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TESTIMONY OF

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NATIONAL ASSOCIATION OF REALTORS®

BEFORE THE

U.S. HOUSE FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON HOUSING AND INSURANCE

HEARING TITLED

TILA-RESPA INTEGRATED DISCLOSURES: EXAMINING THE COSTS AND BENEFITS OF CHANGES TO THE REAL ESTATE SETTLEMENT PROCESS

MAY 14, 2015

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EQUAL HOUSING OPPORTUNITY

INTRODUCTION

Thank you for the opportunity to testify today. My name is Chris Polychron. I am the 2015 President of the National Association of REALTORS® (NAR). A REALTOR® for 27 years, I am an executive broker with 1st Choice Realty in Hot Springs, specializing in residential and commercial brokerage.

NAR has long supported reduced paperwork and better disclosures in real estate transactions where appropriate. NAR provided numerous comments to various efforts by the Department of Housing and Urban Development to reform RESPA culminating in the 2010 changes to the Good Faith Estimate and HUD-1 Settlement Statement. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act went a step further and specifically required the Consumer Financial Protection Bureau (CFPB) propose a rule to combine RESPA disclosures with Truth in Lending Act disclosures. CFPB did so in July of 2012 and finalized the rule in November of 2013. That rules takes effect this summer.

On August 1, 2015, the resulting significant RESPA-TILA changes will go into effect. There will no longer be Good Faith Estimates (GFEs) or Truth in Lending disclosures. Those two disclosure forms have been combined into a single "Loan Estimate" or "LE." Likewise, the HUD-1 Settlement Statement has been combined with the final Truth in Lending disclosure to form the "Closing Disclosure" or "CD." While NAR is generally supportive of this harmonization as long as it benefits consumers and makes the transaction smoother, we believe there will be growing pains in the implementation of this extensive rule. With this in mind, the Association has urged the CFPB to provide for a restrained enforcement and liability period for the RESPA-TILA integration regulation, asked them to clarify TILA and RESPA liabilities under the regulation, and provide additional written guidance and clarity on a number of issues.

Over the last several months, NAR has been conducting webinars and education sessions, as well as participating in several industry forums, to educate real estate professionals on the upcoming RESPA/TILA integration. Through this outreach, it has become clear that the RESPA/TILA integration will be a learning experience for everyone, and there is potential for problems in closing transactions that will negatively impact consumers.

DELAYS AND THE CLOSING DISCLOSURE

First, there is potential for disruption as lenders figure out what will and will not require a new 3-day waiting period for the new CD. Under the rule, the CD must be provided to the buyer at a minimum three days before closing. If there is a major change to the loan terms, such as a change from a fixed rate to an adjustable rate or the APR increases or decrease by one eighth of a percent or more, a new CD must be issued and a new 3 day period commenced. Originally, the CFPB proposed that any change of $100 or more would require a new three day period. Understanding the magnitude of the delays that this would result in, NAR opposed that and the CFPB altered their proposal to require a new waiting period in far fewer circumstances. NAR also supported a broad consumer waiver. However, while the three day period can be waived, it can only be waived for a "bona fide financial emergency." While this sounds reasonable on its face, it is extremely limited (according to CFPB's existing guidance) to items such as an imminent bankruptcy and not to situations such as increased consumer costs or lost downpayments. (Downpayments can be as much as 10% or more than $20,000 for a median priced home in today's market.) So it is conceivable that a borrower even could see their interest rate drop and still be forced to wait days to close the transaction incurring perhaps significant costs in daily interest, hotel charges, storage fees, or extra moving truck rental days to name a few.

