 3, the CFPB has explained that the prototypes use existing RESPA and TILA rules, but the 30-year APR on a seven-year balloon appears inconsistent with Comment 17(c)(5)-4. That Comment states that a loan with a five-year term and 20-year payment schedule, absent a demand feature, should have disclosures based on the five-year term. This loan does not appear to have a demand feature because there is no disclosure of one, and it does not appear to be a renewable balloon loan under Comments 19(b)-5 or 22(c)(1)-11 because there is no disclosure of a renewal.

On a seven-year balloon loan, or on any loan that will be repaid in seven years, an APR that spreads costs over 30 years would be especially misleading because spreading the fees over 30 years makes them appear small. The estimated APR would be lower than the actual APR.

It is not clear how the consumer will use the information under "In 5 Years." The comparison would not be meaningful if the consumer is comparing different loan products. In this example, the consumer may be comparing the seven year balloon loan to, perhaps, a 7/1 ARM. The passage of five years seems irrelevant. If the intent is to show how fast the principal declines, the principal should be separated from the other payments. The "Total you will have paid" should exclude principal. The "Principal" should show the remaining principal.

In Round 1, the front page showed the projected payment at closing. In Round 2, this was expanded to "Cash Needed to Close," and it referred the reader to page two for details. In Round 3, it is "Cash Needed to Close, Includes estimated closing costs" and refers the reader to page two for details. At this early stage in the loan process, the consumer should be focusing on loan shopping. Effective loan shopping requires that the loan costs be *separate* from the purchase costs. The first page should show the loan costs, while the total cash to close should be on the second page.

It is not clear how the prototypes determine what is part of "estimated closing costs" and what is part of Cash Needed to Close. Loan costs should be in estimated closing costs while property purchase costs should be in Cash Needed to Close because this distinction would help the borrower compare different loans. Transfer Taxes and Recording Fees should be broken down, with the loan taxes and fees separated from the purchase taxes and fees. The borrower's attorney fee, which is not required by the creditor, should be in Cash to Close. Fees for inspections should vary based whether the lender requires them. The amount paid at closing for mortgage insurance should be included in estimated closing costs.

The amount of the monthly loan payment, among the most important items of information, is shown to the penny under "Monthly Loan Payment" and rounded to the nearest dollar under "Expect to make these payments." We are unclear why these are different, when rounding is permissible, and what the rounding rules would be.

Page Two

Round 3, as in Round 2, uses two very different designs for the second page, one with more detail than the other. In part, the appropriate level of detail depends on the underlying substantive rules, so our ability to comment meaningfully is limited.

The Camellia prototype does not comply with current RESPA rules. It separates the amounts to be paid into an escrow for future bills for homeowner's insurance, mortgage insurance, and for taxes. Under RESPA § 10(a) and its implementing § 3500.17, this is not permitted. Escrow accounts must use aggregate accounting. "The cushion must be no more than one sixth (1/6) of the estimated total annual disbursements form the escrow account."[1] A servicer cannot calculate and hold a cushion separately for each escrow item. Aggregate accounting is a consumer protection. The Azalea prototype is consistent with aggregate accounting. The total cost is the same, in this example $793, so the difference would likely not be significant to consumers.

Regardless of the RESPA aggregate accounting requirement, the cost of mortgage insurance should be clear because it varies by loan and is an important shopping item. Both Azalea and Camellia make the cost of mortgage insurance very clear on page one, with the loan payment, which we believe is important.

Azalea and Camellia both disclose a $400 fee for the borrower's attorney. We infer Azalea and Camellia reflect a purchase transaction because there is an initial payment, outside of the escrow, for homeowner's insurance. In a disclosure made within three days of an application, the only way the creditor will know whether the consumer will retain an attorney is if the consumer tells the creditor. The benefit of having the creditor ask the consumer a question so the creditor can parrot the information back to the consumer is not apparent, and an inaccurate disclosure could result because even the consumer may not know the cost this early. Any charge not required by the creditor that relates to the negotiations between the buyer and seller should be listed under Cash Needed to Close.

If optional items are to be included under Services You Can Shop For, it may be helpful to note that they are optional.

Camellia has a number of items broken down under Origination Charges. If the lender will guarantee these costs, it is unclear why itemizing them helps. If the consumer is comparing two Loan Estimates from two prospective lenders and they both have the same total origination charge, the consumer likely will not be concerned whether the wire transfer fee was $X and the verification fee was $Y or *vice versa*.

We are unclear about the rush fee on the Camellia prototype. Whether there will be rush fees may not be known within three days of an application, and if there are any, it is not

[1] 24 C.F.R. § 3500.17(c)(5).

clear that the lender will charge them to the consumer. A title agent may assess a rush fee, although at this early stage, the title agent is likely unknown.

On Camellia, under Services You Can Shop For, there appear to be two required disclosures, Lender's Title Policy and All Other Title Service Fees. Some, but not all, homeowners prefer to purchase owner's title insurance. Typically, they have not decided this early whether to do so or the amount of coverage to purchase. But the term "all other" title service fees implies that owner's title insurance is combined in that item. If it is not included, this could be misleading. If it is included, the cost is not disclosed but should be because the consumer needs to make a decision whether to purchase the insurance.

Conclusion

We are pleased that the CFPB continues to improve the Loan Estimates through an iterative process, and we will continue to provide feedback where we can.

Sincerely,

Anne C. Canfield
Executive Director

July 12, 2011

Professor Elizabeth Warren
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1801 L Street, N.W.
Washington, D.C. 20036

Re: Know Before You Owe Prototypes, Round 2

Dear Professor Warren:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its second round of "Know Before You Owe" prototype integrated mortgage disclosure forms.

This round of prototypes has two forms, both with the same first page. The second page, which primarily shows settlement service charges, differs. The Redbud prototype has charges broken down into more component parts than the Dogwood prototype. We gather the CFPB is testing to see whether more detail or more consolidation is preferable.

Part of the answer depends on how the CFPB will address substantive regulatory issues. Without knowing that, it is difficult to comment fully on the prototypes. Nevertheless, we realize this is early in the iterative process. We offer the following feedback and suggestions.

Improvements from Round 1

We note several helpful improvements from the Round 1 prototypes. The general Ficus layout is adopted in Round 2, which we believe is clearer than the Pecan layout. There is now space to name a co-applicant.

