ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA®

June 20, 2012

Streamlined RESPA-TILA Rules Will Boost Mortgage Lending

On behalf of its nearly 5,000 community bank members, ICBA is pleased to submit this statement for the record for the House Financial Services Subcommittee on Insurance, Housing and Community Opportunity's June 20 hearing titled: "Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses." We appreciate the opportunity to share our perspective on this issue.

ICBA is supportive of Congress's and the Consumer Financial Protection Bureau's efforts to clarify and streamline both the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) regulations to make them clearer and easier to comply with while providing consumers with easy-to-read, clear and meaningful disclosures that help them better understand the costs of a mortgage loan transaction. We believe it's critically important to get the forms and procedures right so they will yield the greatest potential benefits to consumers and lenders alike. To help facilitate that process, we suggest the CFPB engage in an Advance Notice of Proposed Rulemaking (ANPR), which would allow all stakeholders to comment on the proposed forms and provide feedback on potential policies that would govern their use.

Below we highlight our principal concerns with draft rules recently circulated by the CFPB:

CFPB should drop the property address as a required item in the initial loan estimate for purchase transactions. HUD intended the current Good Faith Estimate (GFE) to be used as a tool for borrowers to shop and compare mortgage loan offers between lenders. This works relatively well for refinance loans, however, it does not work for purchase transactions. In order to issue a GFE, the lender must have the address of the property to be financed. In order to issue a GFE to a borrower who wishes to "go shopping" for a home and home loan, the lender must issue a preapplication estimate, and would then issue the GFE once a property is selected. This preapplication estimate is not regulated and not standardized in regards to what information is provided and in what format. This frequently can cause confusion with the borrower. CFPB is considering requiring a disclaimer be printed on any preapplication estimate notifying the borrower that "this is not a Loan Estimate required by TILA and RESPA". ICBA feels this would further confuse the borrower and not solve the problem while perpetuating a flawed policy from HUD.

We recommend that "property address" become an optional application item for the initial Loan Estimate for ***purchase*** transactions. This would enable the borrower to shop for a mortgage loan, compare costs and make an informed decision based on a Loan Estimate that is regulated. The lender would then provide a revised Loan Estimate once a property has been selected. While the final information on the Loan Estimate may change, the borrower can clearly see what costs are different and the lender can better explain those differences which would reduce confusion on the part of the borrower.

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CFPB should maintain the current 10 percent tolerance for changes in required third party settlement costs. The CFPB is considering eliminating the current 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. In addition the CFPB is considering requiring the bank to retain documentation supporting any charge that exceeds the amount provided on the GFE so the bank can explain to their supervisory agency why the cost exceeded the estimate and defend itself against any concerns that the lender may have directly profited from an "unjustified increase." As written, this would apply to charges from companies that are affiliated with the bank such as a title company or appraisal management company. However, it is unclear if a lender would be subject to this zero tolerance by using an appraiser from the bank's approved appraiser list, which is required by regulation.

The elimination of the 10 percent tolerance will cause prices for services to increase from the outset, in order to compensate for unforeseen developments that may occur during the processing of the loan. For example, an appraiser may charge a base fee for an appraisal. That fee assumes a typical type of property for that area in terms of lot size, type of dwelling, etc. However, if once on site the appraiser discovers there are out-buildings, unique site issues, atypical construction or design, the fee for the appraisal will increase, as it will require more time from the appraiser to complete the appraisal. The same can apply to title work, especially in outlying areas that are not platted, as well as for property inspections as a result of deferred maintenance. These items are not known at the time the bank would issue a GFE, and only reveal themselves during the processing of the loan. Under the current 10 percent tolerance, even minor increases can cause an out of tolerance condition when there is a small loan amount. Banks do not control these third party charges, even in the case of affiliated companies which are operated separately. These companies have to ensure that all transactions are "arms-length" in nature and that charges are bona fide. As proposed by CFPB, the zero tolerance would in some ways force price collusion among parties, which will not benefit consumers. The current 10 percent tolerance works well, and unless the CFPB has documented evidence of abuse, ICBA believes changing the tolerance is unnecessary and would result in higher settlement costs overall.

