NAMB

The Association of Mortgage Professionals

Written Statement of
The National Association of Mortgage Brokers

House Financial Services Committee
Subcommittee on Insurance, Housing
& Community Opportunity
“Mortgage Disclosures: How Do We Cut Red Tape for Consumers and Small Businesses”
June 20, 2012

Chairwoman Biggert, Ranking Member Gutierrez and members of the subcommittee, thank you for this opportunity to share our mortgage industry viewpoints and small business experiences with the Subcommittee in order to reduce consumer confusion and costs in the mortgage origination and closing process.

NAMB appreciates and supports the CFPB’s process to help the consumers understand the loan origination process and costs by combining the mortgage disclosures under TILA and RESPA, and furthermore clarifying the specific guidelines for all industry professionals. The following are comments with regard to major topics raised in the Consumer Financial Protection Bureau (CFPB) in the recent SBA Panel process.

For more than 35 years, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) have required lenders and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan’s terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry. The Dodd-Frank Act requires the CFPB to solve this problem by combining the disclosures to improve consumer understanding of mortgage loan transactions, and facilitate industry compliance with TILA and RESPA. Our concern is not the specific merger and TILA and RESPA but the mosaic of ALL the regulations the CFPB is attempting to finalize within the time-frames required in the Dodd-Frank Act. Qualified Mortgage, Qualified Residential Mortgage, Loan Originator Compensation, and others must be issued in final within a very short time window. The ability of industry to examine all proposals and respond to the CFPB and the CFPB to examine all comments and coordinate these rules without significant probability of unintended consequences is next to impossible. The CFPB should ask for the obvious; Industry and the CFPB need more time to coordinate the various changes coming from an a timeline created by Congress. All Dodd-Frank rules relating to mortgage market should be delayed for at least 18 months for the good of the economy and the market. If this is done wrong, the damage to the recovering housing market could take years to correct.

1. INTEGRATED INITIAL AND CLOSING DISCLOSURES

There is consumer confusion with regard to the TILA and RESPA forms that result in increased costs. Past studies have been performed by HUD and the Federal Reserve confirming the confusion. It is imperative that the loan originator deliver the Loan Estimate to the consumer to help them understand the forms and the costs in order to make an informed decision. The goal is for the consumer to begin the shopping process immediately, therefore the mortgage broker originator should continue to be able to provide the Loan Estimate.

Consumers shop mortgages for loan amount, monthly payment, closing costs, interest rate and product, which include loan type and down payment. The new streamlined disclosures show the loan features with more clarification, detail, and less duplication.

Currently consumers often choose the higher costs loan during comparison shopping due to the originator charges and credit section of the Good Faith Estimate. The same form for the same loan is completed differently depending on the type of originator: a broker, a mortgage banker or a bank.

It is important that specific guidelines be generated on the new disclosures to eliminate confusion and create more consistency. The goal should be to avoid the 2010 GFE confusion, which to this day, has different lenders with different interpretations on how to complete the GFE.

The training that goes with a TILA/ RESPA form change is significant. A small broker shop, one with few employees, training entails closing the office for days to ensure proper training. NAMB surveys indicate on average, a typical small mortgage brokerage shop has 5-7 employees. Loan origination stops for many offices until training is complete and understood causing burdens to small market participants. Clear, specific guidelines, with no need for interpretation need to be given to all parties at the beginning of this change to eliminate excessive training and inconsistencies throughout the industry.

Disclosures are printed by computerized loan origination software. Changes must be made with the software companies and all lender, wholesale and broker computer systems. All wholesale lenders will have to reprogram their systems, which is a time consuming and costly process. Software changes and training will result in higher costs to the consumer as evidenced by the 2010 GFE changes which cost industry (and indirectly the consumer) a considerable amount of money not only in system changes but the larger cost, training.

Increase compliance costs will also occur with this implementation. RESPA and TILA are complex laws. Lenders must ensure compliance and employ attorneys and auditors. With every change, compliance must be monitored. HUD has provided FAQs in an attempt to help originators comply with their RESPA regulations, however there is still a lack of consistency throughout the mortgage lending industry.

It is very difficult to know how much time will be required to re-educate originators and staff, however it will significantly impact the consumer and small business. Depending on the position held in the brokerage shop, it is likely that the mortgage staff needed at least 50 to 100 hours of education with the 2010 GFE change.

2. DEFINITION OF LOAN APPLICATION

Under TILA and RESPA, a lender is not required to provide the early TILA disclosure and GFE until it has received an application. The CFPB is considering a proposal that would amend the current definition of loan application to constitute receipt of:

1)the borrower’s name;
2)monthly income;
3)social security number to obtain a credit report;
4)property address;
5)property value estimate; and
6)loan amount.

The proposal, however, would eliminate the current seventh element of the definition, which reads “any other information deemed necessary by the [lender or mortgage broker].”

Mortgage Broker shops would be able to issue an accurate Loan Estimate with 6 elements, however we do believe that 7 elements create more flexibility and accuracy for the consumer. For example, it is also important to know the loan product and the down payment for comparison shopping purposes, which would be included in the 7th element.

3. CHANGES IN SETTLEMENT COSTS/RE-DISCLOSURES

The CFPB is considering rule revisions to improve the reliability of the estimates lenders give consumers shortly after application, while largely preserving lenders’ flexibility to respond to unanticipated changes during underwriting. Under the current RESPA rules, when a lender provides a consumer with an estimate of the cost of its own services, the actual cost cannot be higher than the estimate unless there is a valid change of circumstances. We are considering a proposal to apply the same limitation to estimates of services provided by the lender's affiliates or by companies the lender requires the consumer to use. In contrast, for services provided by a company over which the lender has less control, the proposed rule would leave in place the current 10% tolerance requirements.