The Dogwood and Redbud prototypes do not contain the problematic, overbroad statement from Round 1 about appraisals. This is an improvement.

The statement about possible future servicing transfers is removed. Servicing transfers already have required disclosures, and we support avoiding overdisclosures.

The inclusion of a new cross-reference to Section D (Redbud) and F (Dogwood) under the Escrow Account section on page two is helpful.

The Important Dates section on page two is improved from Round 1 because it clarifies that the rate is unlocked. The Important Dates is an important item, so we recommend putting it on page one. It could fit on the top right of the form after the loan number, and the detail about the loan originator could be moved to the second page. We recommend a slight wording change to distinguish between rate changes before and after closing, an important distinction. "Your interest rate and points can change **before closing** unless you lock the rate."

Comments on Round 2

Placement is Not Necessarily Clear

Both prototypes are not necessarily clear about the placement of items. They include hazard insurance under Items Paid in Advance (Redbud) or Prepaid Insurance, Property Tax, and Related Services (Dogwood) rather than under Services You May Shop For (Redbud) or You Can Shop For These Services (Dogwood). Consumers do and should shop for hazard insurance.

Consumers Prefer Some Detail

The Redbud prototype has more itemization of closing costs on page two than Dogwood. Overall, Redbud is preferable. Dogwood has too little itemization, and with this form, consumers will ask questions about what the costs cover. This would lead lenders to create a separate disclosure to answer those questions. This would counter the integration effort, and we therefore recommend more itemization than Dogwood has.

Redbud breaks down insurance more than is necessary.

Showing Formula is Clear

Redbud page two, under Total Estimated Funds Needed to Close, shows the total cost is derived by A + B + C + E + F. This helpful because it is straightforward. It may be helpful to be clear when the items added are not in the same order as they are displayed on the page. For example, adding "but not D" might be helpful in this instance.

In addition to an origination fee, the lender may charge origination points in exchange for a lowered interest rate. Early in the transaction, this should be visible because the consumer has a decision to make about the tradeoff between points and the rate. The Dogwood prototype combines the two into one total dollar amount. It does state that the total includes one point, but it may be clearer to the consumer to show the amount, or state that it is one percent of the loan principal.

What is Estimated Should be Clear

Each prototype states at the top of page two that the amounts are estimates. This is important information.

The Redbud prototype is clearer about which charges are estimated. It is important to be clear about what is estimated. Redbud includes with subtotals on page two the word "estimated," several places on the page, which is important. We would recommend adding the word "estimate" to each estimated item. This includes the cash needed to close on both prototypes, as that amount is almost certain to vary before closing.

The two prototypes differ in their page two treatment of taxes and government fees. On Dogwood, taxes and recording fees are on line C. While uncertain, the amount apparently is an estimate because Line E is labeled as an estimate, and includes Line C.

On Redbud, Section B, taxes and other government fees, is not labeled as an estimate but should be. The lender does not know early in the transaction what the charges for taxes will be. Taxes are not a shoppable item, so using an estimate will not affect the consumer's shopping. The use of an estimate also would not affect the final cost, so there appears no harm to the consumer in using an estimate early in the transaction process. For these reasons, there appears no reason to burden creditors with disclosing the exact amount of taxes, early in the transaction.

We recommend distinguishing between taxes on the loan and taxes on the property purchase, as we explained in our June 28 letter. The buyer and seller may not yet have a final agreement on who will pay how much of the taxes on the purchase transaction, so the buyer is in a better position than the lender to know what the taxes on the purchase transaction will be.

Tolerances

The tolerances are not clear. We realize the CFPB may not be testing tolerances at this early point, but the tolerances will need clarity.

The two prototypes differ in their tolerances. Redbud has amounts in page two Section A that cannot change. These items are points, fees to originators, and charges for an appraisal, tax service, document preparation, and flood determination. It is not certain, but the document preparation fee appears to be only the lender's document preparation fee. If so, then we support having these fees not subject to change. The lender is in a reasonable position to predict these charges.

Dogwood would make the appraisal and tax service charge subject to ten percent tolerances, while Redbud would have lenders guarantee these costs. The lender is reasonably able to predict the costs of these services so we do not object to requiring lenders to guarantee them.

Both prototypes would apparently subject the lender to a ten percent tolerance for title services, survey and pest inspection charges, and the cost of owner's title insurance. The lender cannot either predict or control the title charges. Early in the transaction, these disclosures will necessarily be estimates. Owner's title would be little more than a guess because the lender does not know how much coverage or what deductibles the consumer

may elect. We question the value of providing disclosures that are almost certain to be inaccurate. It would be better to make these disclosures closer to closing after there is a basis for making them.

We recommend including the survey and pest inspection fee in the guaranteed origination charge (Redbud Section A or Dogwood Section A top line), and removing the tolerances. For the cost of owner's title insurance, it would be more helpful to simply state, "Ask your title agent" than to have the lender select a number. Similarly, the lender does not know the cost of homeowner's insurance early in the transaction, so any disclosure will not be helpful.

Document Preparation Fee Should be Removed

Redbud has a document preparation fee included in page two Section A. It is not clear what this covers. It may cover just the lender's document preparation fee, in which case it can be removed and aggregated in the lender's origination charge. We are concerned, though, that it may tell consumers that it includes a title agent's documentation fee. The lender does not know what the title agent's document preparation fee will be, or even whether there will be one. For that reason, the item should be removed.

Fees to Originators is Unclear

Redbud has in page two Section A a $20 "Fees to Originators[.]" It is unclear what this or who the "originators" are. The use of the plural implies that it includes the lender and broker, but this loan appears not to have a broker. If it is a lender's fee, there is no reason to break it out.

Interest Rate Should Be Clear

The first page discloses an introductory interest rate of 2.75%, yet the second page shows the minimum interest rate is 3%. This contradiction would confuse consumers. As we detailed in our June 28 letter, the fully-indexed rate is necessary to understanding an ARM loan and should be included.

Both prototypes, under change frequency, show that the rate will certainly change at the beginning of the 61st month and every 12th month thereafter. This is not necessarily the case. We recommend adding, "if index changes."

