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June 05, 2014

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

Re: Amendments to the 2013 Mortgage Rules under the Truth in Lending Act (TILA)
Docket No. CFPB-2014-0009/RIN 3170-AA43

[Transmitted electronically to www.regulations.gov.]

Dear Director Cordray:

I am writing on behalf of more than one million members of the National Association of REALTORS® (NAR) to provide comments on the amendments to the 2013 Mortgage Rules under the Truth in Lending Act (TILA). NAR supports efforts to make the provisions of the Ability to Repay/Qualified Mortgage(QM) rule less burdensome to comply with.

The National Association of REALTORS® is America's largest trade association, including our eight affiliated Institutes, Societies and Councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of some 1,400 local associations or boards, and 54 state and territory associations of REALTORS®.

NAR appreciates the opportunity to comment on the cure section of the amendment as well as offering additional comments on ways to improve the QM rule.

The Cure Proposal

NAR supports the institution of a cure mechanism. We believe it is important that the only resolution of a mistake is for an originator to not be able to sell the loan on the secondary market or incur more buyback risk. However, we encourage the CFPB to avoid needlessly legalistic qualifying factors to the cure mechanism. Imposing these factors nullify the benefit of the cure mechanism by raising additional legal concerns about the legitimacy of the cure itself. For example, imposing a "good faith mistake" test seems to miss the point about what the purpose of the cure provision is.

Lenders will avail themselves of the cure provision within 120 days after consummation under the proposal. It is almost certain the need to cure will be because a secondary market participant or the lender's own review determined a mistake was made or the manner in which fees and points were calculated was not in compliance with some standard, be it the CFPB's or a market participant's.

The discovery of the need to cure will not likely be because a consumer has defaulted and now is seeking to claim that the lender did not make them a QM loan, and therefore cannot claim the safe harbor. All indications are that QM loans and near-QM loans meeting all the other ability-to-repay and QM standards are simply not loans that tend toward early payment defaults. If this were so, CFPB would be hard pressed to argue (as it does), that non-QM

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and rebuttal presumption QM loans will and should be made since an early payment default is strong evidence that one's ability to repay was not adequately measured.

For this reason, the good faith test seems superfluous and counterproductive. Routine errors occur all the time under the various laws governing complicated mortgage and real estate transactions. Originator, title, and secondary market systems routinely uncover such errors and refunds are issued. The existence of such systems and the manner in which errors are discovered as well as the attempt and desire to cure seems to be enough evidence of good faith that there should not be some complicated test that calls into question whether the attempt to cure is legitimate.

NAR supports the CFPB's plan to require a prompt cure. Such a provision is in line with other provisions governing the settlement process and ensures that consumers receive the funds that they are entitled to in short order, and that the non-QM loan quickly reverts to a QM loan. NAR also believes that the provision related to maintaining quality control procedures is important and abrogates the need for the good faith test discussed earlier.

Debt to Income (DTI) Overages

NAR supports the CFPB's proposal that DTI overages also be subject to a cure procedure. The calculation of DTI is complicated and often subjective. While it would also be potentially more complicated to cure a large DTI overage, for relatively minor overages, the challenge is likely to be less difficult. For this reason, offering some cure mechanism would be of benefit to consumers at least with regard to their access to credit.

Other Matters for CFPB's Consideration

In addition to the CFPB's worthy cure proposal, the CFPB should also memorialize in writing, via advisory opinions or regulations themselves, various oral guidance. Experience in the aftermath of the mortgage crisis has made lenders and their attorneys extremely reticent to accept anything but written guidance and regulations. Verbal pronouncements are simply ignored, especially when they contradict earlier pronouncements.

In particular with regard to whether an affiliate must count an entire charge or only that portion which is retained toward fees and points, the CFPB should put its admonition that only the portion retained be counted in writing. While this does not solve the problem of unfair discrimination against affiliates, it would provide some relief.

Similarly, CFPB (and other QM regulators such as HUD/FHA) should clarify what the 3% cap is based upon. Is it the amount proposed to be financed initially, the total loan amount, or the final loan amount? Those providing compliance guidance continue to debate these issues. The CFPB can do much to help consumers obtain affordable credit by clearly reiterating the standards for this determination.

CFPB should also reduce affiliate discrimination in the calculation of fees and points. H.R. 3211/S. 1577 sponsored by Representative Huizenga (R-MI) in the House and Senator Manchin (D-WV) in the Senate is being advanced with broad bipartisan support to fix this. Despite assertions to the contrary, the removal of provision to exclude affiliate title from the calculation of fees and points from Dodd-Frank was not debated or considered at all. The provision in question was removed during a complicated conference of a rather extensive piece of legislation. For this reason, there is much bipartisan support for fixing the discrimination against title and affiliate homeowner's insurance agencies.

The resulting discrimination against affiliates is counterproductive for consumers. This is becoming even clearer as information comes in from the implementation. For example, one consumer was unable to save several hundred dollars a year in homeowner's insurance premiums because the proposed insurance provider was an affiliate of the lender and therefore the premium had to be counted under the cap and the transaction failed the 3% cap test. The consumer had to go elsewhere for insurance and had to pay more.

In another closing of a modest FHA loan, the borrower could not use the highly regarded in-house title and closing services because the combination of those services put the transaction just over the cap. Perhaps, more exasperating for both the lender and the consumer was that because the title charges were regulated by the state, the title company could not adjust the charges to bring them in under the cap, even if they wanted to.

There are many more examples such as these, and more happening every day. It is becoming more and more evident that discriminating against affiliates is restricting consumer choice and adding needless complications to these transactions. Any

concerns regarding illegal referral fees or other issues can certainly be addressed under the CFPB's RESPA authority as the CFPB is already demonstrating.

Conclusion

NAR appreciates the opportunity to comment on the CFPB's efforts to revise existing regulations and guidance. Our members remain concerned that the layers of regulations surrounding the mortgage finance business may result in further consolidation of the broader mortgage market. It is important that the CFPB balance the need to protect consumers while also ensuring that regulations do not needlessly increase costs to consumer or further constrain access and competition in the mortgage market.

We would be pleased to discuss these issues in more detail at your convenience. If you have any questions, please contact Ken Trepeta, our Director of Real Estate Services, at ktrepeta@realtors.org or (202) 383-1294.

Sincerely,

Steve Brown
2014 President, National Association of REALTORS®