American Bankers Association

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Mr. Rajeev Date
Special Advisor to the Secretary of the Treasury
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: RESPA-TILA Integration; Know Before You Owe Prototypes, Round 6

Dear Mr. Date:

American Bankers Association ("ABA")[1] commends the Consumer Financial Protection Bureau ("CFPB") on the initial draft mortgage settlement forms that would merge the Truth in Lending Act and the Real Estate Settlement Procedures Act disclosures as required by the Dodd-Frank Act. We congratulate CFPB for providing an open process that allows for exchange and communication, and for promoting input from banking institutions. ABA members have extensive and sustained experience in understanding consumer financial needs, and we are pleased to offer our insights to advance the success of this reform process.

The comments set forth below represent an initial reaction to the first iteration of the draft mortgage settlement forms released by CFPB in November 2011, and labeled as the "Hornbeam" and "Ironwood" Settlement Disclosure Forms. Our comments focus on the format of the draft forms, and on their general clarity and intelligibility. As CFPB has recognized, the draft forms are being released without the necessary context of the rules that will determine the timing of the disclosures, the binding nature of their content, and the responsibilities that will attach to the issuer. These elements are crucial to determining whether the disclosure reforms are meaningful and whether banks can effectively implement the changes. We understand that the Bureau will entertain discussion about these issues in future steps of the process.

Overall, we believe that these draft settlement forms are a noticeable improvement over existing forms—they are more visually friendly and they set forth more comprehensible disclosures. Our specific comments are set forth below on a page-by-page analysis.

We also note that our comments are in general accord with Joint Industry comments filed on December 5th, and signed by American Financial Services Association, Community Mortgage Banking Project, Consumer Bankers Association, Consumer Mortgage Coalition, Housing Policy Council, and the Mortgage Bankers Association. ABA's comments below add certain views and observations that our bankers believe are important, but our overall positions remain consistent within the joint industry's views.

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[1] The **American Bankers Association** represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

There are certain preliminary issues that are essential to this reform process, and that must be considered by the Bureau as this rule advances to formally publishing a proposed rule.

Legal Responsibility: Under current law, the HUD-1 settlement statement must be prepared by the settlement agent, while the TILA disclosures must be prepared by the lender or creditor. Logically, the integrated good faith estimate disclosure will still be prepared by the creditor, but real questions arise regarding who is to prepare the settlement statement. Since this integration process will blend the final TIL and the HUD-1 settlement statement, there is a vital logistical problem that the rules will have to confront. Presumably, the Bureau will not require that lenders act as the closing agents, which means that two different entities will necessarily affect the preparation of one single form. ABA warns that that this will require unique synchronization rules that will compel timing flexibilities to ensure that all information is properly exchanged. In addition, as it pertains to these final cost disclosures, there are existing re-disclosure requirements that apply to one entity (creditors) when costs exceed certain percentages; compliance with these regulatory mandates directly affects the timing for the duties imposed upon the other entity (closing agents). As discussed above, such issues must be synchronized, and we anticipate that any such harmonization will require intrusion into existing state laws that may currently mandate rigid timing rules.

State Law: Related to the previous comments, ABA notes that these forms are being crafted without any consideration of state legal requirements. State and local disclosure mandates are often in variance with federal disclosures, and are specific in terms of mandating the fees that must be disclosed. State forms are generally required to be issued separately from the RESPA and TILA forms.

We raise these important issues because disclosure variations cause considerable complexity and risk when constructing compliance systems, and more importantly, they add an overlay of disparate shopping figures that swell the intimidating disclosure packages that consumers must consider. We believe that the potential for cognitive distortion is so high that CFPB should consider explicit preemptions on such varying disclosure requirements. A truly uniform and comprehensive set of fee disclosures is a most important aspect of this reform, and competing forms are opposite to the objectives of this overall process.

