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on behalf of the
Mortgage Bankers Association

House Financial Services Committee
Subcommittee on Insurance, Housing & Community Opportunity

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

June 20, 2012

Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee, my name is Bill Cosgrove and I am a Certified Mortgage Banker. I currently serve as President and Chief Executive Officer of Union National Mortgage Company, headquartered in Strongsville, Ohio, and I also serve on the Board of Governors of the Mortgage Bankers Association.[1] My company employs 220 individuals and we are very proud that since 1999 we have helped more than 40,000 homebuyers finance and refinance their homes and achieve their dreams of homeownership.

We particularly appreciate you conducting this hearing at what is a pivotal time for the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) integration effort by the Bureau of Consumer Financial Protection (CFPB), known as "Know Before You Owe."

Dodd-Frank requires that by July 21, 2012, the CFPB issue proposed combined disclosures to be provided to borrowers at the time of application for a loan and at the time of settlement, as well as accompanying rules.

My testimony today will provide MBA's perspective on this effort so far and how we think Congress, the CFPB and stakeholders should move forward so that consumers can finally have a far more transparent and efficient mortgage process, with improvements they have long deserved.

Introduction

The Mortgage Bankers Association has long supported greater transparency in the mortgage process for consumers. For that reason, among others, we welcome Dodd-Frank's consolidation of RESPA and TILA authorities in the CFPB and strongly support Dodd-Frank's mandate to integrate RESPA and TILA disclosures. Our experience has shown that splitting RESPA and TILA authority between The Department of Housing and Urban Development (HUD) and the Federal Reserve did not result in the development of coordinated disclosures and rules to best serve consumers.

While we do not believe disclosures are all that is needed to help consumers, we firmly believe better disclosures would go a long way to empowering consumers to make prudent decisions to protect themselves.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Better disclosures will focus consumers on the costs and terms of their mortgage and home purchase transaction, help them discern that the mortgage, closing transaction and home purchase are as offered and as agreed, that the mortgage is sustainable, and that they will be able to afford their loan into the future.

True transparency also helps facilitate a level playing field for large and small lenders and other loan providers to compete on quality, cost and benefit of their service to consumers. Conversely, opaque disclosures, piled on top of each other, allow the rare abuser to hide in plain sight, harming consumers and undermining the efforts of reputable companies.

Finally, we would hope that effort to markedly improve federal loan disclosures will, in turn, spawn a national disclosure reform effort under the CFPB's leadership to address the myriad disclosures added by the states and obviate the need for additional disclosures by loan providers themselves.

As the CFPB prepares to issue its RESPA and TILA simplification rule, MBA urges Members of Congress to become involved in this effort to ensure its success. To that end, we make the following points to guide this effort and which we will explain in detail:

1. First and foremost, we believe all necessary resources should be applied to making certain this effort is done right and not hastily.

2. While the prototype forms have benefitted from public input through an iterative process, more work needs to be done to ensure they are as useful as possible to consumers.

3. The forms and rules resulting from this effort should not be finalized until the other Dodd-Frank rules having implications for these forms are finalized and appropriately taken into account.

4. The rules accompanying the forms, which have not benefitted from an iterative process, should be developed carefully so that they guard consumers against abuse but do not unwittingly harm the market and the consumers they are intended to serve.

5. Ultimately, when the forms and rules are finalized, they should be implemented in an orderly manner that is respectful of the considerable commitment of resources, including by small businesses, that will be needed to ensure efficient compliance.

Background

In 1968, Congress enacted TILA to ensure consumers are informed of the costs of credit and assigned the Federal Reserve regulatory responsibility. RESPA was enacted

in 1974, delegating regulatory authority to HUD to ensure consumers are informed of their real estate settlement costs.

Since these laws were enacted, in part because of the divided responsibility for their implementation, RESPA and TILA disclosures have gone in different directions and are accompanied by differing rules with vastly different penalties for failing to comply.