Seller Credits

In Dogwood, page two Line Gc discloses the Seller Contribution. In Redbud, the same disclosure is on page two under Total Estimated Funds Needed to Close, called Seller Credits. For a disclosure immediately after a loan application, the lender will not know this amount. The seller and buyer negotiate that amount without the lender's participation or awareness. The only way the lender can know the amount is to ask the borrower or perhaps the borrower's real estate agent. There is no point in requiring creditors to ask a consumer for information the creditor includes in a disclosure to the

same consumer. Including the dollar amount of seller credits early in the transaction would not be a helpful or workable disclosure.

It may be appropriate to leave a place for the disclosure so the consumer will see how seller credits or contributions affect the transaction, but not require the lender to include a number until after the lender receives a final copy of the purchase and sale agreement.

Suggested Name Changes

The Redbud prototype, in section B on page two, includes a line entitled Other Taxes and Fees. It would be clearer to label it Recording and Other Fees. This adds specificity without taking up extra room. Similarly, in Redbud's section C is labeled Items Paid in Advance. It would be clearer to call it Prepaid Items, or Prepaid Insurance, Property Tax and Related Services, as on Dogwood.

Page One Comparisons

The "Comparisons" on page one of both prototypes has expanded since Round 1. It retains the APR and an amount of principal paid in five years, which we believe is misleading and unhelpful as we explained in our June 28 letter. Now there is added an amount of interest, mortgage insurance, and fees paid in five years. We do not believe this is a good disclosure.

This in an adjustable rate mortgage (ARM) loan. It is most unhelpful to imply that the payments will not change, even if the payments are fixed for longer than five years. Further, the loan has no prepayment penalty, so the amount paid on the loan and for mortgage insurance over five years is unknowable.

As we explained in our June 28 letter, a static disclosure cannot demonstrate amortization. Amortization is a process, and a one-time snapshot at an arbitrary date cannot capture it. An interactive amortization application on the CFPB's website would be a far more helpful disclosure. The website can tell consumers which information from the Loan Estimate to enter into the website, and where, and an amortization schedule will appear. Consumers would see every month of the loan, not just one.

If the loan terms and costs are clearly disclosed, consumers will be very capable of comparing different loan products and terms. The five-year comparison seems not to be helpful.

Projected Payments Should be Consistent With Monthly Loan Payment

The Projected Payments on page one say, "Expect to make these payments" but do not include the monthly mortgage insurance premium. Under Loan Terms, the monthly payment amount includes principal, interest, and mortgage insurance premium. The amount the consumer should expect to pay is higher than the amount shown in Projected Payments, and we are concerned that this will cause confusion.

If the issue is that the duration of the mortgage insurance is too much to cover here, then it would be better to at least note under "expect to make these payments" that the payment will at least initially include the mortgage insurance premium.

Clarifying Descriptions

Some of the terminology is not necessarily clear. Where there is space to include descriptions, they may be helpful. There is space on page one to include a brief description of a prepayment penalty, such as "A fee for selling the home, refinancing, or paying the loan early." For a balloon, there is space for a brief description, such as, "A larger payment due at the end of the loan."

Conclusion

We are pleased to see the CFPB continue to work toward disclosures that clearly communicate to consumers the costs and terms of their mortgage loans. We will continue to provide feedback as the CFPB continues releasing additional prototypes.

Sincerely,

Anne C. Canfield
Executive Director

June 28, 2011

Professor Elizabeth Warren
Special Advisor to the Secretary of the Treasury
for the Consumer Financial Protection Bureau
1801 L Street, N.W.
Washington, D.C. 20036

Re: Know Before You Owe Prototypes

Dear Professor Warren:

The Consumer Mortgage Coalition (CMC), a trade association of national mortgage lenders, servicers, and service providers, appreciates the opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its first round of "Know Before You Owe" prototype integrated mortgage disclosure forms. The CFPB published the second round before we had time to comment on the first round. We will comment on the second round separately.

CMC has for many years advocated that mortgage disclosures be improved and streamlined. Mortgage disclosures required today are overly complicated, voluminous, and in many ways conflicting and confusing. Therefore, we strongly support your efforts to create mortgage disclosure forms that will give prospective mortgage borrowers the information they need to make informed decisions. We are pleased that you have made this important Know Before You Owe project a high priority.

We also very strongly support your iterative approach to this project because it is the best way to arrive at the most effective disclosures. As you know well, integrating disclosure forms is more complicated than it would appear because the provisions of the Real Estate Settlement Procedures Act (RESPA) and of the Truth in Lending Act (TILA) were enacted at different times for different reasons. Mortgage disclosures are especially complex because there are a great number of variables inherent in the transactions. By soliciting input from interested parties through multiple rounds of draft disclosures, you will receive the benefit of much careful consideration of the multiple, complicated issues that go into a mortgage disclosure.

We understand that the first two prototypes you have released are just the first of multiple rounds of forms you will explore. We also understand you have not resolved the important underlying regulatory issues, of which there are many. It is not possible to give robust feedback without knowing how the CFPB will address the underlying

600 Cameron Street, Alexandria, VA 22314
Telephone: (202) 617-2101 Fax: (202) 403-3926

regulatory issues. Nevertheless, we provide feedback to the extent we can, with the understanding that the prototypes are going to be revised many times. We begin with an overview and a look at why some of the existing disclosures do not work well. We then discuss the content of the first prototypes. We follow by identifying some of the issues about tolerances, redisclosures, and waiting periods that will arise as the forms are integrated.

Overview

Generally, the two prototypes are clear and easy to read, and the language is in plain English. The most important information is up front and easy to find. There is a welcome reduction in clutter.

We understand the CFPB will provide educational materials online, which we have advocated for some time. *Before* a consumer approaches a lender about a potential loan application, the consumer should already understand the fundamentals of the mortgage loan process. The CFPB could play a helpful role by making educational materials widely available to consumers, including through online videos. Providing educational information before a consumer approaches a lender will help streamline the transaction-specific disclosures.

The prototypes also show, in the "Projected Payments" section, how the payment can change over time, reading from left to right. This is straightforward, and illustrates the future course of the loan. The prototypes appropriately show that future adjustable rate mortgage loan (ARM) payments are uncertain and illustrate the possible range in monthly payments. This is the type of information consumers need. It is appropriate to show the maximum amount of potential payments, but it is also appropriate to show the range within which payment amounts may adjust. This makes clear that the future payment amounts are not known, an important feature of ARM loans. This will let consumers know the limits of their risk in their ARM loans.