Duplication and Consistency: In various places, the new prototypes have duplication of information for no clear reason. We describe these in our comments below. In addition, we point out that there are numerous instances where the fee appellations in the settlement form are not consistent with those employed in the initial GFE disclosure prototypes. As you know, the consistency between initial and final disclosures was a very important part of HUD's efforts in their 2008 RESPA reform activities, and continues to be a crucial factor in ensuring that mortgage shoppers are fully able to identify discrepancies between the costs they were quoted in the shopping phase, and those that are actually charged at the closing table.

We note, for instance, that the Bureau must develop consistent usage with respect to the entity that is actually lending the money. The "creditor" has been alternatively referred to as "lender" or "creditor" through the Bureau's various iterations rounds. In addition, the lender or creditor must be distinguished from the "broker" or the "originator." All these terms have very specific definitions across multiple regulations, and nomenclature will matter greatly as the Bureau integrates these forms and creditors implement them into their systems.

We don't see a need to provide an exhaustive list of variations in terminology, as we understand that these prototypes will be improved as iterations advance. Since the wording in these forms is likely to evolve, we cite these examples only to illustrate the types of careful synchronizing that must be achieved within and among the initial estimates and the final forms.

Specific Comments:

Below are our specific comments arranged in a page-sequential order. As always, ABA submits these comments in the spirit of ensuring that this initial step is conducive to workable disclosure for all stakeholders in the mortgage finance system.

Page 1:

- In the row entitled "Escrow Information for Taxes and Insurance," there is a specific listing for a $430/month escrow payment that is repeated from a different row above it, entitled "Estimated Taxes and Insurance." We note that these repeating figures are redundant and optically confusing. We think that this "Projected Payments" block needs to be better configured to express the information only once. The additional box of whether an escrow is or is not required could be set out separately, below the "Projected Payments" box in a manner that would be understandable and apparent to the reader.

- There is some doubt as to what would be disclosed in "Projected Payments" block in instances where there is no escrow established in connection with the loan. In such instances, it is unclear whether these elements are to be left blank, or whether the creditor would still have to estimate such amounts to ensure that the consumer is aware of his/her responsibility to pay such amounts "separately from your loan payments." ABA would recommend that if an loan does not carry escrow, then the amounts that the consumer must pay should not be itemized in this form.

- To the extent that the Bureau decides to retain the payment calculation row entitled "Estimated Taxes & Insurance," we believe it would be clearer to the consumer if the tax and insurance charges were separately listed. The aggregation of these charges can be confusing, and go against the objective of ensuring that the consumer understands obligations that are owed to entirely separate entities.

- There are various abbreviations on this page that can cause some confusion. We believe that the reference to the "AIR table on page 4" need to spell out that it refers to the "Adjustable Rate Table." This abbreviation does not make apparent what is being identified in this disclosure. Likewise, the word "MIC" should be spelled out as "Mortgage Insurance Case Number" to clearly articulate what it stands for.

- We note that there is often a misunderstanding between "closing" and "disbursement" dates. Including only the settlement date under the "Settlement Information" header can confuse the borrower. We recommend that the "closing" date be included somewhere in the first page, perhaps under the "Loan Information" category.

- The block entitled "Closing Costs" is somewhat confusing, because under both prototypes, it only lists a "Cash to Close" component. We note that this sum includes the settlement fees that actually paid in cash, as well as other costs that are paid at other times in the transaction through methods other than moneys to be brought to the closing table. The overall header and the specific category are therefore misleading, as the consumer need not come up with the full amount of the "cash" that is implied by the plain meaning of the disclosure. Note that even in deals where the creditor guarantees that there will be no payments due at the closing table, this block would list a dollar amount that will surely surprise the consumer.

- We note that Section 1462 of the Dodd-Frank Act requires that there be a disclosure notice for consumers who waive escrow. This mandate for a "clear and prominent" statement is omitted from these prototypes. We recommend that the Bureau list this disclosure on page one, in connection with the escrow information figures that appear in that page.

Page 3:

- ABA members that reviewed the prototypes prefer the lay-out set forth in the Ironwood form. This lay-out is visually clearer, and does not waste needless space on fees paid outside of closing.

