Testimony of

Brenda K. Hughes

On behalf of the

American Bankers Association

before the

Subcommittee on Insurance, Housing and Community Opportunity

of the

Committee on Financial Services

United States House of Representatives

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Chairman Biggert, Ranking Member Gutierrez, and members of the Subcommittee, my name is Brenda K. Hughes, Senior Vice President and Retail Lending Administrator at First Federal Savings Bank . Our bank is a 96-year old community bank, headquartered in Twin Falls, Idaho. We have assets of $482 million, and serve the Southern Idaho region. I also serve as Co-Vice Chairman of the Mortgage Markets Committee at the American Bankers Association. ABA represents banks of all sizes and charters and is the voice of the nation's $14 trillion banking industry and its two million employees.

We commend the Subcommittee for holding this hearing on the reform of mortgage disclosures. We support the efforts of Congress and the Bureau of Consumer Financial Protection (Bureau) to make these important reforms and we believe it is critical that all stakeholders work towards an improved mortgage disclosure system.

I work closely with our Chief Compliance Officer and with the bank's Compliance Committee, a committee made up of senior officers responsible for lending, deposits, operations, human resources, and our controller. Together we work to understand the requirements of applicable regulations and to implement policies, procedures, and controls to ensure that our operations comply with supervisory expectations. Thus, I am well aware of our compliance obligations. I understand the time and effort required to implement regulatory changes—the changes to forms, systems, policies, and procedures necessary to comply with new or modified regulatory requirements as well as the employee training, monitoring and auditing required to ensure the bank has successfully navigated the change.

I appreciate how each regulatory change siphons time and resources from lending and deposit operations, impeding our ability to serve our customers and to help our community recover from the recession. In addition, I have concerns about the impact of change on my employees. We choose our employees carefully at First Federal Savings Bank so that we identify people who want to work with customers to help them meet their financial needs and goals. I see that our staff is increasingly frustrated by the time they must spend studying new regulations and determining how each one will impact our products, services, and operations.

My loan officers and loan administrative staff are the most discouraged. They have struggled since 2008 to keep pace with a stream of poorly-coordinated and often conflicting mortgage-related regulatory proposals. On top of integrating new rules, the staff must also anticipate even more change as the Bureau implements the requirements of Title XIV of the Dodd-Frank Act. Today's regulatory uncertainty and the fear of making a mistake have changed the focus from helping the consumer understand and navigate the process to a fixation on rules, forms and procedures.

Nonetheless, we have some hope to minimize at least a small portion of these forms, and to improve their clarity, with the integration of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). This effort is an important one, and ABA has long supported reforming the RESPA and TILA disclosures. We have often stressed that inadequate consumer understanding is a primary factor that enables abusive practices to persist. We believe that clarity in cost disclosures will contribute to an optimal mortgage marketplace by imposing certainty in pricing and enabling consumers to compare among loan offers using factors that are of real importance. If this process goes off track, however, it will muddle the settlement process, confuse homebuyers, add wasted compliance burdens to banks, and stimulate counterproductive litigation across all jurisdictions.

Our advice in this process is for the Bureau to take it slow and get it right. The Bureau must tackle the important task of RESPA-TILA integration through a more inclusive process that fully considers all other changes being imposed under Dodd-Frank. The integration or merger must be done with a forward perspective that accommodates all the reforms brought about by this massive statutory reform. The Bureau must, therefore, continue to get input from consumers, lenders, and servicers, and take the time necessary to come up with a solution that will really make things easier to understand and at the same time simplify the process for all involved.

ABA's threshold recommendation is that Congress remain engaged in monitoring the direction of this reform initiative, and that the Bureau be granted a longer time latitude to ensure the agency is able to carefully consider all issues and alternatives surrounding the regulatory integration process.

The real goal for all stakeholders must be to ensure that we achieve a lasting set of clearer and more efficient mortgage disclosures. ABA understands that this is an extremely difficult task, as the mortgage process is complex and the interests are diverse. We believe it essential that Congress maintain oversight of this regulatory process and ensure the Bureau take the time necessary to weigh all the options, consider the consequences, and ultimately, get this right.