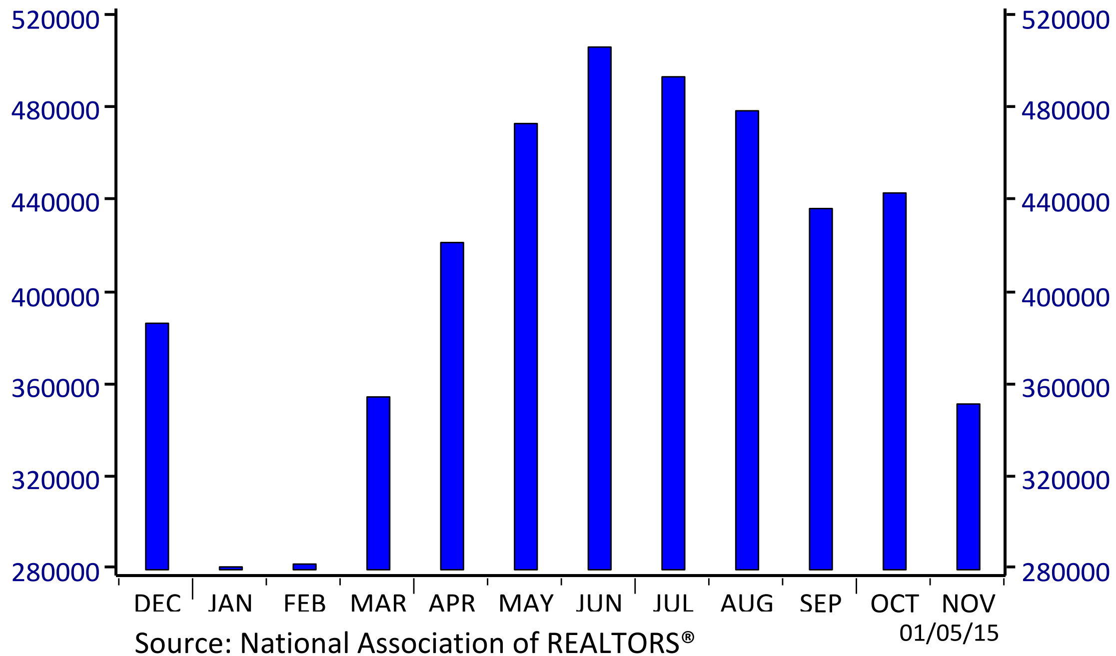
Another concern is that while the CFPB limited the requirement for issuing a new CD and requiring a new three day period, CFPB made the lender ultimately responsible for the CD and its contents. This has led to many lenders adding a requirement that any changes to the CD be approved by the lender. The problem arises because in many instances, the ultimate lender is not present at the closing. Therefore, an approval will

need to be sought from the lender who may be in a different time zone and/or thousands of miles away causing significant delays though not necessarily a three day delay. It is easy to see a scenario where an afternoon closing is carried over to the next day and a related closing in the chain of transactions that are commonly associated with a property's sale postponed as well. Needless to say, this entire scenario could cost many parties significant time and money, as well as causing serious frustration.

RESTRAINED ENFORCEMENT/TRIAL IMPLEMENTATION PERIOD

NAR is advising its members and other industry partners to avoid last minute changes wherever possible. Nevertheless, real estate transactions are complicated with many moving parts. For most people, it is the most complicated transaction they will be involved with in their lives and, of course if not the most, one of the most significant financial commitments. In such a significant and detailed transaction, last minute changes may sometimes be unavoidable. However, no one can know for sure the degree to which this new rule will increase the number of delays until the rule takes effect and is implemented. For this reason, NAR is advocating that the CFPB make the period August 1, 2015 to December 31, 2015 a restrained enforcement and liability period. During this period, industry would operate under the rule and use the new disclosure forms but be held harmless in terms of liability if acting in good faith. The industry and the CFPB can then collect data on problems and develop solutions to minimize costly and harmful impact on consumers.

This five month break-in or beta testing period should provide enough time to collect data, identify unintended consequences, and make the necessary changes. It also has the benefit of moving the full-fledged implementation from some of the busiest months for closings to the least busy months of January and February, as evidenced in the following chart documenting just one component of transactions subject to the rule.



Even if only ten percent of transactions experience issues with the rule implementation, the numbers will be significant, perhaps more than 40,000 transactions a month but involving many more people and families

than that. The potential for disruption and negative consumer impact is significant. This is certainly something REALTORS®, the industry and consumers would like to avoid.

There is precedent for the CFPB to create a "break in" period for the rule. The Department of Housing & Urban Development (HUD) took a similar approach when it revised the RESPA disclosures in 2010. In that effort, HUD encouraged industry to provide feedback on the new disclosures by announcing it would not conduct enforcement actions against companies that tried to comply in good faith by following the rules' interpretation. CFPB is granted significant power under Dodd-Frank and should be able to allow a trial implementation period that gives industry the appropriate assurances while ensuring the new forms are implemented starting August 1, 2015. It is worth noting that while Section 1032 of Dodd-Frank did require a proposed rule by July 21, 2012, it did not even propose an implementation date for these changes as it required for most of its other mortgage rules. Rather, the law cedes nearly complete authority to CFPB, while section 1032(e) also envisions the possibility of a trial period with a safe harbor:

> TRIAL DISCLOSURE PROGRAMS.—
> (1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.
>
> (2) SAFE HARBOR.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law. [1]

Clearly, Congress intended to grant CFPB broad authority to test this rule before enforcement, and the CFPB should use this authority to ensure that the rule works effectively for consumers in practice.