- Appraisal Fees are listed in these prototypes under Line 906, and they would appear as one single amount that would aggregate any fees paid to the appraiser and the appraisal management company. ABA believes this is the ideal methodology for disclosing this cost, as it will be the clearest way to inform the consumer. The settlement form must be designed to clearly convey costs to the mortgage shopper, and any attempt to dissect this fee into separate amounts for the service component and the management component of the service would not advance consumer comprehension in any way.

  We make this point because we understand that arguments have been advanced that any amounts retained by management companies should be broken out as a separate charge. The reasoning behind such an approach is not related to comprehension of the form, but rather, to attempt to force the separate disclosure of the fee paid by the lender to the appraiser for other market benefits that do not relate to consumer understanding. Such business-to-business necessities and other arcane regulatory requirements should not be used to clutter this disclosure form, to the detriment of the consumer.

- ABA understands the Bureau's effort to use only the simplest possible language in the consumer disclosures. We would counsel, however, against the use of lingo or vernacular when describing specific fees and payment options, as such usage will only confuse consumers and will lead to compliance uncertainty once the actual rules are written. For instance, the use of the term "Prepaids" in line 1200 constitutes an informal moniker that has different meanings when referring either to TILA-related costs (prepaid finance charges) or alternatively, to items paid before (or outside of) the closing. We recommend that this header be amended to better describe that the fees listed therein are deposited or paid separately from the closing.

- There is some confusion regarding the definition of "Paid Outside of Closing." The Bureau must clarify whether this term applies to payments paid by the lender to settlement service providers, or to payments by borrowers to anyone in the transaction prior to the closing, or whether it applies to both.

Page 4:

- As we have expressed in past comments, we are concerned that the AIR disclosures do not adequately inform consumers of the difference between loans with similar initial rates and lifetime ceilings, where one loan had a premium initial rate and the other loan had a deeply discounted initial rate. As shown in the prototypes, the AIR table does not disclose that if the index remains unchanged, the rate would increase or decrease to the fully-indexed rate. Nor does it disclose what the payment would be at the fully-indexed rate. ABA recommends that the ARM loan disclosures should include the fully-indexed rate.

- In both prototypes, the placement of the AIR table misfits the overall setting of the disclosure in a way that could lead to oversight by the consumer. In short, this table appears below information that relates to settlement costs only, and yet the table pertains to important terms that apply to the actual loan product. ABA recommends that the Bureau rethink the positioning of this table.

- It is unclear what the form means by "$0 over limit." From our current understanding of the RESPA rules, we presume that this means that this block will list the refund that is owed to the consumer. Such a conclusion is difficult to derive from the title of this block—"Increase Between Loan Estimate and Final Closing Costs."

- It appears from the "Limits to Increases" table that the Bureau will continue the unwise and somewhat odd provision that currently exists under RESPA that would penalize the creditor for fees that are not paid by the borrower (through a lender credit to the borrower, or through a seller-paid item). In many instances, the lender (or seller) agrees to "cover" or pay for one of the fees or services required at closing. Often, that fee or service exceeds the price that was originally estimated in the GFE. In such circumstances, and under the methodology set forth under existing RESPA rules, the borrower would receive a windfall because tolerance refunds must be paid to the consumer regardless of whether the lender or the seller had responsibility for paying that fee or service. If this is the Bureau's intention, we recommend that there be a reconsideration of this construction, as it results in unjust outcomes and provides a heavy disincentive for lender credits that are of great value to consumers.

Page 5:

- ABA believes that the table set forth in the Ironwood prototype provides the superior format for the presentation of information.

- From a form reproduction perspective, we note that the inclusion of numbers into text forms can be very difficult to accomplish. This mixture of variable numerical figures and pre-set verbiage will be very expensive to implement.