Although America's banks support reforms that will improve consumer mortgage disclosures, they are also increasingly concerned about a rulemaking process that appears to be leading once again to unwieldy results. We note that the comprehensive reforms brought about by Dodd-Frank will require a large number of ancillary implementing regulations, including ability-to-repay rules under TILA, risk retention requirements, and "high-cost" trigger amendments under the Home Ownership and Equity Protection Act (HOEPA). These other mortgage-related changes are in various stages of the rulemaking pipeline, some being at the "pre-rule" stage. Since these significant regulatory proposals aim at the mortgage origination process, they will significantly affect the disclosure-related rules being considered under RESPA-TILA reform. It would be cumbersome, expensive, inefficient and confusing to finalize a merger rule without taking into account the myriad of other rules that must still be crafted and implemented. Such an incongruent approach would necessitate erratic and intermittent amendments to the RESPA-TILA merged regulations, to properly incorporate whatever other rule is enacted. We think such a result is unwarranted and entirely avoidable.

In addition, we also note the rules being crafted will have to work in every jurisdiction and across all states. State and local disclosure mandates are often in variance with federal disclosures, and are specific in terms of mandating the fees that must be disclosed. State forms are generally required to be issued separately from the RESPA and TILA forms. These disclosure variations cause considerable complexity and risk when constructing compliance systems, and more importantly, they add an overlay of disparate shopping figures that expand the intimidating disclosure packages that consumers receive and should have a reasonable opportunity to consider.

These two important issues command that the Bureau adopt a conscious and very deliberative approach to this "merger" rulemaking. We understand that the Dodd-Frank legislation imposed a

July 2012 deadline for the issuance of proposed integrated disclosures. Congress should, however, place emphasis on completeness and thoroughness, and not on inflexible timeliness. To this end, the Bureau should be allowed to satisfy the statutory deadline through the issuance of an advance notice of proposed rulemaking (ANPR). An ANPR approach would allow Congress to assess the Bureau's thinking on the progression and course of this reform, and would help to ensure that the agency is advancing the Congressional objectives established in the statute. An ANPR would allow more flexibility for the Bureau to accommodate changes in the RESPA-TILA framework that are being demanded by other parts of the mortgage reform process. We also think that industry stakeholders would benefit by being able to monitor the rule's development, and therefore properly consider and plan for the coming changes.

ABA deems this process to be crucial in the overall reform initiatives under Dodd-Frank. Our recommendation for an ANPR aims at ensuring that these regulatory reforms are properly and efficiently considered.

With regard to the rule-writing process currently underway at the Bureau, ABA offers four principles that should guide the process.

- New rules should in fact simplify a complicated process;
- New rules should recognize the interactions and reconcile the conflicts inherent in the mortgage regulatory structure;
- The integration process should not be abused by adding rules that go beyond RESPA and TILA's congressional intent; and
- Implementation time frames should be ample and adequate to accommodate industry need.

We discuss these items in detail below.

I. New Rules Should in Fact Simplify a Complicated Process

Mortgage lending is complicated, and much more so with each new rule, which brings with it an additional paragraph of text to read or an additional form to fill out. For consumers, the current maze of disclosures is complex and confusing, and for lenders, the rules are often undecipherable and legally risky. The endless difficulty that banks—and consumers—have with the mortgage process is well illustrated by the recent experience with the 2008 regulatory reforms to RESPA.

Unfortunately, the 2008 RESPA reforms, while well-intended, did not fully achieve the goal of either simplifying or clarifying mortgage disclosures for consumers. The provisions of the 2008 proposed rules increased the length of the good faith estimate (GFE) disclosure from 1 to 3 pages, and the settlement form from 2 to 3 pages. The 2008 amendments added tolerance provisions and rigid requirements that increased liabilities and forced redisclosures every time any variance occurred in the origination process. In addition, the reform regulations entirely altered the structure and appearance of the required forms and the novel configurations obscured many elements of credit and cost calculations. All in all, the 2008 HUD rule greatly increased complexity, legal risk and paperwork for lenders and settlement service providers alike.

Most importantly, there is widespread agreement that the new 2008 forms introduced disclosure elements and configurations that actually increased consumer confusion. Our members unanimously report that the 2008 form amendments befuddle consumers as the “improved” forms fail to reflect lender credits or total costs, and do not help consumers to really understand the bottom line number needed to shop for a loan. In many instances, lenders have had to craft auxiliary or explanatory work-sheets that are handed to the consumer in conjunction with the federally-mandated forms so that the consumer understands the numbers they are being shown. The reward banks receive for this customer assistance is an increase in litigation and compliance risk, because this information is adjunct to the obscure “sanctioned” forms.