Earlier Reform Efforts

HUD in 2008 proposed and in 2010 finalized rules overhauling the Good Faith Estimate (GFE) and HUD-1 Settlement Statement. Also in 2008, Congress added new timing requirements for redisclosures under TILA that differ from the timing requirements for redisclosure of the GFE under the new RESPA rule.

In the summer of 2009, the Federal Reserve proposed a complete overhaul of its TILA disclosures for most closed-end and open-end transactions and required comments by the end of that year. The following summer, the Board issued a second proposal covering transactions and topics not addressed in the previous year. Both proposals required extensive review and an enormous investment of time by stakeholders to provide meaningful comments. Ultimately, however, the Federal Reserve only finalized its loan officer compensation proposals and chose not to finalize its disclosure reforms so as not to interfere with the forthcoming CFPB simplification effort.

As a result of both legislative and regulatory requirements, consumers today receive a package of disclosures when they apply for a loan and then continue to receive a dizzying array of redisclosures until their loans close.

CFPB Takes Over – "Know Before You Owe"

Under Dodd-Frank, the CFPB formally took over responsibility for RESPA and TILA on the "transfer date," July 21, 2011. The law mandates that no later than one year after that date (by July 21, 2012) the CFPB issue a proposed regulation integrating and combining the TILA and RESPA disclosures at application and at settlement.

Dodd-Frank made the CFPB responsible for approximately 16 other consumer financial protection laws in addition to RESPA and TILA and assigned it the daunting task of implementing most of the new consumer financial protection provisions involving mortgages, under Title XIV, no later than January 21, 2013.

From May 2011 through February 2012, the CFPB conducted its RESPA and TILA reform effort, which it called "Know Before You Owe," by first issuing and refining prototypes of the early disclosure form or "Loan Estimate." The Loan Estimate was to take the place of the GFE provided to consumers at or within three days of application under RESPA and the early Truth in Lending (TIL) disclosure. In October 2011, the CFPB largely shifted its focus to developing a "Settlement Disclosure" combining the current HUD-1 settlement document and the final TIL.

In its development of the prototypes, the CFPB issued several iterations of forms and provided short turn-around times for comment from members of the public through the CFPB website. MBA and other stakeholders commented on each of the proposals resulting in improvements to the forms.

The current prototype of the Loan Estimate, to be provided at or within three days of loan application, is three pages long. The first page includes: identifying information for the borrower and loan; the terms of the specific loan including the loan amount, payments and rate; particular loan features that deserve the borrower's attention such as prepayment penalties and balloon payments; projected payments showing any increases to payment amounts; as well as the cost to close and total settlement fees. The second page includes some detail on settlement costs, escrows and down payment. The third page includes an array of disclosures concerning the availability of appraisals, whether the loan is assumable, the need for homeowner's insurance, policy on late payments, that refinancing cannot be guaranteed and whether servicing may be transferred.

The current prototype of the Settlement Disclosure to be provided at settlement (or possibly three days before settlement, see below) is five pages long. The first page is the same as the first page of early disclosure, the second and third pages detail the settlement costs and summarize the real estate transaction. The remaining pages also provide several loan disclosures, including the lender's late payment policy, whether the loan includes negative amortization and the Annual Percentage Rate (APR). The form also features a new disclosure of the "Total Interest Percentage" and "Lender Cost of Funds," which we believe will have little value for the consumer.

During the comment periods on the forms, MBA and other industry organizations urged the CFPB to provide a similarly iterative process to consider the rules that would apply to the forms.

