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TESTIMONY OF

MOE VEISSI, 2012 PRESIDENT

NATIONAL ASSOCIATION OF REALTORS®

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON FINANCIAL SERVICES SUBCOMMITTEE ON INSURANCE, HOUSING AND COMMUNITY OPPORTUNITY

HEARING ENTITLED

"MORTGAGE DISCLOSURES: HOW DO WE CUT THE RED TAPE FOR CONSUMERS AND SMALL BUSINESS"

JUNE 20, 2012

Introduction

Madam Chairwoman, Ranking Member Gutierrez, and members of the Subcommittee, I am Moe Veissi, 2012 President of the National Association of REALTORS® (NAR,) from Miami, Florida. I have more than 40 years' experience in the real estate business and I am the Broker/Owner of Veissi and Associates. In 2002, I served as president of the Florida Association of REALTORS® and have had the honor of serving in numerous positions at NAR. I thank you for the opportunity to participate in this hearing on behalf of the more than one million members of NAR. NAR represents a wide variety of housing industry professionals committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers.

In my testimony today, I would like to discuss proposed changes to the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending (TILA) Act disclosures and regulations. But before I begin, I would like to thank the Chair and the Financial Services Committee for all of their hard work on extending the National Flood Insurance Program. As you know, the flood insurance program is vital to home owners and the housing industry in general. We strongly support your efforts to secure a long-term extension to this vital program.

Initial Effort on GFE/TIL

The Consumer Financial Protection Bureau (CFPB) is currently working to combine the Truth in Lending Act (TILA) Disclosure with the RESPA Good Faith Estimate (GFE). NAR has participated in that effort and is a strong supporter of reducing duplicative paperwork and combining these two forms provided the combined document includes the statutorily required elements of both laws. The CFPB's proposed initial disclosure or "loan estimate" does a fair job of combining the GFE and the TILA disclosures but still requires some additional work and testing. However, we have developed several concerns as the CFPB's task has expanded beyond simply improving the initial disclosures.

Closing Disclosure and Underlying Regulations

The process undertaken by the CFPB focused on the development of initial disclosures for several months, implying this was going to be their main focus. However by the early winter of 2012, it

could be ascertained by evaluating the draft forms that CFPB intended to extensively rework in the underlying regulations.

To date, however, the underlying RESPA/TILA regulations that spell out how the new form will be used have yet to be released or discussed in any comprehensive form other than a limited outline and questions distributed to a Small Business Regulatory Fairness review panel. Even this limited release raised many questions and indicated the CFPB was considering going in problematic directions with several items. NAR joined several other stakeholders in sending a list of concerns to the CFPB and asking that the Bureau expand the comment process to cover the proposed changes to the underlying regulations. NAR also asked that the CFPB follow an Advanced Notice of Proposed Rulemaking (ANPR) process to give the public, industry, and other stakeholders two chances to provide formal commentary and ensure that this effort is successful, does not impose undue costs and burdens on both industry and consumers, and achieves the desired result of simplification and clarity.

Furthermore, implementation of the RESPA/TILA disclosures needs to be considered in conjunction with the implementation of other Dodd-Frank Act amendments that are closely related, particularly the Qualified Mortgage/Ability to Repay (QM) rule. Not doing so will cause massive confusion and impose significant costs on the industry and consumers. Since the QM rule is not expected until later this year and the RESPA/TILA proposal is expected in July, this alone is reason to split the RESPA/TILA process and only release an ANPR in July. It will be hard to provide meaningful or informed comment with several key rules such as the QM, Qualified Residential Mortgage (QRM), Loan Officer Compensation and Fees and Points rules still outstanding since all of them factor into the RESPA/TILA process in significant ways.

Other Specific Concerns

The CFPB has indicated that it may require delivery of a Settlement Disclosure three days before closing. The CFPB is also considering requiring re-disclosure and an additional three-day waiting period if certain charges change beyond a specified tolerance during the three days before a scheduled closing. Waiting periods can be very costly and disruptive to consumers, such as, for example, when a rate-lock will expire during the waiting period, or if the consumer would be in breach of a contract to purchase or sell real estate by a date during the waiting period. These costs

need to be considered as a factor in the decision whether an additional waiting period should be required. Furthermore, any waiting period should allow for a broad waiver and only be limited to significant changes to loan terms.