Timing of Settlement Disclosures. Requiring the customer to wait three business days to close after receiving their Settlement Disclosure will lead to more consumer complaints. Consumers want to close sooner, not later. With the safeguards provided by the changes in Regulation Z on mortgage loan officer compensation and the requirements regarding what can and cannot change on the settlement disclosure, consumers should not experience the "bait and switch" tactics that were used by some unscrupulous lenders in the past. For refinance loans, the additional three business days when combined with the three-day right of rescission period will now stretch the closing process to at least a week or more. Purchase money loans have other parties to the transaction such as the property seller or builder and moving companies for both the borrower and property seller, which will be delayed as well. Additionally, real estate purchase and sales contracts all contain penalties if the borrower fails to act in good faith to complete the transaction. It is likely that if a borrower were to decide to cancel the transaction during the three business days prior to settlement, they would face loss of their deposit and possible additional financial penalties from the property seller. This is not a right of rescission, so the borrower has no right to cancel at that point. However, allowing the three business days could infer that right, thereby adding to confusion on the borrower's part. Further extending the timeline by adding the additional three business days will lead to increased costs and frustration to purchase and move into a home. Providing the customer 24 hours to review the settlement statement and obtain the funds needed for closing is more than adequate.

Finally, ICBA is concerned that the scope of the changes being considered by the CFPB have the potential to cause significant costly IT upgrades and changes to bank loan origination, document preparation, and core operating systems. These costs could drive many small banks to exit the mortgage lending business, even for loans held in portfolios, which will severely restrict credit in many rural areas. Those community banks that do remain in the business will likely have to increase their prices to cover these costs. These costs for items that add no value or protection to the consumer will end up increasing the cost of credit and reducing the availably of credit. To minimize the disruption created by any new rules, in whatever form they take, we urge the CFPB to provide an implementation period of at least one year following the adoption of final rules.

Thank you for convening this hearing and for the opportunity to submit this statement for the record. We are attaching our April 13, 2012 comment letter to the CFPB which describes our concerns in greater detail.

Attachment

April 13, 2012

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Dear Director Cordray:

The Independent Community Bankers of America (ICBA) represents 5,000 community banks nationwide. Many of our member banks are located in small towns and rural communities and are the primary source of mortgage lending in their communities. Our member banks are local lenders and generally know their customers personally. They take great pride in providing their borrowers with good, safe, lending products that the borrower can afford. They are small businesses that do not have large staffs. Their employees wear multiple hats to provide banking services. Loans are originated locally and generally serviced locally.

ICBA is supportive of the CFPB's efforts to clarify and streamline both the TILA and RESPA regulations making them clearer and easier to comply with while providing consumers with an easy to read, clear and meaningful set of disclosures that help them better understand the costs of a mortgage loan transaction. We appreciate the opportunity to work with the CFPB to achieve that goal. Listed below are our comments and suggestions to the Outline of Proposals Under Consideration and Alternatives Considered as presented to the Small Business Review Panel for TILA/RESPA Integration Rulemaking.

1. **Definition of Loan Application –Drop property address as a required item.** HUD intended the current Good Faith Estimate (GFE) to be used as a tool for borrowers to shop and compare mortgage loan offers between lenders. This works relatively well for refinance loans, however, it does not work for purchase transactions. In order to issue a GFE, the lender must have the address of the property to be financed. In order to issue a GFE to a borrower who wishes to "go shopping" for a home and home loan, the lender must issue a preapplication estimate, and would then issue the GFE once a property is selected. This

preapplication estimate is not regulated and not standardized in regards to what information is provided and in what format. This frequently can cause confusion with the borrower. CFPB is considering requiring a disclaimer be printed on any preapplication estimate notifying the borrower that "this is not a Loan Estimate required by TILA and RESPA." ICBA feels this would further confuse the borrower and not solve the problem while perpetuating a flawed policy from HUD.

We recommend that "property address" become an optional application item for the initial Loan Estimate for ***purchase*** transactions. This would enable the borrower to shop for a mortgage loan, compare costs and make an informed decision based on a Loan Estimate that is regulated. The lender would then provide a revised Loan Estimate once a property has been selected. While the final information on the Loan Estimate may change, the borrower can clearly see what costs are different and the lender can better explain those differences which would reduce confusion on the part of the borrower.