Nor did the 2008 changes make it easier on lenders. Compliance with RESPA regulations require that banks rely upon a wide compendium of rules that come from various sources. Some stem from written and formally enacted regulations; others come from formal statements of policy issued by HUD over the years; additional guidance may be found in HUD’s website containing Q&As for Industry and Consumers. With regard to the 2008 regulatory reforms, industry must still rely on interpretive advice that can be found in HUD’s website in the form of iterative FAQ postings. Finally, HUD staff issued a series of RESPA updates entitled “Roundups” that offered regulatory guidance to banks. While most of these varying sources supplement each other, some actually contradict others, causing great confusion for compliance officers.

To assist members with these increased compliance burdens, ABA was forced to issue comprehensive RESPA Guides with step-by-step instructions on how to fill out the forms. Further, we sought review of these Guides by regulators, and the few suggestions received have quickly been incorporated. Still, the Guides remain unofficial. Bankers should not have to rely on unofficial guidance to understand complex compliance requirements.

Finally, the final rule overlaps with, and at times replicates, disclosures mandated under other federal laws. The agencies that engaged in issuing these important consumer protection regulations did not coordinate efforts and therefore created a confusing web of duplicative and disjointed rules and disclosures.

Compliance with TILA is no less clear, with three official sources for compliance—the statute, the regulations, and the commentaries. These have recently been supplemented by oral advice from Federal Reserve staff that provides the only real resource for a number of difficult issues.

Because of these difficulties, banking industry participants have made independent judgments on key regulatory issues absent the availability of sufficient and timely guidance, exposing themselves to legal risk.

ABA believes and has long advocated that to achieve truly effective reforms that benefit consumers, the ameliorative changes to RESPA must be undertaken in conjunction with TILA disclosures to harmonize the two disclosure laws that guide consumers in the mortgage shopping process. That is what this process is all about—we must achieve greater simplicity and intelligibility.

II. New Rules Should Recognize and Reconcile Conflicts Within the Statutory Structure

RESPA and TILA each come from separate and unique sets of law. The Dodd-Frank reforms now add new legal structures onto existing forms and requirements. And most of these overlap with, and at times replicate, disclosures mandated under other federal laws. As the Bureau moves forward, it must do so carefully, taking into account all the disparate legal structures that support the rules it is trying to harmonize.

Two examples serve to illustrate this point. Section 1419 of Dodd-Frank adds a new disclosure requirement for residential mortgage loans. There must be a disclosure of “the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan." Under the Act, these new items appear to be ***in addition to existing RESPA-TILA items.*** It is unclear whether the draft disclosures being prepared by the Bureau incorporate, or will be deemed to satisfy, this new addition. It must be noted that this provision was inserted as an addition to Section 128(a) of TILA. If the new forms do not address these additional disclosure requirements, they cannot be deemed to be complete.

Also, Sections 1471 and 1474 of Dodd-Frank require that the consumer be provided with a free copy of the property appraisal at least three days before closing. However this mandate is ultimately interpreted, the requirement intersects with important disclosures being considered under the RESPA-TILA merger. Their interaction and timing triggers could greatly complicate the flow of information to consumers if they are considered and implemented separately. Disclosures such as this are logically integrated with existing RESPA-TILA items, and must therefore be considered holistically with the RESPA-TILA reform process.

An additional consideration is that, quite simply, the new disclosure regime must work.

One good example of a workability complications the Bureau will encounter are the unique legal responsibilities of lenders and settlement agents. Under current law, the HUD-1 settlement statement must be prepared by the settlement agent, while the TILA disclosures must be prepared by the lender or creditor. Logically, the integrated good faith estimate disclosure will still be prepared by the creditor, but real questions arise regarding who is to prepare the settlement statement. Since this integration process will blend the final TILA and the HUD-1 settlement statement, there is a vital logistical problem that the rules will have to confront.

Moreover, although their disclosures are to be integrated, RESPA and TILA remain separate statutes. 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 Bureau 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.

III. The Integration Process Should Not Be Misused to Add Rules That Go Beyond Congressional Intent

In recent draft rule outlines that have been circulated, the Bureau proposes to revise and add several new substantive provisions, such as: establishing tighter cost tolerances; establishing additional waiting periods for existing disclosures; changing the definition of application; and changing the basic definition of "Finance Charge" and "APR." We are disturbed about these intentions. As set forth by Dodd-Frank, the RESPA-TILA reform process should be focused upon integrating and combining the disclosures required under RESPA and TILA. The Dodd-Frank mandate is to ensure that the new integrated forms can apply to transactions "subject to both or either provision of law." (See Section 1098).