A related concern is that it is not clear who will provide the required Settlement Disclosure. Lenders have information about the loan, while settlement agents have information on settlement charges. If the lender were required to prepare and deliver the disclosures, what duty would lenders have to verify information from settlement agents? If lenders prepare the Settlement Disclosures, they will need final closing cost charges typically determined by the settlement agent well before closing and longer if they have a duty to investigate the accuracy of the information. If a lender were to find some information has become inaccurate, a closing may be significantly delayed. In short, neither the settlement agent nor the lender is well positioned to complete the document. Thus a fundamental change in settlement responsibilities and competencies would be required in order to transform the final TILA disclosure and the HUD-1 into a single document. At the very least, this would be a costly and complicated transition and may very well be unworkable because of the differing legal and regulatory responsibilities and obligations of lenders and settlement agents. The CFPB should seriously consider abandoning the effort to combine to the two documents.

Finally, the attempt to merge the HUD-1 with the final TILA disclosure may need to be severely limited as the two documents serve different purposes. It might still be possible to provide RESPA related information along with the final TILA disclosure information but all parties in the transaction need additional time and flexibility when it comes to the final closing information not associated with loan terms. The fact is numerous issue scenarios can arise in the final days before closing unrelated to the mortgage that need to be handled up to and until closing. The settlement statement is often where these adjustments are made or issues rectified; the closing should not be needlessly held hostage to inflexible rules. Therefore, we recommend the TILA disclosure and RESPA settlement disclosures maintain significant levels of distinction. It may make sense to repeat TILA information on the final settlement statement, but it does not make sense to hold the settlement statement to the kind of three day waiting period the TILA requires.

Tolerances Still Problematic

The CFPB proposes to implement tolerances similar to those currently in Regulation X (RESPA) and developed by the 2008-2009 RESPA reforms implemented in January of 2010. First, we would note that these existing tolerances were instituted under questionable legal authority as RESPA only requires a good faith estimate be made of the closing costs. The CFPB is suggesting that more charges be subject to zero tolerances (especially for firms with affiliates in the transaction) that cannot change from initial estimates. This will create a need to overestimate settlement charges in Loan Estimates in order to stay within the required tolerances. Many believed the tolerances themselves would lead to increase borrower closing costs as GFE estimates are often carried over to closing; as anticipated, closing cost have gone up since the HUD RESPA reforms were instituted. CFPB should instead consider liberalizing the tolerance system by making lenders responsible only for the charges they control. Absent that, charges that are inherently variable, such as recording fees, should be removed from the tolerance calculation as should charges related to state and local taxes and fees.

In addition to keeping and perhaps tightening the tolerances, the CFPB has indicated that it is considering revising the Regulation X (RESPA) definition of "application" to eliminate the inclusion of "any other information" the lender deems necessary. This change would make preparation of an accurate Loan Estimate impossible. It would be inconsistent with Regulation B, which recognizes that underwriting takes time, and run counter to Regulation C, which requires lenders to collect information that is covered by the phrase "any other information." The six items required under the application definition are inadequate in and of themselves to constitute a meaningful application. This was borne out during the RESPA implementation when numerous lenders were misled into thinking that had to issue GFEs with just the six items and found it impossible to do so and stand behind the information in them.

Furthermore, the effort to turn the GFE into a "shopping" document has proven unrealistic. Half of the ills the revised GFE was supposed to address no longer exist, as exotic loan products have left the market and are all but banned for the future by other regulations such as QM. Even were they not to be banned, rules such as the Federal Reserve's Loan Officer Compensation rule remove any incentive to steer consumers to these products even if they still exist. In the already tight and growingly complex mortgage market, borrowers are just happy to qualify for a loan at a rate they

shopped for that is agreeable to them. The current definition for application serves the purpose of providing borrowers with a GFE or Loan Estimate that informs them of related closing charges (the purpose of RESPA). It does not need to be changed.

Conclusion

The housing industry is recovering but still faces headwinds. NAR opposed risky lending in 2004 when it issued its subprime lending policy that called for strong underwriting on mortgages and measuring a person's ability to repay. We feel now that the pendulum has swung too far. With numerous new regulations on the horizon, fewer and fewer otherwise qualified people will be able to get a loan and there will be fewer lenders to lend. Congress and the Administration need to seriously re-examine the many well-meaning laws and regulations that have come out of the financial and mortgage crisis, including the RESPA/TILA harmonization efforts. Some have merit and need minor fixes; others may have been well-intentioned but are proving problematic at best. They deserve a second look to ensure that the still fragile recovery stays on track and to protect the long-term value of homeownership in the U.S.

The CFPB should carefully tailor its efforts to harmonize RESPA and TILA disclosures to ensure that consumers truly benefit, the process is truly simplified, and the associated costs of implementation are cost effective for the benefit provided. There is danger if these core goals are being overlooked to the detriment of all involved.

NAR thanks the Subcommittee members for their attention to this issue. We look forward to working with Congress and the Administration on efforts to address the challenges still facing the nation's housing markets.