



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

Hearing entitled:

“Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?”

Wednesday, June 20, 2012

Statement of the American Financial Services Association

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The American Financial Services Association (AFSA) is pleased to provide its comments to the Subcommittee on Insurance, Housing and Community Opportunity for today’s hearing entitled “Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses?”

Founded in 1916, AFSA is the national trade association for the consumer credit industry protecting access to credit and consumer choice. Our 350 members include consumer and commercial finance companies, auto finance and leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers.

General Comments on Mortgage Reform

Most economists and housing market analysts in government and in the private sector agree that today’s underwriting standards are tight and are contributing to a slow housing recovery. AFSA believes that unnecessarily narrow definitions of “qualified mortgage” (QM) and “qualified residential mortgage” (QRM) that cover only a modest proportion of loan products and underwriting standards and serve only a small proportion of borrowers would undermine prospects for a housing recovery and threaten the redevelopment of a sound mortgage market.

We also believe that the QM rule should include a safe harbor. AFSA believes that a broad QM rule with a safe harbor is the only way to help the economy and at the same time ensure that the largest number of credit worthy borrowers are able to access safe, quality loan products for all housing types, as Congress intended in enacting the Dodd-Frank Act.

Additionally, the mortgage servicing rule outline proposed by the CFPB also may limit the growth of small servicers or drive them from the business altogether, particularly if the CFPB

imposes mandates that exceed those required by the Dodd-Frank Act. For example, the existing items the CFPB wants to add to the closed-end mortgage periodic statement may be very onerous for smaller mortgage servicers.

Rollout of Various Mortgage Reforms should Occur Deliberately

Perhaps as important as the substance of the new rules is the need to synchronize all of the forthcoming reforms that will impact mortgage origination. In addition to the aforementioned QM, QRM and mortgage servicing rules, lenders face new disclosures as well as restrictions on product characteristics and origination practices under the Mortgage Reform and Anti-Predatory Lending Act (Title IV of the Dodd-Frank Act).

Regarding the subject of this hearing, the Consumer Financial Protection Bureau (Bureau) is currently revising the prescribed documentation to combine the overlapping and conflicting disclosures required at the shopping and settlement stages under the Real Estate Settlement Procedures Act and the Truth in Lending Act. Were the Bureau to issue new model forms and compel their implementation by lenders prior to the completion of other major changes in the pipeline, the forms might need to be revised a second time. This would impose substantial costs on industry, as it would have to repeat the implementation process. This hardship can be avoided if regulators take a coordinated, deliberate approach to rolling out the aforementioned interrelated reforms.

Use of Prescribed Model Forms should Provide Safe Harbor to Lenders

AFSA appreciates that the Bureau seeks to make the residential mortgage disclosures simpler and more comprehensible by conveying information on key loan terms clearly, while potentially deemphasizing or even eliminating information that is not relevant or useful to the consumer's ability to shop for and compare mortgage terms across loan offers and make an informed decision.

However, AFSA remains concerned that the Bureau may set aside requirements of existing statute or regulations that require disclosure of certain pieces of information without offering express protection to lenders. As it improves the disclosure process, the Bureau must provide a safe harbor to lenders who use the Bureau's prescribed forms. If that safe harbor is not absolutely certain, lenders will be compelled to provide both the streamlined disclosures proposed by the Bureau, as well as all of the traditional disclosures that are given today. This unnecessary duplication of complicated disclosures runs counter to the congressional objectives of achieving greater simplicity and clarity for mortgage shoppers while reducing the overall paper load.

Use of Model Forms should be Optional for Lenders

In its memorandum of February 21, 2012, "Outline of Proposals under Consideration and Alternatives Considered" ("Outline"), the Bureau notes:

TILA authorizes the CFPB to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the CFPB to require the use of standard forms (e.g., the prescribed GFE and HUD-1 settlement statement forms).

The Outline then makes a key observation:

Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders but provide consistency for both consumers and lenders. In light of these considerations, the CFPB is considering whether to propose a rule that requires use of standard forms under RESPA for the Loan Estimate and Settlement Disclosure for mortgage loan transactions that are subject to RESPA. Transactions that are subject only to TILA would not be required to use the model forms, consistent with the provisions of that statute.

AFSA believes that it is important that the Bureau provide safe harbor for compliance with the provisions of the two statutes so long as lenders use model forms, but should avoid the absolute requirement of standard forms. The standard forms may turn out to be less relevant to nontraditional lenders such as the consumer finance companies AFSA represents, who often focus their business on unsecured personal loans and secured, retail installment sales contracts on vehicles and other purchases. Some of these companies make mortgage loans only occasionally, typically in the form of home equity loans to finance home improvements or other needs. Too rigid requirements threaten to drive these lenders out of the marketplace, depriving their regular customers of the option of borrowing on their real estate from a trusted source.

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AFSA thanks the committee for its consideration of these views. Please feel free to contact Bill Himpler, Executive Vice President, with any questions at 202-296-5544, ext. 616 or bhimpler@afsamail.org.