Existing Disclosure Rules Do Not Always Work Well

The RESPA and TILA rules in place today do not always work well, and one unnecessary result is overstated costs.

One area of weakness in the current rules arises because good faith estimates (GFEs) blur the distinction between costs that relate to a loan and costs that relate to homeownership. Today's GFE requires that some loan and homeownership costs be combined and disclosed as one cost:

- The "total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator."[1]

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[1] 24 C.F.R. Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, Block 4.

- A single charge for "government fees for recording the loan and title documents that can be expected to be charged at settlement."[2]
- The total "government fees on mortgages and home sales that can be expected to be charged at settlement[.]"[3]

By combining the amounts as one dollar amount, the true cost of borrowing and of homeownership are unclear. We believe this is inappropriate. Just as consumers should, in the CFPB's words, "know before you owe," they should also know before they buy. The costs of homeownership can be significant, and they should be apparent. Some closing services, recording fees, and fees or taxes on home sales are costs of homeownership. The consumer would pay them when purchasing a home even in a cash transaction.

If the CFPB were to unmask the true costs of homeownership, it would make visible one unintended, inappropriate, and unauthorized aspect of the current RESPA rules. The current rules subject lenders to zero tolerances for transfer taxes, and in many cases to ten percent tolerances for third-party title services and recording charges. The GFE includes in these disclosures the portion related to a property purchase. This means that lenders are subject to tolerances on consumers' *purchase* costs – *i.e.*, costs that the lenders do not control, and that the consumer would pay even in a cash purchase.

This problem of third-party fees lenders cannot predict is not limited to the fees disclosed in the current GFE. For example, a lender often needs to pay a fee to verify an applicant's employment or asset account balances, or may need to pay a resubordination fee. The mortgage lender has no ability to select the employer or institution, and has no ability to negotiate these fees. The applicant does select its financial institution, and should have an incentive to select those with the lowest fees. Whatever the fees are, the lender must simply pay. It is inappropriate for lenders to be subject to tolerances in these cases.

Lenders also need to pay homeowners association fees to verify information such as the amount of dues, property insurance coverage, and financial reserves and controls. Again, the lender has no ability to predict, let alone control, these costs. The borrower chooses the homeowners' association, and participates to some extent in setting its fees. In this case, the lender should not be subject to liability for not being able to predict the fees.

The initial Loan Estimate will not be able to disclose the amount of the verification fees because the lender does not know them when it prepares the disclosure. Lenders, however, should still be able to pass on these required third-party charges.

Moreover, while well intended, the tolerances that the Department of Housing and Urban Development (HUD) recently put in place seem to be driving settlement costs higher,

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[2] 24 C.F.R. Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, Block 7.
[3] 24 C.F.R. Appendix C to Part 3500—Instructions for Completing Good Faith Estimate (GFE) Form, Block 8.

rather than lowering them as HUD originally envisioned. Lenders, to avoid paying consumers' costs, seem to be increasing the estimates for those costs so that they fall within the tolerance levels. HUD's RESPA tolerances are analogous to TILA tolerances, which in some cases explicitly permit overstated charges.[4] TILA tolerances also apply to some third-party charges, which is similarly inappropriate.

We urge the CFPB to make mortgage disclosures clearer, such as by distinguishing a loan from a home purchase. We also urge the CFPB to make the disclosures support lower costs by holding lenders liable only for costs they can predict.

Comments on the Content of the Prototypes

We comment below on the content of the prototypes. The first two items are general. The remaining items are arranged generally in the order the disclosures appear in the prototypes.

Separate Forms for Separate Loan Products Can be Helpful But Require Clarity

We note that the prototypes are designed for only one type of loan product, in this case an ARM loan. It may be useful to use separate forms for product types that differ significantly because information relevant to one product can be irrelevant to another. For example, for a fixed-rate loan, disclosures about potential interest rate changes could cause confusion.

Some products can be combined, as the prototypes demonstrate. Both prototypes cover ARM loans with and without negative amortization, balloon payments, and prepayment penalties.

The CFPB will need to be very clear about which form to use under which circumstances. Otherwise, different lenders would use different forms for the same loan type.

There will be a need for some flexibility for new products to enter the market. Suppose, for example, a future change in tax laws creates a beneficial loan product for a particular purpose. Lenders will want to get new products to the market quickly without having to wait a year for a rulemaking to revise an existing form. The lack of a federal agency's decision should not determine whether new loan products become available in the marketplace. The forms should have sufficient flexibility so that a rulemaking is not required for every market development.

It would be especially helpful if the CFPB were to provide examples of how the forms are to be completed for each of the common loan products. This would help establish both how to complete the forms and which to use under which circumstances. At a minimum, there should be an example for each of the standard Fannie Mae and Freddie Mac loan products.

[4] 12 C.F.R. §§ 226.18(d)(1)(ii); 226.23(h)(2)(ii).

Formatting

Consumer mortgage disclosures are produced by highly specialized technology systems. They vary from lender to lender, and even within individual lenders, there may be several technology systems. Using the technology systems is necessary because they are designed to prepare detailed, transaction-specific disclosures accurately and on schedule.

The prototypes use formatting methods that the industry does not have the technology to reproduce in consumer disclosures. For example, the Ficus Bank prototype contains a "YES" in a circle with an arrow, under "Key Loan Terms." Shading, circles, and arrows are beyond the capacity of much or all of the industry's technology systems to produce in transaction-specific disclosures. The prototypes also use font sizes and styles that many origination technology systems do not support. The prototypes are prepared on double-sided forms. Lenders and brokers nationwide will have difficulty printing these disclosures on two sides of a sheet of paper.

We recommend that the CFPB consider the enormous costs the industry would have to bear, and pass on to consumers, to use new, special layout and formatting. We can imagine no particular benefit to consumer understanding based on whether a disclosure form is printed on one or two sides of a piece of paper, if a disclosure is printed in a unique font, or if it has shading or other shapes. We urge the CFPB to avoid rigid formatting requirements.

Changes in the blocks from the current GFE blocks will require the industry to undertake massive reprogramming changes that will take substantial time to accomplish.