We are very concerned that the Bureau is expanding beyond this mandate, and altering the statutory substance of RESPA and TILA in significant ways. The RESPA and TILA statute remain separate statutes, and it is important that the substance of those laws not be distorted as the Bureau reworks the forms. Any attempt to alter the guiding provisions of the underlying statutes would exceed the Congressional order under Dodd-Frank. The legislative balances and accommodations contained in the RESPA and TILA statutes are important to the needs and requirements of the lending and settlement service industries. In addition, both of these statutes provide significant liability and remedies respecting their respective disclosures, and such liabilities and remedies vary in each statute. There is no legal basis under Dodd-Frank to vary the basic statutory requirements that explicitly apply under each law, nor is there permission to intermingle RESPA and TILA liabilities that apply differently and uniquely to each specific statute.

A clear example, is the Bureau's plan to use the RESPA-TILA merger process to amend related annual percentage rate (APR) calculations. Such intentions must be thought through in the context of the seven new APR comparisons to the average prime offer rate (APOR) required by Dodd-Frank. All of these disclosures are interrelated. For example, if the Bureau 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.

The Bureau 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. Unless lenders alter observed preferences to avoid making loans that are classified as high cost, such APR increases in isolation would have the effect of reducing credit availability because the costs of making certain loans being underwritten in today's already restrictive market would not be recovered. 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. In short, these issues could have a substantial impact on mortgage lending practices and credit availability, even though parts of the Bureau's potential plan are not in any way mandated or authorized by existing law.

Such expansions should not form part of the current effort, which simply mandates that there be a proposal to merge the forms under these regulations. ABA believes the Bureau would greatly overstep its boundaries if it decides to substantively amend explicit statutory provisions.

IV. Adequate Time Should be Allowed for Guidance and Implementation

Once the final rule is published, the Bureau should embark on a process for implementation that commits to providing timely guidance for the questions that will inevitably arise, and then adequate time for implementation.

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. We recommend continuing on a similar path to that which the Bureau has often adopted, using an iterative process. For example, the Bureau can issue written guidance on both disclosures and other substantive issues, solicit comment, and then clarify and expand guidance prior to implementation of the final rule. This would allow both consumers and industry to see the major substantive decisions that the Bureau will be making, and identify areas where additional guidance is needed and where loopholes need to be closed.

After the rules and guidance are available, institutions and the firms that support them must be given adequate time for system changes and training. Coming into compliance with a rulemaking this far-reaching entails an extremely complex and demanding set of interconnected actions. The implementation time frame should reflect the real work that must be done by institutions that either provide credit or services to credit-providers.

First, every lender, mortgage broker, settlement services provider, and their third-party vendors must understand the revised rules, and then identify and measure the new provisions' impact on every aspect of their business lines and overall operations. Then each entity must design methods to ensure full compliance while controlling for any negative consequences, if possible. For example, the new rules govern the timing of the disclosures the industry makes, so creditors need to design lending practices accordingly.

Affected entities must determine whether to employ vendors for specified activities and, if so, which ones, at what cost, and at what level of service. This is not merely a cost issue—the determination requires a thorough assessment of whether each firm has the capacity to manage the revisions to the rule either in-house or through a service provider.

After having identified general compliance needs, the actual implementation work begins. The new disclosures require modifications to several data systems so that each and every line and block on the new good faith estimate and settlement statement (HUD-1/HUD-1-A) is correctly populated. To assure this outcome, lenders and service providers must identify which data elements must be accessed, when, where the data must be delivered, and in which form.

Lenders in particular must go through extensive implementation processes because RESPA affects lenders during the entire loan origination process, from before a borrower applies for a loan, through underwriting and terms negotiation, approval, preparing for closing, closing, and post-closing checks for RESPA compliance. Also, because data must be communicated between the various industry participants (e.g., lender and broker or title company), communication protocols must be compatible even when the sender and recipient use different data technology.

Every data transfer must be complete, accurate, timely, and secure. Every change requires programming redesign and development, validation testing, error correction, and retesting. Information security protections must be expanded to cover changes to data transfers. Staff must be trained in loan production, customer service, compliance, and information technology.

Conclusion

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 accompanies a combination of two laws' disclosures so they properly inform and protect consumers, and do not unnecessarily add to complexity and costs or establish barriers to credit availability.

The underlying legal and procedural issues that the Bureau must still consider are significant and they deserve at least the same attention as the forms. We urge that the Bureau be allowed sufficient time to fully review the critical elements raised by this important reform.

Thank you for the opportunity to testify today. I am happy to answer any questions.