

Testimony of Chanelle P. Hardy, Esq.,  
Senior Vice President and Executive Director  
National Urban League Policy Institute

US House of Representatives Subcommittee on Insurance, Housing  
and Community Opportunity

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

June 20, 2012

Chairman Biggert, Ranking Member Gutierrez, and members of the Subcommittee, thank you for the opportunity to testify before the Subcommittee and for the leadership you have shown on this issue. I am Chanelle Hardy, Senior Vice President and Executive Director of the National Urban League Policy Institute. On behalf of the National Urban League, its President and CEO Marc Morial, and the 2.6 million Americans served by our 98 affiliates in 2010, I am pleased to share our views concerning the Consumer Finance Protection Bureau’s (CFPB) efforts to create combined (TILA) Truth in Lending Act and (RESPA) Real Estate Settlement Procedures Act disclosures as mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

With the help of HUD Housing Counseling Grants, the National Urban League acts as a direct provider of housing counseling services in 36 cities throughout the country. Last year alone National Urban League affiliates offered counseling to more than 10,000 families, with services ranging from pre-purchase workshops, to mortgage modification and the initiation of forbearance agreements. The goal of our housing counseling model is to break down barriers and obtain economic equality through education, self-reliance, and a greater understanding of financial tools and services.

Our counselors see firsthand the damage done by confusion at the point of loan origination on the part of well-intentioned and qualified borrowers confronted

with hopelessly confusing documents, and sometimes deliberately abusive and malicious lending agents.

In our view, CFPB will help combat and limit such abuse and confusion by simplifying the information required by TILA and RESPA.

The broader context for these reforms must not be forgotten. The fact that between five and six million American homeowners are currently at risk of foreclosure makes it clear that a large share of homeowners lacked full awareness of the types of risks of certain types of mortgages before agreeing to their terms. Communities of color, and African American communities in particular have borne much of the brunt of this crisis, leading to loss of family and community wealth that can only be described as devastating. The Federal Reserve has recently pointed to a 40% plunge in the wealth of the average American family, from \$126,400 in 2007, to \$77,300 in 2007<sup>1</sup>. However, black average family wealth in America started at an astonishingly lower figure of \$5,677 in 2009<sup>2</sup>, before the worst of the crisis. The sudden evaporation of black wealth spells looming hardship not only for those families impacted, but for the greater American economy as a whole.

The heartbreaking stories that the Urban League has heard from many of our clients revealed that many of them didn't fully understand the potential of many mortgage terms to cause problems in the future, and many claim to have been unaware of those provisions at all. Better consumer education is a significant part of the solution to the recurrence of the current housing crisis, and streamlining RESPA and TILA disclosure forms are a critical component to that solution.

Now that CFPB has authority over RESPA and TILA, we believe the combination of those authorities will make it easier to unify the legal approach. And while some will certainly argue for an approach that reduces the regulatory burden on the

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<sup>1</sup> Federal Reserve Bulletin, Changes in US Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances, June 2012, Vol. 98, No. 2.

<sup>2</sup> Pew Research Center tabulations of survey of income and program participation data from 2004 and 2008 panels.

mortgage industry, we strongly believe the central challenge of CFPB's focus must be on improving the ability of consumers to understand the disclosures.

However, many hurdles clearly remain, including differences in the laws themselves.

TILA, enacted in 1968, requires lenders to disclose the lending terms, including finance charges and the annual percentage rate, for mortgages. RESPA, enacted in 1974, focuses more on closing and settlement costs, including requiring a good faith estimate. We believe the biggest impediment for the CFPB is the inconsistency between the laws themselves; specifically with regard to content, coverage, timing and liability provisions. Settlement costs and finance costs are interdependent, and manipulation of the relationship between the two is a common way consumers have been tricked into abusive loans.