THE NEED FOR WRITTEN GUIDANCE

Written guidance is important for effective implementation of any regulation. NAR is generally supportive of efforts by the CFPB to provide additional guidance on any number of issues including RESPA and other regulatory issues outside the scope of this hearing. Without clarifications, practitioners can be hamstrung in their efforts to properly comply with new requirements. Here are some examples where additional written guidance can be helpful under the RESPA/TILA rule.

One issue is whether loan pre-approvals can still be done and how they relate to the LE under the rule. While CFPB's verbal guidance has been positive and indicates that very little will change in the pre-approval process with regard to collecting and evaluating documentation, a written declaration that the pre-approval process is separate from the application process would have an added benefit. For example, the application trigger is for the issuance of a loan estimate and a loan estimate must be given when the critical six items are collected.[2]

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[1] The Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, Section 1032. July 21, 2010. http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm

[2] The six items are: (1) the consumer's name, (2) the consumer's income, (3) the consumer's Social Security number to obtain a credit report (or other unique identifier if the consumer has no Social Security number), (4) the property address (5) An estimate of the value of the property, and (6) the mortgage loan amount sought. It is rare that when one asks for a pre-approval, they already know the property address. Pre-approvals tend to be a pre cursor to visiting properties.

But that does not mean that information other than those items cannot be voluntarily collected for purposes of issuing a pre-approval letter.

Additionally, in many states, there will be consumer confusion around the disclosure of owner's and lender's title insurance premiums referred to as "simultaneous issue." This may require significant additional explanation and even additional disclosures. It may also lead to borrowers not receiving the title insurance protection they want. The CFPB has made an effort to explain this issue in its home loan toolkit. It should go further and allow for disclosure consistent with state law and rules.

There are other issues where written guidance and additional changes could be helpful, reduce confusion and additional paperwork. Some of these include:

1. Clarifying whether real estate agents can receive copies of the closing disclosure directly from the lender in order to explain and advance the transaction with their clients.
2. Ensuring that consumers can still choose the agent that closes their transaction without lender interference the same way one chooses their lawyer to represent them and not their opponent.
3. Providing more information and flexibility on "bona fide financial emergency" and waivers.
4. Requiring re-disclosure and a new three day waiting period only when the APR increases.

These are but a few questions CFPB could and should answer or provide additional guidance in order to ensure a smooth implementation of the TRID rule.

When HUD implemented RESPA reform in 2010, it also issued 400 questions and answers to explain the rule. Industry had hoped that would be unnecessary with the new RESPA/TILA rule, but it appears more written guidance is not only unavoidable but would be a great benefit. CFPB staff has been helpful in providing oral guidance and attending and participating in industry education events. However, the litigious climate that has consumed the lending industry in the wake of the most recent crisis has made industry participants (and more specifically their counsels and risk managers) extremely cautious. While oral guidance may be put one's mind somewhat at ease, written guidance may be necessary for a practice or procedure to be approved more universally and consistently. Therefore, NAR has urged the CFPB to ensure lingering questions get answered so consumers only benefit from these new rules and disclosures.

LIABILITY CLARIFICATION

Similar to the need for written guidance is the need for assurance of which type of liability applies to the documents and the rule. RESPA and TILA have different liability standards with TILA standards being generally more stringent including private right of action. Given that the rule relies heavily on TILA's statutory authority, lenders are being cautious and essentially assuming that TILA liability applies to everything. NAR believes that the CFPB could provide more flexible by defining what liability standard applies to the various elements, i.e. assigning TILA liability to TILA elements and RESPA liability to RESPA elements. Doing so would likely make lenders more willing to be flexible at the closing table for changes not closely or directly related to the loan. This may abrogate the need for time-consuming centralized approval of changes to the CD.

CONCLUSION

RESPA/TILA integration is a monumental effort that truly was decades in the making. The CFPB has done good work in this effort but there is more work that needs to be done to ensure these changes are effective and meet the needs and expectations of consumers. NAR will continue to work with the CFPB and our industry partners in this effort. Thank you for allowing me to share the views of the National Association of REALTORS®, and we look forward to working with you as well.