Rules Under Consideration

On February 21, 2012, the Bureau issued a memorandum entitled "Outline of Proposals Under Consideration and Alternatives Considered" ("Outline") for its Small Business Review Panel. Dodd-Frank requires that the CFPB convene such panels for proposed rules to obtain the views of small businesses. This document for the first time provides an outline of rules the CFPB is considering to accompany the forms. The proposals under consideration are extensive and would have profound effects on the mortgage market. They include, among others:

- Limiting the information the lender may require from the borrower to provide GFEs to six items of information;
- Tightening the tolerances applicable to any changes in the charges of affiliated and unaffiliated settlement providers listed to the consumer by the lender;

- Changing the timing of disclosures including possibly imposing a new three day waiting period before consumers can close;
- Changing the entity charged with providing the settlement disclosure from the settlement agent to the lender or making both the lender and settlement agent responsible for TILA and RESPA disclosures respectively;
- Providing standard forms for certain transactions and model forms for other transactions;
- Removing many of the exclusions from the computation of the finance charge that is used to compute the APR;
- Facilitating average cost pricing;
- Establishment of clear disclaimers regarding shopping estimates, to name a few; and
- Permitting the use of an index to disclose the lender's cost of funds.

While some of these proposals are improvements, MBA has concerns about several others, some of which I will discuss.

While we look forward to providing detailed comments on the forthcoming proposed forms and rules, we respectfully urge that the following points guide the process going forward.

1. **First and foremost, we believe all necessary resources should be applied to make certain that this effort is done right and not hastily.**

Buying and financing a home remains the largest financial transaction in nearly all families' lives. In spite of this, the disclosures consumers are required to receive to guide the process remain confusing, voluminous and inconsistent.

Past efforts to improve the disclosures have been uncoordinated and ultimately failed to achieve their objectives. Untold sums have been spent and continue to be spent to implement the recent RESPA rule, which at this point is expected to be eclipsed by the CFPB's reforms. Significant amounts have also been spent implementing and simply reacting to TILA proposals.

Dodd-Frank requires proposed forms and rules for integrated RESPA and TILA disclosures by July 21, 2012. Unlike other provisions of the Act, Dodd-Frank does not require final forms and rules for this initiative by any specific date.

Considering that other rules under Dodd-Frank have implications for this final rule and the forms and rules deserve considerably more review, we believe the CFPB should build on the work to date as a starting point for a more protracted and more judicious rulemaking process. At this point, the issuance of a proposed rule and establishment of a mere 60- or 90-day comment period would be inadequate and unwise.

A better approach would be to issue an advance notice of proposed rulemaking (ANPR) in July 2012 instead of a typical proposed rule or a proposed rule that opens a process for additional comment on next steps and then subsequent period(s) of comment. Such an ANPR or proposal could open a process for comments on further testing, further refinement of rules and/or open a negotiated rulemaking where representatives of consumers, industry and other stakeholders could fully enter the process to help hammer out acceptable forms and rules.

Considerable resources have been spent on this effort so far, but actual implementation will be far costlier for businesses large and small. Considering that consumers will ultimately bear these costs, it is important that we get this right.

2. **While the forms have benefitted from public input through an iterative process, more work needs to be done to ensure that they are as useful as possible to consumers.**

As indicated, the current “Loan Estimate” to be provided at or shortly after application is three pages long and the current “Settlement Disclosure” to be provided at closing is now five pages.

While the prototypes have improved considerably, they still are very extensive. Although both enable the borrower to use the first page to compare the loan offered to the loan received, the other material on the forms might be counterproductive, considering that too much information might be ignored. In fact, the CFPB itself has admitted that: “These disclosures don’t work if they give you too much information or if the information they provide isn’t what you need.”

The CFPB has indicated that it has not prepared a prototype for every possible set of loan terms but plans to provide extensive samples with the proposed and final rules. It also is considering requiring the use of a standard form for a transaction that is subject to both RESPA and TILA but a model form for a transaction subject only to TILA.

Today’s mortgage market offers a range of loan products to address borrower’s diverse needs. These include, for example, a variety of both fixed and adjustable products as well as loans to address particular needs such as construction to permanent financing. While prototypes do not need be developed for every possible loan, provisions relevant to all of the major loan products should be developed so they can be nested into a standard form.