We urge permitting the inclusion of bar codes and other electronically readable information on the forms because these greatly improve records management quality and speed while reducing its cost. Electronic codes should be permitted in varying sizes, their location should not be fixed, and they should be permitted to change as technology advances.

We urge the CFPB to take into consideration the costs of implementing revised disclosure forms. We would be pleased to meet with you or your Implementation Team to help you understand the processes, resources, and time required to revise consumer disclosures.

Layout

The Ficus prototype has items laid out in a clear order, starting with a high-level overview and working down to more specific items. The loan amount, type, purpose, and program should be together with "Key Terms" in equal prominence because together they provide a high-level overview of the loan. On the Pecan prototype, the loan type, purpose, and program should likewise be included in the "Summary" and should be at the top of the disclosure because they provide a high-level overview of the loan. The second group of disclosures should be the "Cautions," followed by the "Projected Payments."

Multiple Applicants

The prototypes name only one applicant, while mortgage loans often have more than one borrower. When there are coapplicants, the disclosure forms should be the same for all applicants. We recommend permitting lenders to list all coapplicants, and expanding the space as necessary to do so.

Brokers

The prototypes do not mention mortgage brokers. The forms contain disclosures that brokers are not equipped today to provide. When a consumer works with a broker, does the CFPB intend that brokers will provide the Loan Estimate within three days of an application?

There should be a place to disclose whether the broker's compensation will be paid by the consumer or lender. Compensation to brokers from both the lender and consumer is now prohibited, so who will pay the broker should be apparent in the Loan Estimate.

Expiration Date and Rate Locks

The prototypes have an expiration date on the first page and, on the second page under "Important Dates," state the date through which the Loan Estimate is valid. The expiration date does not appear to apply to rate locks.

The ability to lock or float a rate is important to consumers. Some borrowers prefer to lock their interest rate early in the application process, especially if market rates are rising, while others prefer to let the rate float initially, especially if rates are falling. Loan Estimates will need to accommodate the possibility that the interest rate may initially be locked for a period of time that does not coincide with the life of the Loan Estimate, and the possibility that the rate may not be locked at all. We suggest including a disclosure of when a rate lock expires.

If the same form is to be used for redisclosures, there will need to be clarity on what an expiration date means.

Loan Type and Program

The prototypes contain a statement of the loan type, in this case a "30-year adjustable rate[.]" This is too vague because there are many types of 30-year ARMs. We suggest a more meaningful identification of the loan type would be "2/1 ARM with a 30-year term."

Is a step-rate loan a different loan type than an ARM? Is a 15-year loan a different loan type than a 30-year loan? It is also not clear what a loan program is.

Key Loan Terms or Summary – Fully Indexed-Rate

The "Key Loan Terms" (Ficus) and "Summary" (Pecan) disclose the initial interest rate and payment, and when it can adjust. The "Key Loan Terms" (Ficus) and "Cautions" (Pecan) also show the maximum rate and payment.

Neither, however, shows the fully-indexed, or expected, rate, the index at origination plus the margin. The initial rate is not necessarily set by the same index and margin that apply to future rate adjustments. Two different loans can have the same initial and maximum rates but very different fully-indexed rates.

For example, tow loans can have an initial rate of 2.5 percent and a lifetime cap of 10 percent. Future rate adjustments on one loan may be set by a different index, margin, or both, than on the other loan. The prototypes do not make this difference clear.

The fully-indexed rate is therefore an important disclosure. We suggest it be included in "Projected Payments" in each column that corresponds to a periodic payment, as well as under "Key Loan Terms" or "Summary" as discussed below. Under "Adjustable Interest Rate Information," it may help to state, "Your initial rate is not set by the index and margin that will be used for future adjustments. If your initial rate were set by the margin and index, your initial rate would be X%."

When preparing a pre-closing disclosure, the lender does not know what the index will be at origination. We suggest that the fully-indexed rate be set using any value of the index during the look-back period.

Key Loan Terms or Summary – Clarifying Adjustment Timing

The Ficus prototype under "Monthly Loan Payment" in "Key Loan Terms" states that the payment can go as high as $1,810, but it does not say when. The Pecan prototype, under "Cautions," similarly shows how high the "Increasing Monthly Payment" can go, but not when. Even under "Projected Payments" on both prototypes, this is not clear. The "Projected Payments" shows the maximum payment could be reached some time during years 3 to 8, a long period. How soon the maximum payment can be reached should be clearer.

The prototypes disclose, under "Adjustable Interest Rate Information" on the second page, the rate change frequency. The example states the first rate change is "2 years from loan date[.]" The Ficus prototype under "Key Loan Terms" and Pecan under "Summary" state that the rate starts adjusting yearly "in year 3[.]" We believe the timing of the first adjustment should be disclosed the same way in "Adjustable Interest Rate Information" as in the "Key Loan Terms" or "Summary" because each conveys the same information.

The phrase that the payment can adjust "in year X" is vague because it could mean any time during that year. Similarly, the statement that the rate can go as high as 10% "in year 5" on the Ficus Bank prototype, under "Key Terms," lacks specificity.

However, even the phrase "X years from loan date" is not specific enough because it does not specify whether it refers to the rate change date or the payment change date. The rate change date is typically a month earlier than the payment change date. We also suggest that the Loan Estimate use the payment change date, as it is very likely more important to consumers.

We suggest the disclosures of adjustment timing under "Key Loan Terms" or "Summary" state that the rate or payment "Adjusts starting in the 24th payment." This uses the payment change date, is specific and accurate, and does not get bogged down with an explanation of the difference between the rate and payment change dates.

Similarly, the fully-indexed rate could be included in "Interest Rate" under "Key Loan Terms" (Ficus) or "Summary" (Pecan), and in "Projected Payments," by stating, "Expected to go to X% in the 24th payment."

Projected Payments

The "Projected Payments" in the two prototypes differ in that Pecan shows the loan payment, the estimated taxes and insurance, and the total, while Ficus shows the total payment and the estimated taxes and insurance. The payment amount is very important, and it should be clear what it includes. The amount of the payment for principal and interest alone should be disclosed, as the Pecan Prototype does, without making the consumer subtract estimated taxes and insurance from the total payment. It should add that this amount is "for principal and interest" for clarity.

The example loan includes mortgage insurance, but the amount of the mortgage insurance premium is not disclosed. Consumers will not realize that the decrease in "taxes and insurance" after years 3 through 8 in the "Projected Payments" reflects the termination of mortgage insurance.