A change of circumstance happens on every loan when you lock your loan. Most mortgage brokers see about 4-5 additional changes consistently. Examples include: lock extensions, loan amount changes, sales contract renegotiation, loan to value, product change and appraisal issues. With every change the loan must go back through re-disclosure and underwriting. This process may result in a lock extension that is paid by the consumer. The additional time frames could also result in missed closing dates further resulting in expenses directly to the consumer such as: moving, rent, storage, child care and time off work.

Services that the originator selects, are subject to a 10% tolerance. This process is currently working with minimal costs to the broker and the lender. The title company charges the broker and lender through the cost to cure process. An example of a tolerance violation could be when a lender requires a title policy endorsement, a survey, or a 2nd appraisal. If the CFPB were to issue "no tolerance" rule this would create a burden on brokers, lenders and providers that would increase costs to consumers.

It is difficult to count the cost of re-disclosure since it is handled very differently at all companies. Some companies have a staff dedicated to disclosure review and re-disclosure. In smaller companies it may be handled by the originator. If a typical re-disclosure takes an hour to prepare and review, with wages in the $30 to $40/hour range for specialized staff with benefits, it can easily cost several hundred more dollars on each loan to prepare and review the changes.

4. PROVIDING SETTLEMENT DISCLOSURES

TILA's MDIA has built in a time frame for the consumer to review fees prior to going to closing. This process created additional staff and procedures for wholesalers and additional costs to consumers.

With the safeguards provided by the current and proposed TILA, RESPA and MDIA, there should be no reason to delay settlement for an additional 3 days.

Completing a settlement disclosure 3 days prior to closing will create additional costs, staffing and training. The costs could be significant to the consumer. The increased costs include, but are not limited to: lock extension fees, additional credit report pulls, moving delays and contract extensions.

In addition to consumer costs, there are also other parties involved in purchase transactions. When a consumer is buying a house and the seller is buying another house on the same day, our delays will create their expenses. Unless the exact date of settlement is absolutely known, the exact settlement figures cannot be determined.

The change in terminology and the numbering of the Settlement Statement to the Settlement Disclosure will cause a major reprogramming for lenders, brokers and title companies. This process will be a major undertaking for all parties.

The Settlement Disclosure proposed by the CFPB seems be proposing a form that could be confusing to consumers. Their is double disclosure of the commission paid by consumer to those entities brokering loans. The commission amount is disclosed in the Settlement Disclosure document and reflected in the rate (by the consumer picking a higher rate in order to pay for costs and fees) and disclosing that commission amount on the Settlement Disclosure. In addition, the CFPB should be vigilant in requiring lenders, credit unions and banks, which act in the capacity of brokering a loan, follow the loan origination and other rules applicable to any entity that brokers a loan. We believe the CFPB should increase market understanding of this legal requirement. We would like to emphasize the importance of giving specific direction to the industry professionals with very little room for interpretation to eliminate inconsistencies.

5. RECORDKEEPING AND DATA COLLECTION

The CFPB is considering requiring that copies of all Loan Estimates and Settlement Disclosures provided to the borrower be maintained in a standard, machine-readable, electronic format. The retention period for any new requirements is to be determined. To reduce the burden on small entities, the CFPB is considering exempting small entities from these requirements.

Most small business's keep their files in paper and PDF format. There would be a significant cost to store files into a machine readable format if that means, for CFPB's purposes, a paper document that is scanned into a computer system. It is not clear from the CFPB's description of their proposal what machine readable requires. Everyone that has interest in the transaction should maintain supporting business records. The CFPB should work with the state regulatory agencies to ensure a uniform record keeping process.

6. ANNUAL PERCENTAGE RATE

The CFPB is considering including in the calculation of the Annual Percentage Rate (APR) some common loan charges that are currently excluded from the calculation. The standard disclosure of the cost of credit under TILA is the APR, which is the finance charge expressed as a yearly rate. TILA defines the finance charge broadly to include "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit" and "does not include charges of a type payable in a comparable cash transaction." Despite this broad definition, the regulations exclude many types of charges from the finance charge, especially for mortgage transactions. Concerns have been raised that these exclusions undermine the potential usefulness of the APR as a simple tool to compare the total cost of one loan to another, a basic purpose of TILA.

Very few consumers understand what APR means. Many have mistakenly seen the figure on the TIL disclosure and assumed it was their interest rate. Others assume it is the actual interest rate rather than the Note rate. Most simply ignore it. Consumers do not realize that they are being presented different loan terms that produce a different APR. It is very common to see APRs on different loan-to-value ratios that have dramatic variances since lower loan-to-values do not have mortgage insurance. Consumers are not aware of how this affects the APR. Consumers hear an advertisement for a low APR and don't realize that a shorter term produces a lower APR. Adjustable-rate mortgages can produce an APR that does not align to what borrowers may eventually pay. Even loan size can affect the APR. Low loan amounts can easily trigger HOEPA violations. If CFPB removes exclusions, more loans will fall into the violation category, which could affect state law. For example inclusion of escrows in high closing costs states could have an impact on consumers applying for smaller loan amount mortgages.

The majority of small mortgage broker offices utilize software to operate and comply with the various legal parameters required by state and Federal law. The change of APR fees will cause the wholesale lenders to reprogram and retrain which will take time, money and staff, which will ultimately be passed on to the consumer.

NAMB looks forward to continuing to work with the Consumer Financial Protection Bureau in its mission to protect the consumer and support small business. We suggest again to the Subcommittee, the Dodd-Frank Act rules require for mortgages should be delayed at least 18 months in order for all unintended consequences to be removed, as best as can be done, in order to protect consumers and market participants.