Also, while the forms should continue to be tested on consumers, they must be carefully tested in conjunction with lenders and settlement service providers on real loans.

Clearly, standard forms are best and should result from all this effort. Lenders of all sizes and consumers are better served by standard forms that facilitate competition. To produce them, however, more forms development and testing will be needed.

3. **The forms and rules resulting from this effort should not be finalized until other Dodd-Frank rules having implications for these forms are finalized and appropriately taken into account.**

Title XIV of Dodd-Frank requires the CFPB to finalize several major rules no later than January 21, 2013. These include the Ability to Repay-Qualified Mortgage (QM), High Cost Loan (HOEPA), Mortgage Originator Compensation and Qualification as well as Servicing rules.

All of these rules have significant implications for any final disclosure requirements. For example, the Ability to Repay/QM rule requires that a lender make a reasonable determination of a borrower's ability to repay their loan. The extent of information that will be provided to facilitate a lender's determination has implications for how an "application" is defined for purposes of the RESPA-TILA integration effort.

Additionally, the CFPB has indicated that preventing borrower confusion is key to its thinking about providing a limited exemption to Dodd-Frank's restrictions against origination fees under the Mortgage Loan Originator rule. Ultimately, this issue may be resolved at least in part by better RESPA-TILA disclosures.

The CFPB itself noted in the Outline that it is considering using its TILA, RESPA and Dodd-Frank authority to exempt lenders from compliance with the many Title XIV disclosure requirements until the forms are finalized.

In a similar vein, industry representatives expressed concerns in a meeting with CFPB staff that the rule must work harmoniously with the rules under Title XIV. In response, staff indicated the rule would not be finalized until it did. We appreciate and strongly support this approach and believe that a unified set of rules is far preferable to piecemeal rulemaking, which leads only to confusion and higher costs.

Considering that the rules implementing Title XIV will not be finalized until January of next year, we urge that this rule await the completion and integration of any relevant portions of the related rulemakings before it is finalized and that any necessary delays in instituting disclosure provisions to ensure appropriate coordination are provided.

4. **The rules accompanying the forms, which have not benefitted from an iterative process, should be developed carefully so that they guard consumers against abuse but do not unwittingly harm the market and the consumers they are intended to serve.**

MBA's preliminary view is that several proposals for rule changes by the CFPB are problematic while others seem acceptable. Although we will not burden the subcommittee with a discussion of all of the rules under consideration at this point, we offer the following as examples of areas of concern:

a. Application

We do not agree, as the CFPB's Outline suggests, that the application information needed by lenders to issue a "Loan Estimate" should be reduced to six items without also allowing the lender to request "any other information it deems necessary," as is permitted under RESPA today.[2]

HUD allowed lenders to request additional information before providing a GFE because of its recognition that the GFE would be binding and subject to "tolerances" that required adherence to estimated amounts. The CFPB has indicated, however, that in order to get estimates into the hands of borrowers more easily, less information is preferable to more.

There is a clear tension between getting estimates early and getting them right. In our view, the rules should assure that getting a reliable estimate is the greater imperative.

Borrowers generally shop the market before they apply for a loan, not at the time of application. A misunderstanding of this fact threatens to hamper lenders' ability to obtain necessary information from borrowers.

Limiting a lender's ability to gather information will make it impossible for lenders to fill out the current Loan Estimate itself. For example, information on "Cash to Close" cannot be calculated without substantial information about the terms of a purchase transaction. Escrow disclosures cannot be provided without knowing whether or not the borrower wants to escrow all, part, or none of the escrow items. Transfer taxes cannot be disclosed without knowing the terms of contract between the borrower and the seller.

Most importantly, under the new Ability to Repay rule, lenders will face significant liability for failing to determine that a borrower has a reasonable ability to repay the loan. Constraining lenders from gaining relevant information not only brings an unreliable estimate but may put them in legal jeopardy. This would likely result in more conservative lending standards that would punish otherwise eligible consumers.