It is important for consumers to know how much mortgage insurance costs because it can vary by loan. It is therefore very important information for loan shopping purposes. It also affects consumers' decisions whether to buy or rent, and whether to come up with a bigger down payment.

It is not clear why there are three columns showing payments. The first payment column seems to represent the initial fixed rate, but what triggers another column after year 8?

The estimated taxes and hazard insurance should be disclosed without regard to whether the loan will have an escrow. This is important if a consumer will compare two loans, one that has an escrow and another without an escrow.

Down Payment and Estimated Closing Costs

The purpose of the Loan Estimate is to make it easy to shop for a suitable loan. The prototypes include on the first page "Estimated Closing Costs" and a down payment (Ficus) or "Closing Costs You Pay" and a down payment (Pecan). Many of the closing

costs are related to the purchase transaction rather than to the loan terms. Disclosures related to the purchase transaction should be on the second page with the other settlement charges. These amounts need to be separate from the loan shopping information so as not to confuse loan shopping.

Especially likely to mislead or confuse is the combined down payment and closing costs, in the Pecan prototype, under "Projected Payments," very early in the disclosure, labeled "At Closing." The caveat that the amount "will be adjusted for credits and deposits" does not explain what the figure represents.

The amount, $10,060, for "Estimated Closing Costs" (Ficus, under "Projected Payments") and for "Closing Costs You Pay" (Pecan, under "Summary") is vague. The caveat in Ficus that the amount "will be adjusted for credits and deposits" again does not explain what the figure represents.

When viewed in relation to page two, what is included in the closing costs is unclear because page both Lines F and I on page two are the same in the example loan. Line F is total closing costs before deducting credits from the lender or seller, and before deducting closing costs that are financed. Line I is total closing costs after these items.

If there is to be a disclosure on page one about closing costs, it should be the amount on Line F rather than Line I. Otherwise, it would appear on page one that closing costs are reduced if they are financed.

If there is a disclosure of closing costs on page 1, its title should be the same as for its entry on page 2. It is an estimated amount at this stage, and that fact needs to be clear, rather than calling it "Closing Costs You Pay" as on Pecan under "Summary."

Cautions

The prototypes both disclose under "Cautions" whether the loan has certain provisions, with yes or no answers. The yes or no answers are clear and concise.

Both prototypes list under "Cautions" that the loan amount will not increase, and that it has no balloon or prepayment penalty. The Pecan Bank prototype also includes potential rate and payment increases under the heading. When a loan has none of the terms about which the "Cautions" warn, the term would be misleading. We suggest that "Loan Features" would be a more accurate term. The term "Loan Features" also corresponds better with the statement that "These features trigger higher or additional payments" (in Pecan) and "Can loan features trigger higher or additional payments?" (in Ficus).

It is not clear whether a step-rate feature needs to be listed. We suggest that lenders be permitted to include all the potential features, including step-rates, along with a yes or no answer. This would help consumers find the information they will expect to find, and would reduce compliance costs and implementation time.

Comparisons

The prototypes state the amount the consumer will have paid in five years, and the amount of the principal that will have been repaid in five years. Both are fixed dollar amounts. We are concerned that this will be highly misleading.

- Using fixed dollar amounts contradicts the important disclosures that the payment amount can adjust during the first five years, and that the amount paid after five years is uncertain.
- Stating how much the principal will reduce during the first five years would leave the incorrect impression that the loan balance decreases the same amount each month or every five years.
- A static disclosure would give the incorrect impression that prepayments are not permitted.

The idea may be that consumers need to understand how loans amortize over time. We agree this is important, but a static disclosure simply cannot convey the dynamic nature of the amortization process.

Consumers who do not understand the amortization process will be misled by a static amortization disclosure. Consumers who do understand amortization will realize that this disclosure is based on several assumptions that may be inaccurate, and that it relates only to one arbitrary date. They are likely to ignore the disclosure and run an amortization schedule themselves.

We suggest that the CFPB make available *interactive* amortization schedules on its website where consumers can test different loans types and different loan terms, and run "what if" scenarios. This would demonstrate the effects of amortization and how the loan balance declines over the life of the loan, rather than considering month 60 in isolation based on a number of assumptions.

The chance of an amortization disclosure in a Loan Estimate misleading consumers is so high, and the potential consumer benefit is so low, that we believe the disclosure should be eliminated. Consumers would be far better educated by using interactive amortizations on the CFPB's website.

APR

Both prototypes have, under the "Comparisons" heading, an APR disclosure. The description of the APR is not clear. The description is not poorly written, rather, the concept is too difficult to put into a short description because the APR is complex and counterintuitive by nature.

We doubt consumers find APR disclosures meaningful. APRs are opaque and difficult for consumers to calculate. They are also based on an unrealistic assumption that the consumer will keep the loan for its entire term, which, for mortgage loans, almost never happens. APRs are calculated assuming that the points and closing charges are spread

over the full loan term, but they are almost always paid much faster. We question the value of providing unrealistic disclosures.

For long-term loans, such as a 30-year mortgage loan, spreading a closing cost over 30 years will increase the APR only very slightly. To the extent a consumer understands an APR, it would make the cost appear minor. This seems contrary to the intent of the prototype to make closing costs clear.

The new disclosures will make clear the loan amount and terms, when payments can change and by how much, floors and caps on payment changes, the range within which payment amounts will be, whether the initial rate is set independently of the index and margin used for future rate adjustments, closing cost details, and escrow information. With these disclosures in hand, and with CFPB consumer education, the APR seems not to add anything meaningful and could interfere with consumer understanding.

Eliminating the APR disclosure would greatly reduce compliance costs and regulatory burden, would help streamline the Loan Estimate, and would not impact consumers.

Origination Fee

CMC supports requiring lenders to guarantee their own loan origination costs. It appears that the origination fee, Line A on the second page, is the lender's total origination fee. Brokers' compensation will need to be broken out separately, as noted above. Discount points will also need to be broken out separately. The IRS permits a tax deduction for discount points on a home mortgage, but only if, among other things:

> The amount is clearly shown on the settlement statement (such as the Settlement Statement, Form HUD-1) as points charged for the mortgage.[5]

It will also be necessary to break out discount points to establish whether they are *bona fide* discount points for qualified mortgage purposes.[6]

The prototypes state that the origination charge may not change. We assume this means the lender's origination charge but not discount points. Consumers may want to change the number of discount points they pay, and they should have the flexibility to do so.