2. **Tolerance for Changes—Maintain the current 10 percent tolerance for changes in required third party settlement costs.** The CFPB is considering eliminating the current 10 percent tolerance for certain required settlement services that the borrower cannot shop for or where the bank selects the service provider. In addition the CFPB is considering requiring the bank to retain documentation supporting any charge that exceeds the amount provided on the GFE so the bank can explain to their supervisory agency why the cost exceeded the estimate and defend itself against any concerns that the lender may have directly profited from an "unjustified increase." As written, this would apply to charges from companies that are affiliated with the bank such as a title company or appraisal management company. However, it is unclear if a lender would be subject to this zero tolerance by using an appraiser from the bank's approved appraiser list, which is required by regulation.

   The elimination of the 10 percent tolerance will cause prices for services to increase from the outset, in order to compensate for unforeseen developments that may occur during the processing of the loan. For example, an appraiser may charge a base fee for an appraisal. That fee assumes a typical type of property for that area in terms of lot size, type of dwelling, etc. However, if once on site the appraiser discovers there are out-buildings, unique site issues, atypical construction or design, the fee for the appraisal will increase, as it will require more time from the appraiser to complete the appraisal. The same can apply to title work, especially in outlying areas that are not platted, as well as for property inspections as a result of deferred maintenance. These items are not known at the time the bank would issue a GFE, and only reveal themselves during the processing of the loan. Under the current 10 percent tolerance, even minor increases can cause an out of tolerance condition when there is a small loan amount. Banks do not control these third party charges, even in the case of affiliated companies which are operated separately. These companies have to ensure that all transactions are "arms-length" in nature and that charges are bona fide. As proposed by CFPB, the zero tolerance would in some ways force price collusion among parties, which will not benefit consumers. The current 10 percent tolerance works well, and unless the CFPB has documented evidence of abuse, ICBA believes changing the tolerance is unnecessary and would result in higher settlement costs overall.

3. **Timing of Settlement Disclosures- Do not require delivery to the borrower three business days prior to closing.** Requiring the customer to wait three business days to close after receiving their Settlement Disclosure will lead to more consumer complaints. Consumers want to close sooner, not later. With the safeguards provided by the changes in Regulation Z on mortgage loan officer compensation and the requirements regarding what can and cannot change on the settlement disclosure, consumers should not experience the "bait and switch" tactics that were used by some unscrupulous lenders in the past. For refinance loans, the additional three business days when combined with the three-day right of rescission period will now stretch the closing process to at least a week or more. Purchase money loans have other parties to the transaction such as the property seller or builder and moving companies for both the borrower and property seller, which will be delayed as well. Additionally, real estate purchase and sales contracts all contain penalties if the borrower fails to act in good faith to complete the transaction. It is likely that if a borrower were to decide to cancel the transaction during the three business days prior to settlement, they would face loss of their deposit and possible additional financial penalties from the property seller. This is not a right of rescission, so the borrower has no right to cancel at that point. However, allowing the three business days could infer that right, thereby adding to confusion on the borrower's part. Further extending the timeline by adding the additional three business days will lead to increased costs and frustration to purchase and move into a home. Providing the customer 24 hours to review the settlement statement and obtain the funds needed for closing is more than adequate.

4. **Providing Settlement Disclosures- Allow the lender flexibility to determine who provides the settlement disclosure.** Many banks currently close refinance loans at the bank's offices and as such they prepare and provide the settlement statement. This is done to save consumers money by not having to pay attorneys fees and speeds the process up. However, purchase money loans are usually closed at the title company. Having this flexibility helps community banks to

deliver the best service at the lowest possible cost. ICBA would urge the CFPB to continue to permit this type of flexibility by allowing the lender to choose the best way to provide the settlement disclosures.

5. **Record Keeping and Data Collection- Permit lenders the choice of paper or electronic format.** While many community banks keep imaged (PDF) copies of loan files including all disclosure forms, many community banks also still keep paper loan files. Few keep loan files in a "machine readable format" which would permit the CFPB or other regulator to obtain or extract certain data from the disclosure forms. Imposing this type of requirement on the industry will require major system upgrades costing thousands of dollars, which would be hard for a small bank to justify. We request that the CFPB permit lenders the choice of using paper or imaged (PDF) format for record keeping and data collection purposes rather than requiring data to be maintained in a "machine readable format."

