

HOUSING POLICY COUNCIL
THE FINANCIAL SERVICES ROUNDTABLE



Housing Policy Council

Statement for the Record
For the House Financial Services Committee
Subcommittee on

Insurance, Housing and Community Opportunity
Hearing:

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

Wednesday, June 20, 2012

The Housing Policy Council (HPC) of The Financial Services Roundtable appreciates the opportunity to submit a statement for the record for the Subcommittee’s June 20 hearing on mortgage disclosures – a topic that is a high priority for the Housing Policy Council and our member companies.

The Housing Policy Council of The Financial Services Roundtable consists of thirty of the leading national mortgage finance companies. HPC members originate, service, and insure mortgages. We estimate that HPC member companies originate approximately 75% and service two-thirds of mortgages in the United States. HPC's mission is to represent the mortgage and housing marketplace interests of member companies in legislative, regulatory, and judicial forums.

The Housing Policy Council has long supported simplifying and harmonizing mortgage disclosures to help ensure that consumers understand the terms of their mortgage loan. The forms and disclosures under the Truth in Lending Act (TILA) and its implementing regulation (Regulation Z) and the Real Estate Settlement Procedures Act (RESPA) and its implementing regulation (Regulation X) constitutes pages and pages of information that is, at times, confusing, contradictory, or duplicative.

It is critical that consumers understand the terms of a mortgage loan before reaching the settlement table. We applaud the Consumer Financial Protection Bureau (Bureau or CFPB) in undertaking the important task of creating unified disclosures that are effective for borrowers and lenders alike. We share the Bureau’s goal to reduce the regulatory complexity and improve clarity in mortgage disclosures.

HPC has been active in responding to the CFPB’s process of harmonizing TILA and RESPA. For each round of the Bureau’s Know Before You Owe effort on merging these disclosures, HPC has provided either written or oral suggestions, or both to CFPB staff. In addition, we have worked cooperatively with other financial services trade associations to communicate shared views and concerns about the substance and process of the CFPB’s disclosure effort.¹

As the Committee examines the Bureau’s efforts to revise mortgage disclosures, we would like to highlight some of the suggestions we have made to the Bureau.

¹ Please contact Joan Gregory of HPC (joan@fsround.org) if you would like copies of our comments to the CFPB.

- 1) **Keep the forms simple and concise.** The purpose of the merged forms should be to disclose critical information to consumers in a clear and concise manner. The forms need to disclose information that the consumer should know in a format the consumer can understand. In addition, the Bureau must ensure that the model forms are flexible enough to effectively disclose terms for different products. To this end, the Bureau should issue model forms as called for in TILA and section 1032(b), not required forms as mandated in HUD's 2008 amendments to Regulation X. In addition, these model forms should provide a safe harbor when utilized correctly, as provided for in section 1032(d) of the Dodd-Frank Act. This step will ensure consistency in the information provided to borrowers and enhance comparison shopping.
- 2) **Consider what information is most critical to borrowers.** In addition to requiring the Bureau to merge the disclosures under TILA and RESPA, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added some additional disclosure requirements. Some of these seem to be at odds with the purpose of merging TILA and RESPA disclosures – namely to simplify the disclosures and make sure the forms disclose to the consumer key information about the mortgage.

For example, the cost of funds provision (section 1419 of the Dodd-Frank Act) does not assist the borrower in understanding the mortgage or comparing the mortgage to another. We understand that this disclosure led to consumer confusion in the Bureau's qualitative testing. We urge the Bureau to use its exception authority under TILA and not include this information on the disclosure forms as it would not help inform the consumer. We understand the Bureau may be hesitant to use its exception authority for brand new requirements mandated by Congress, and to that end we would appreciate the Committee's help in explaining the purpose of this disclosure and whether there is a better way to inform the consumer. If the Bureau declines to use this exemption authority, we suggest that the Bureau require an average costs of funds based on a national average that is publicly available.

Information that may change if the loan is sold or if state law is amended (e.g. the disclosures around whether partial payments will be accepted and liability after foreclosure) should either be reviewed to determine the utility of the information and if retained, then additional language to alert the borrower that the information may change.

- 3) **Merging TILA and RESPA requirements.** We appreciate the Bureau's efforts to design clear and concise forms; however, much work remains to be done in terms of harmonizing the requirements under TILA, RESPA.

For example, the timing of the disclosures and who is responsible for the forms is different, and the Bureau will need to harmonize this in the proposed regulations.

Clear guidance is needed regarding requirements to re-disclose loan terms and settlement costs when facts change after an application is taken. We support keeping consumers informed about changes to key items, but current regulations have resulted in over-disclosure that is confusing to consumers. We ask the Bureau to consider the implications when making these changes and to engage with the industry to understand potential consequences and possible unintended effects of these changes. In order for us to provide the Bureau with informed comment, the Bureau should explain which liability scheme (TILA's or RESPA's) will apply to the revised disclosures.

Finally, the two statutes also provide for different liability rules. The rules supporting the combined disclosures should clearly define the liability rules that would attach to information required to be provided on the disclosure.

- 4) **A pilot program should be utilized prior to final implementation.** Under section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau may permit institutions “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 improve upon any model form” the CFPB issues. In addition, during this trial period, the Bureau must provide a safe harbor from pertinent rules and enumerated consumer laws to institutions engaged in the program during the trial period.

After the Bureau issues proposed rules and forms but before they are finalized, we continue to urge the Bureau to establish a trial program with a few lenders using the new forms in real world transactions. This will provide an opportunity for the Bureau to make any necessary clarifications or modifications, and eliminate unnecessary confusion amongst consumers, lenders, and other participants in the mortgage process.

- 5) **Effective Dates and Implementation Period.** We understand the Bureau plans to meet the July 21, 2012 deadline for issuing a proposed regulation. As this requirement is under Title X and not Title XIV, the final rules do not need to be issued before January 21, 2013. We ask the Bureau to take the time necessary to create a rule that will usefully continue for years unamended and not be rushed into final promulgation before the rule and forms are tested and ready. To ensure that, we urge the Bureau to provide for a lengthy comment period and other opportunities for interested parties to discuss the forms and regulations with the Bureau’s staff.

Additionally, a lengthy implementation period is needed. Combining these mortgage disclosures will take a considerable amount of time due to the necessary changes in systems and staff training. We ask that the Bureau allow at least 18 months for the implementation of the final regulations.

Finally, as noted above, some pieces of the new forms are new disclosure requirements mandated under Title XIV (cost of funds, escrow account disclosures, aggregate settlement charges, and negative amortization). Under Title XIV, these disclosures become self-effectuating on January 21, 2013 if a final regulation is not issued. We ask the Bureau to use its exception authority under TILA to postpone the effective date for the new disclosures under Title XIV that will be included in these forms and have these disclosures become effective when the TILA-RESPA final rule is implemented. Otherwise, lenders will be faced with additional disclosure requirements without the final TILA-RESPA forms, which will lead to confusion amongst the industry and consumers.

- 6) **Continue the dialogue.** We appreciate the Bureau’s efforts to engage the industry and consumers as it has developed and tested these forms. In addition, we appreciate that the CFPB provided interested parties with an opportunity to provide feedback on the information contained in the SBREFA panel documents. We ask that the Bureau continue this open dialogue.

Thank you for the opportunity to provide the committee with an official statement on the CFPB mortgage disclosure harmonization process. HPC would be happy to further brief the committee at any time. Please contact Paul Leonard (paul@fsround.org) or Joan Gregory (joan@fsround.org) with questions.