Required Service and Costs You Cannot Shop For

The prototypes list the required services in a narrative, but the form would be significantly less burdensome to prepare if the disclosures were included in a table. A table would also make it easier for consumer to compare different Loan Estimates.

The prototypes imply, but do not state, that there is a ten percent tolerance for these

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[5] *Home Mortgage Interest Deduction*, IRS Publication 936 For Use in Preparing 2010 Returns, p. 5, under Deduction Allowed in Year Paid, ¶ 9. http://www.irs.gov/pub/irs-pdf/p936.pdf
[6] Dodd-Frank § 1412, 124 Stat. at 2146-47, new TILA § 129C(b)(2)(C).

charges. It is important that government charges are not included within the tolerance because lenders cannot control government charges. It is possible government charges will increase after a lender delivers a Loan Estimate, without the lender having any way of predicting the increase when preparing the disclosure.

The language in the prototypes states that the services are "provided by lender-related companies[.]" This appears to be an integration of the current affiliated business arrangement disclosure. If shoppable services are available from an affiliate, would they appear on this form or a separate form? There does not appear to be a place on the prototypes for them.

The prototypes both have a disclosure of the cost of homeowner's insurance. When a mortgage is refinanced, the borrower already knows the cost of insurance because the insurance policy is already in place, while the lender does not know the cost. Additionally, the homeowner makes coverage and deductible decisions that affect the insurance premium, and the lender cannot predict future consumer elections. Requiring disclosure of the cost of homeowner's insurance early in the transaction is requiring a disclosure that can be inaccurate. We do not believe this is appropriate. Rather, a disclosure of the cost of homeowner's insurance should be required at or just before closing, after the lender is able to know what the amount is.

Required Services You Can Shop For

This disclosure states, "If you choose another provider, these amounts may vary." This seems to mean that the lender must select a provider unless the consumer indicates a desire to shop.

One reason existing RESPA rules do not work well for shoppable services is that the RESPA FAQs state that lenders should maintain lists of vendors who are likely available, a very burdensome undertaking. The FAQs state:

> The requirements for the new GFE form provide that "[w]here the loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers." The list should contain settlement service providers that are likely available to provide the settlement service for the borrower.[7]

The intent of the FAQ is to require lenders to maintain lists of all service providers, maintain awareness of their "likely availability" (an undefined term) for a consumer or an area, and update it continuously. The result is that lenders restrict shopping to avoid the extra cost and work, or restrict shopping to nationwide service providers. This rule restricts shopping although it was intended to promote shopping.

In the information age, there seems no point in requiring lenders to tell consumers which service provider is available. Typing a few keystrokes, or looking in the Yellow Pages,

[7] HUD's *RESPA Rule FAQs,* GFE – Written List of Providers, FAQ 7, p. 15 (April 2, 2010).

will readily retrieve vendors that serve an area.

Non-Required Services

The purchase and loan transactions need to be distinguished as to services the lender does not require – i.e., the prototypes list, in Line D, "Non-required services" for which the consumer may choose to shop or may elect not to purchase. The examples include owner's title insurance and a home warranty.

These items reflect the cost of homeownership, not the cost of borrowing. Both owners' title insurance and home warranties vary greatly in price depending on what they cover, what deductibles are included in the policy and, of course, whether a homeowner elects to purchase them. Any dollar amount the lender discloses will almost certainly be inaccurate and, therefore, not helpful to the consumer.

Owners' title insurance and home warranties are similar to the costs of maintaining a home in that they are largely influenced by a homeowner's elections, and they are not part of the mortgage transaction. It is true that owner's title insurance and a home warranty are roughly associated with a loan closing because they may be purchased at the time of closing. However, there are many costs associated with closing that are excluded. The cost of moving and the cost of selling a house are associated with a closing. They are not related to the mortgage transaction, however, and are appropriately omitted from mortgage loan disclosures.

There is no indication of which non-required services a lender would need to list. The estimated costs would be included in the total estimated closing costs, so lenders will have an incentive to provide as little information as possible. Moreover, when a service is not required in connection with a loan, the lender is not in the best position to provide information about the service.

For these reasons, services unrelated to the loan that are not required should be omitted.

Advance Charges You Pay at Closing

This item covers escrowed items and prepaid interest. The HUD-1 currently shows the amount paid at closing for property taxes, mortgage insurance, and hazard insurance. It separately shows the amount deposited into the escrow. The prototypes show the amount paid at closing for homeowner's insurance. They also show the amount for "Escrow and prepaid property taxes" and separately show the amount escrowed for insurance. It would be best to disclose each amount paid in advance for each type of insurance and for property taxes. It would also be preferable not to use the term "insurance" without specifying the insurance type.

The amount paid into escrow should not be itemized. It is possible that the intent is for the prototypes to show the total initial escrow deposit as the total of the initial escrow deposit for taxes and the initial escrow for insurance. However, escrow rules require the use of aggregate accounting, "by computing the sufficiency of the escrow account funds

by analyzing the account as a whole."[8] Calculating the amount escrowed for one item separately from the amount escrowed for another is not permitted. The escrow deposit disclosure therefore needs to be combined.

This item is based on the HUD-1 900 series, which is entitled Items Required by Lender to be Paid in Advance. The prototypes entitle it "Advance charges you pay at closing." This new title is clearer and more concise because it uses the active voice rather than the passive voice. The term "advance" charges paid "at closing" seems confusing because in advance may imply before closing. We recommend removing the word advance and retaining "Charges you pay at closing" because this is clear and conveys when the payment is required. The description of the items that follows will convey what the charges are for.

Credits From Lender or Seller

The prototypes do not reflect any credits from either the lender or seller, so their treatment is not apparent. We believe it is important to clarify who provides credits. It may be the lender, the seller, or another, such as an employer for a relocation. The buyer and seller negotiate seller credits, and these have nothing to do with the loan terms or cost. Lender credits should be segregated from seller and other credits so consumers will be able to see the cost of borrowing as opposed to the cost of purchasing a home.