Timely, consistent, and clearer disclosures of all-important factors that affect mortgage financing decisions are needed. The magnitude of the current housing crisis and its tragic impact on the personal lives of millions of American homeowners, and the entire economy, argues for rules that place far more weight on assuring full consumer understanding of mortgage terms. This is more important than preventing minor additional paperwork and inconvenience for companies that play various roles in the mortgage financing process.

Timely, consistent and clearer disclosures will also reduce the frequency of poor financial decisions by consumers, many of whom lack the sophistication to "read between the lines." Consumers will benefit from clarity and reinforcement regarding elements of mortgage obligations that could create future risks. Disclosures will reduce deception by making it harder for lenders or brokers to skip over or minimize the significance of important terms and conditions, and may lower mortgage costs by fostering more competition.

Today, as the U.S. economy faces significant challenges, the need to ensure a transparent accounting of costs in real estate transactions has become clearer than ever. Right now, it is estimated that at least 20,000 foreclosures are taking place every single week. The negative spillover effects from these foreclosures are

substantial: a single foreclosure causes neighborhood property values to drop, collectively adding up to billions of dollars of losses. Empty homes lead to higher crime rates. Lost property tax revenue hurts cities and counties that are already strapped. Millions of Americans who depend on a robust housing market are losing jobs and income.

Confusing, misleading, and inaccurate information has played a contributory role in the current mortgage crisis, and reforms to the current disclosure requirements are long overdue. We commend the CFPB staff for its diligent work in crafting this proposal. We also recognize that the home mortgage process is unique and complex and that developing a fair and reasonable method of ensuring early and accurate price disclosure is challenging. However, we cannot overemphasize the fact that poor disclosure has not been the driver of the foreclosure crisis. It has been only part of a broader system of skewed incentives that have encouraged mortgage originators to steer consumers into the riskiest, highest-cost loans available. Brokers could wash their hands clean of these loans as soon as they collected their origination fees, and lenders could do the same as soon as they sold them off into the secondary market.

Finally, it's also critical to understand that disclosures do little for those consumers who are not in fact shopping independently. Most victims of predatory lending did not go out shopping for loans; rather, loans were push-marketed to them by people marketing their expertise, but who were in fact promoting not a loan with the interest rate and terms the consumer qualified for, but the *most expensive* loan. The most expensive loan earned the broker the most in kickbacks from the lender – kickbacks that were allowed only because HUD did not use its authority under RESPA to ban them.

Unfortunately, whatever decisions are made with respect to the disclosures in this proposed rule will not prevent future predatory loans from being made. They will not fix the misaligned market incentives that created this mess. However, CFPB's efforts to fulfill its mandate to streamline the disclosure forms established under Dodd-Frank, is long overdue. On behalf of the National Urban League and its roster of HUD-certified housing counseling agencies across the country, we

believe consumers should be able to evaluate all cost factors together in order to see the whole picture and make the most informed choice possible.

To that end, we strongly support the CFPB's proposal and rationale to consolidate TILA and RESPA disclosures, and we believe that streamlining information about the cost of credit and the cost of settlement are central to creating more informed consumers and achieving more sustainable outcomes.

I'd like to close by offering 3 recommendations to help ensure that the CFPB is successful in its efforts to eliminate red tape for qualified borrowers regardless of race, geography, or economic class, while also protecting their rights as consumers.

- 1) Require that all settlement and financing terms be communicated well in advance of settlement, with clear and consistent language. Allow for the corrective redress of violations including remedy to the affected borrower.
- 2) Require that client disclosure and acknowledgement forms be completed by the lender not unlike the 'Know Your Client' protection provisions mandated in the securities investing marketplace. This would give uniform structure to the TILA 'Ability to Repay' requirement.
- 3) Draft Qualified Residential Mortgage rules requiring all securitized residential loans, qualified and other, feature complete and valid 'Know Your Borrower' documentation in addition to other prescribed forms of risk retention.

Thank you members of the Subcommittee for your time today. I would like to answer any questions you might have.