6. **Annual Percentage Rate calculation- Do not change the components used to calculate APR.** The APR calculation is embedded in every loan processing and core banking system currently in use today. Any changes to the components that comprise APR would require additional upgrades to that system which will be very costly, and changes would also require a massive retraining of all staff. There is additional concern that inclusion of additional items into the APR calculations would drive the APRs higher causing more loans to be higher-priced mortgage loans which require escrows for taxes and insurance. This would pose problems for many community banks, which do not have the ability to escrow for taxes and insurance. Many community banks today will not make loans that fall into the higher priced mortgage loan category because of their inability to escrow. If more loans fall into that category due to the inclusion of additional fees, lending by community banks will be curtailed further. This condition could be further exasperated by small balance mortgage loans which are common in many rural areas. The APR, while intended as a way for consumers to measure the "true cost of credit" they are seeking, is confusing for many consumers. Changing the components that comprise the calculation will only add to that confusion while imposing an enormous burden on the community banking industry to update systems, train staff, revise materials and change mortgage loan advertisements for compliance.

7. **The Forms- Drop the "average cost of funds" and the "total interest percentage" from the Loan Estimate and Settlement Disclosure.** As discussed in several previous comment letters on the forms themselves, ICBA strongly urges that the "Average Cost of Funds" and the "Total Interest

Percentage" categories be dropped from the Loan Estimate and Settlement Disclosure. Neither of these items provides any value to the consumer, and will likely cause additional confusion. Further, since these are completely new data fields, all loan origination document preparation systems will have to be changed to support these two items, which will be very costly. Developing the cost of funds rate for the lender creates an additional set of issues for lenders. What rate does a lender use - deposit rates, warehouse line cost, Freddie Mac or Fannie Mae posted rates, correspondent investor rate? Will this result in additional record keeping on the part of the lender to retain and store all those various rate sheets? Will the lender be penalized based on how much spread there is between the stated cost of funds and the interest rate on the loan? We would hope the CFPB can provide clarity around the need for these items and work with the industry to find a better solution than what's currently proposed.

8. **Costs and Implementation- will reduce availability of credit and increase consumer costs.** The costs to implement these changes are difficult to estimate. Community banks rely on their IT and data processing vendors to support these changes, some of which will be covered by maintenance agreements. There are also staff costs to retrain the entire industry which are measured not only in terms of dollars, but also in lost productivity and delays while the industry transitions from the current forms and rules to the new forms and rules. We are concerned that given the scope of the changes as outlined in paragraphs 2, 5, 6, and 7 above, they have the potential to cause significant costly upgrades and changes to most bank loan origination, document preparation, and core operating systems. These costs could drive many small banks to exit the mortgage lending business, even for loans held in portfolios, which will severely restrict credit in many rural areas. Those community banks that do remain in the business will likely have to increase their prices to cover these costs. These costs for items that add no value or protection to the consumer will end up increasing the cost of credit and reducing the availably of credit. ICBA strongly urges the CFPB to reconsider these provisions in the rule making. Finally, ICBA recommends that the CFPB conduct a BETA test of the finalized forms and proposed TILA/RESPA rules on real loan transactions done by community banks, large banks, and small and large mortgage bankers. This will enable the CFPB and the industry to see how these new forms and the revised TILA/RESPA policy work and will be valuable in crafting a successful industry wide implementation.

The ICBA appreciates the opportunity to work with the CFPB on this very important initiative. We believe it's important to "get this right" so it will yield greater benefits to consumers and lenders alike. To help facilitate that process, we suggest the CFPB engage in an Advance Notice of Proposed Rulemaking (ANPR), which would allow all stakeholders to comment on the proposed forms and provide feedback on potential policies that would govern their use. We look forward to participating in the rule making process with the CFPB staff. If you have any questions, please contact me at 202-821-4436, or ron.haynie@icba.org

Sincerely,

Ron Haynie
Vice President- Mortgage Finance Policy
Independent Community Bankers of America

Cc: Benjamin Olsen, Consumer Finance Protection Bureau
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