If this form is also to be used for redisclosures, there will need to be a place to show costs the consumer has already paid, such as fees for an application, appraisal, credit report, rate lock, commitment, or extension. Current RESPA rules use "P.O.C" disclosures (paid outside closing), but these are cumbersome disclosures, and consumers frequently have to ask what they are. It would be preferable to have a clean way to disclose the common fact that consumers pay some costs before closing.

Is An Escrow Required?

The prototypes disclose whether the loan will have an escrow, which is certainly appropriate. It should make clear which items will be escrowed.

The disclosure is preceded by the question, "Is an Escrow Account Required?" Consumers often prefer escrows even when they are not required. It would be more helpful to ask whether the loan will have an escrow. Prospective mortgage applicants should know what escrows are and whether they would like one before they approach a lender about obtaining a loan. At this point, the relevant question is whether the loan will have an escrow, not why.

The Dodd-Frank Act requires several escrow disclosures that will need to be reflected in the prototypes.[9] These will need to be incorporated into the Loan Estimate.

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[8] 24 C.F.R. §§ 3500.17(c)(4)(ii) and 3500.17(b).
[9] *See*, Dodd-Frank §§ 1461 and 1462, 124 Stat. at 2178-82, new TILA § 129D(a) – (j).

Is Mortgage Insurance Required?

We believe the cost of mortgage insurance should be reflected on the first page because it is a direct cost of borrowing, because it varies from loan to loan, and because it is important for loan shopping. If mortgage insurance premiums are to continue to be combined with items payable in a cash transaction, then under "Is Mortgage Insurance Required," if the answer is yes, there should be a statement that mortgage insurance premiums are included in taxes and insurance.

Will You Make Your Payments to Us?

In this disclosure, the question posed is not the same as the answers available. The answers relate to whether the lender "intends" to service the loan or transfer the servicing. If that is the information to be conveyed, the question may be clearer by asking "Will We Service This Loan?"

If the answer is yes, it is important to add that "We may transfer the servicing in the future."

If the servicing is transferred to an affiliate but there is no change that triggers a RESPA servicing transfer notice,[10] it is not clear that the required answer is to be yes or no. If it is to be no, should the lender state that the loan will initially be serviced by an affiliate?

With the new Loan Estimates in place, the current disclosure under Regulation X[11] should be eliminated. The language in the prototype is certainly more streamlined and clearer than that in Appendix MS-1.[12]

Appraisal

The first round of prototypes state, "We will promptly give you a free copy of any written property appraisals or valuations. You will receive the copy even if the loan does not close." While we understand the intent to ensure that consumers are aware that they will receive a copy of an appraisal, we have concerns about the draft wording of this statement.

First, it is not transaction-specific information. The CFPB's educational materials should therefore include consumers' ability to get a copy of appraisals so applicants will know this long before approaching a lender for a loan. In this event, it would be unnecessary in the Loan Estimate.

The statement that the consumer will receive a "free" appraisal is misleading and confusing because lenders charge applicants for appraisals. Lenders should not be required to provide free appraisals to consumers who have not paid for them.

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[10] *See* 24 C.F.R. § 3500.21(d)(1)(i).
[11] 24 C.F.R. § 3500.21(c).
[12] Appendix MS-1 to Regulation X.

Sometimes a lender orders and receives an appraisal but finds it is flawed, and therefore orders another. In no event should lenders be required to provide borrowers with appraisals that the lender knows are flawed. Lenders should only be required to provide a copy of one valuation, and it should be one on which the lender relies in underwriting a loan before closing.

Servicers may obtain property valuations after a loan closes. The draft language may imply that the servicer will provide a free copy of any valuations at any time during the life of the loan, which is not the case.

Taxes and Insurance

The prototypes state that property taxes and insurance amounts are estimated and that they could increase over time. We suggest it would be more realistic to say that they are likely to increase in the future.

Adjustable Interest Rate Information

The index disclosed in the prototypes says simply "Prime." This is far too vague. There should be enough information for the consumer to know how the index is determined.

The "Adjustable Rate Information" states that the first rate change is 2 years from the loan date. Rate changes are normally on the first of a month, while loan closings are usually on a date other than the first. We suggest the statement read "Adjusts starting in the 24th payment."

We also suggest including in the "Adjustable Rate Information" a statement of any rounding, such as, "Your rate will be rounded to the nearest one-eighth of a percentage point each time it changes."

Integrating Tolerances, Redisclosures, and Waiting Periods

The CFPB will need to address tolerances as it integrates the TILA and RESPA disclosures. Tolerances under Regulation Z are very different than tolerances under Regulation X, even though all tolerances serve the same purpose. We suggest rationally relating tolerances to their purpose. Tolerances exist because of the uncertainties during the origination process, so tolerances should vary *depending on* the degree of uncertainty.

Costs the lender can control directly, its own charges and the charge it pays a broker, do not need tolerances, either early in the transaction or later (assuming the consumer does not make a change to the loan, such as changing the loan amount or points). Charges for services for which the lender or broker selects the service provider need some tolerance early in the application process because lenders cannot control these costs. Charges for services for which the borrower selects the service provider will need wider tolerances early in the process because the lender cannot predict the costs. Charges that neither the lender nor the consumer control, such as government recording charges, should not result

in lender liability for inaccuracy.

Limiting redisclosures to circumstances in which they will convey significant and helpful information to consumers would be an improvement over current rules.

It would also make sense for the CFPB to relate mandatory waiting periods after a redisclosure to the problem waiting periods are designed to address. Waiting periods can be costly to consumers. If new waiting periods were to be required for every redisclosed term, closings would be delayed repeatedly, and delays themselves would cause redisclosures as, for example, rate locks expire during mandatory waiting periods. A cycle of repeated redisclosures, as under today's RESPA rules, with resulting waiting periods, as under today's TILA rules, would be wholly unworkable. The standard for requiring a waiting period after a redisclosure should be higher than the standard for requiring a redisclosure.

Conclusion

We are pleased to see the CFPB tackling a difficult project early, and we are pleased that the CFPB's goal is to create disclosures that work. The early prototypes are an improvement from current disclosures. We encourage the CFPB to address the weaknesses in the current system of tolerances for costs lenders cannot predict, control, or select. We will continue to offer any input that would be helpful as you continue your progress on improving the consumer mortgage origination experience.

Sincerely,

Anne C. Canfield
Executive Director