- ABA believes that the TIP disclosure must be more fully considered by the Bureau. The disclosure can be misleading, and could result in erroneous choices by consumers. The TIP term would be in addition to other interest rate "constructs" that are currently imposed by TILA, and would therefore add a distinct and entirely unconnected number that the consumer is not likely to process effectively. Moreover, this figure cannot be adequately calculated in instances where the rate can fluctuate over the life of the loan. Finally, we are not sure whether the use of a TIP comparison would lead the consumer to a different product choice than they make through a straightforward comparison of APR.

  We understand that this new item is required by the Dodd-Frank Act, but its value is so questionable that the Bureau should engage in more focused consumer testing to determine whether it confuses consumers.

- ABA expresses its firmest dissent and reservations with respect to the new disclosure entitled "Lender Cost of Funds" (LCF). We understand that this new term attempts to implement another novel item mandated by the Dodd-Frank Act, which calls for the disclosure of the "approximate amount of the wholesale rate of funds" on the loan. We also understand that the Dodd-Frank Act did not adequately explain this disclosure, nor did it define what any of the mandate's terms mean.

  ABA urges that the Bureau consider this disclosure item with more care. We believe that the LCF is entirely worthless in terms of consumer understanding, ineffectual in terms of assisting consumer shopping, and even detrimental to the goal of ensuring concise and understandable disclosures to the consumer. Presumably, the Dodd-Frank Act intended to use this new disclosure term to force lenders to reveal their internal costs and thereby allow consumers to more fully understand what they were being charged. This dissection of internal costs will not, however, add any clarity to a consumer that is already beset by a slew of numbers that it must consider in determining the loan's value.

  We note that an informal count of all the numbers and terms included in this settlement form yields an amazing 143 figures that the consumer must absorb, digest, understand, and be able to compare. We cannot grasp how this additional cost of fund figure can in any way enhance the quality of the decision that the consumer must undertake in analyzing these 143 cost figures that are included in this settlement form.

  In addition, there are no definitions provided that would assist ABA members to determine how they must calculate this LCF figure. The "costs of funds used to make this loan" is a vague and ambiguous description and will require massive rulemaking efforts to establish a formulaic approach to ensure that all creditors are calculating this correctly and uniformly. In addition, the Bureau will have to provide dense instructions to consumers to prepare them to understand how they can use this figure.

  We further note that there is no clear way to utilize this LCF number in a rational manner that reflects accurate market choices. Assume, for instance, that a comparison among two loans reflects that loan A has a lower APR than loan B. How should the borrower decide whether a loan is "better" or "worse" if loan B has a higher LCF than loan A? What if the LCF number on both loans is equal? What if a loan has equal APRs, but Page 1 of the settlement form reflects that one loan has a lower "cash to close" figure than the other.

Should the consumer now refer to the LCF number to complete any additional cost decisions that are not reflected by APR and "cash to close"?

These examples reflect the reality that the use of the LCF figure for shopping purposes is entirely questionable. This doubt is exacerbated by the fact that this figure is presented within a settlement statement form that will presumably be delivered to the consumer right before the closing. ABA points out that the consumer can do very little with an LCF number at the end of the shopping and settlement process, since reaching this stage of the disclosures means they have already compared GFEs and have studied the fees and the interest rates that were disclosed in the initial forms.

We urge that the Bureau engage in a fuller analysis of the consumer protection value of this disclosure. We don't think the Bureau should incorporate this figure into the closing disclosures until it completes a fuller analysis of the term's sharp potential for misinforming and deluding consumers. The Bureau has strong authority under Section 1405 of the Dodd-Frank Act to exempt of modify any disclosure where there is a "consumer interest" involved. ABA would urge that the Bureau use this authority to take appropriate measures on this item.

Conclusion:

ABA commends CFPB in this first step toward integrating the final and closing disclosures under RESPA and TILA. We look forward to assisting CFPB in the further iterations of this process. If you have any questions, please contact Rod J. Alba (ralba@aba.com) or Ginny O'Neill (voneill@aba.com). As always, ABA remains willing to assist the Board with any questions and concerns that will arise in this and future phases of effort.

Sincerely,

Rod J. Alba
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