[2] Under current RESPA rules, "application' is defined as the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include: (1) borrower's name, (2) borrower's monthly income; (3) borrower's social security number to obtain a credit report; (4) property address; (5) estimate of value of the property; (6) loan amount and (7) *any other information deemed necessary by the loan originator* [emphasis added].

Finally, while we do not support the suggested change to the definition of "application," we would urge as part of a comprehensive reform effort, a fresh look be given to whether differences in the definition of application under RESPA and TILA, the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA), and the Fair Credit Reporting Act (FCRA) are justified.

b. Tolerances

MBA disagrees with CFPB's proposal to extend the current "zero tolerance" limit on increases in estimated charges that is applicable to lender fees to fees for third-party services of companies owned, affiliated, selected by lenders or chosen from a list prepared by the lender.

While MBA disapproves of offering estimates and then varying from them unnecessarily, we do not believe there is sufficient data to necessitate a change in the tolerances that were imposed less than 18 months ago.

Lenders do not as a general matter control third party fees and a change of this kind also risks unintended consequences. New requirements for zero tolerance may spur increased affiliations and other arrangements that may have negative consequences for smaller, independent third-party providers.

c. Timing of Settlement Disclosure

MBA also disagrees with CFPB's proposal to require delivery of the integrated settlement disclosures three days before closing in all circumstances. Beyond our concern that such an approach is not authorized by RESPA or TILA, there are far better and less intrusive means of ensuring that borrowers get the loan they bargained for. Requiring the provision of Loan Estimates subject to the current tolerances at established times in the mortgage process, including a standard Loan Estimate within three days after application, a Loan Estimate after underwriting or loan approval, and a Loan Estimate three days before closing and then a Settlement Disclosure at settlement, would regularize disclosure requirements and protect borrowers. Such a process would not unduly delay closing.

We note the CFPB is also considering a provision delaying closing only when, after the Loan Estimate is given, the APR in the Loan Estimate increases by more than 0.125 percent or an adjustable rate feature is added to the loan. While this approach is better than simply requiring a three day delay in all cases, a final Loan Estimate three days before closing would be a better choice. If the tolerances and other protections for consumers in the final rule apply, borrowers will be sufficiently protected from abuse.

5. **Ultimately, when the forms and rules are finalized, they should be implemented in an orderly manner that is respectful of the very considerable commitment of resources, including by small businesses, needed to ensure efficient compliance.**

   Past implementation periods for the RESPA reforms and the loan officer compensation rule were difficult; far too many questions were raised and left unanswered while the implementation deadline loomed.

   We respectfully urge that when this final rule is published, the CFPB should embark on a process for implementation that includes a specific period of time -- we would suggest at least three months -- for stakeholders and the public to identify and submit questions and for the CFPB to respond in writing. Only after necessary guidance is provided should the actual implementation period begin.

   The implementation period should provide sufficient time for training, systems development and the many operational changes that the rule will necessitate. For larger lenders, very considerable time will be needed not only to integrate these changes but also 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 guidance and systems development by larger lenders, vendors and secondary market aggregators. Considering the number of other rules where compliance will also be expected of both large and small lenders, we respectfully urge that twelve months should be the minimum, not the maximum, time for compliance.

CONCLUSION

We appreciate the efforts of the subcommittee to examine these important regulations and consider our comments. No matter how well intentioned these rules may be, they cannot be allowed to harm American families, the mortgage market or the nation's still fragile economic recovery.

While MBA commends much of the CFPB's work on this project to date, we believe the next steps we take in this important effort are crucial to its ultimate success. To achieve this end, we believe the process must be judicious and more expansive.

In this process it is crucial that the CFPB draw on the experience of the mortgage industry as it further develops these proposals. Lenders work with consumers every day and have extensive experience in conveying information to consumers at optimal times, in the most useful manner.