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June 7, 2016

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

Dear Director Cordray:

I write on behalf of the more than 1.1 million members of the National Association of REALTORS® (NAR) about the upcoming Notice of Proposed Rulemaking (NPRM) on the Know Before you Owe rule. NAR appreciates the Consumer Financial Protection Bureau's (CFPB) efforts to provide additional written guidance into the regulation text. Reliable, written guidance is critical for effective implementation of the rule.

The National Association of REALTORS® is America's largest trade association, including NAR's five commercial real estate institutes and its societies and councils. REALTORS® are involved in all aspects of the residential and commercial real estate industries and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations of REALTORS®.

NAR is concerned about increased consumer frustration with the loan process, increased costs to the consumer and a negative impact on access to credit if there is continued lender and investor confusion and inconsistent application of the complex rule.

NAR participated in two listening sessions with CFPB staff in the past month and urges the Bureau to incorporate the following recommendations in the proposed rule: 1) clarify that lenders can share the Closing Disclosure (CD) with third parties if the lender receives a consent form from the consumer, 2) provide additional guidance to lenders about revising the CD to reflect changes in circumstances, and 3) extend post-consummation timelines to correct minor Know Before You Owe errors.

Sharing the Closing Disclosure with Third Parties

REALTORS® are trusted advisors who help consumers navigate the home purchase process. A recent ALTA survey reported that a third of consumers cite real estate agents as the most important source of information about real estate settlements. Prior to implementation of the Know Before You Owe rule, real estate agents aided their clients by answering questions about the HUD-1 and reviewing terms agreed to in the sales contract including concessions, escrows, commissions and shares of prorated taxes. This form was routinely shared with agents in nearly all transactions.

Since the rule was implemented, 54.5 percent of real estate professionals who were surveyed now have problems getting access to the Closing Disclosure. Real estate professionals are even more likely to have issues getting access to the Closing Disclosure when settlement is delayed. When real estate professionals do get access to Closing Disclosures, 50 percent have reported finding missing concessions and incorrect names or addresses, incorrect fees, commissions, and taxes.

While consumer financial privacy issues fall under Regulation P and did not change with Know Before You Owe, NAR has heard that lenders feel the new rule exposes them to additional liability under the Truth and Lending Act (TILA) if they provide real estate professionals with copies of the Closing Disclosure. This is an unintended consequence of the rule that needs clarification from the CFPB.



NAR urges the CFPB to include language in the proposed rule stating that it is just as acceptable now as it was before Know Before You Owe for a lender to share the CD with third parties if the lender receives a consent form from the consumer as allowed under Regulation P, Privacy of Consumer Financial Information - 12 CFR Part 216. This will help lenders feel more comfortable sharing the CD with third parties when they have a consent form from a borrower. This will also help NAR communicate with industry partners that a consent form is permissible and encourage its use. If real estate agents are able to review the CD with the borrower, they will help the process by aiding the consumer and finding technical errors that are more easily fixed by the lender before the loan is closed.

Changes in circumstance after the CD has been Issued

NAR has received consistent feedback from mortgage lenders who are confused about whether or not changes can be made to the CD once it has been sent to the consumer within certain timeframes. What constitutes a valid change in circumstance that can be added to the CD after it has been mailed to the borrower (typically 6-7 days before consummation)? When are these changes allowed?

One common example cited is when a borrower requests a closing delay which requires a rate lock extension fee after the CD has been issued. Lenders are often absorbing the costs of the extension fee because they are not sure if they can revise a closing disclosure to add this fee once the CD has been sent to the consumer. The Bureau tries to address this issue on page 50 of the Small Entity Compliance Guide, but only addresses a very specific window of time that occurs between the fourth and third business days from consummation.

NAR urges the CFPB to clarify whether or not lenders can re-baseline costs on the closing disclosure after it has been mailed to the consumer to reflect a valid change in circumstance and give more information on the time frames that are allowed for these changes.

Loan Salability to Investors

NAR is aware of the intense examination by investors and due diligence firms on minor Know Before You Owe errors. Some investors are refusing to buy loans with minor errors, even if the error doesn't negatively impact a consumer or lead to material liability. Lenders can incur huge losses if they sell these loans in the scratch and dent market. This is compounded by the fact that investors are not accepting cures past 60 days, even though investors can take more than 60 days to review and return loans to the lender.

What is the future impact on access to credit if lenders are forced to keep loans on warehouse lines for extended periods of time or sell them at a loss in the scratch and dent market? NAR is concerned that the increased cost of manufacturing these loans will ultimately trickle down to the consumer and impact access to credit, especially for lower-income and first-time homebuyers.

NAR urges the CFPB to extend post-consummation timelines to correct minor Know Before You Owe errors from 30 days to 180 days. NAR also urges the CFPB to continue to work with due diligence firms and investors to educate them about loan salability and technical errors.

Conclusion

Over the past year, NAR has provided ongoing education for real estate agents about the new Know Before You Owe process and has provided links to the CFPB's Real Estate Professional's guide on REALTOR.org. NAR recently published a Know Before You Owe pocket card with suggestions for real estate professionals to guide them through the process. Additional written guidance from the Bureau will greatly enhance our education efforts with our members. NAR urges the Bureau to incorporate our recommendations and looks forward to additional reliable, written guidance on the Know Before You Owe rule. If you have any questions or concerns about our recommendations, please do not hesitate to contact me or Sarah Young, Director of Real Estate Services at (202) 383-1233 or SCYoung@REALTORS.org.

Sincerely,



Tom Salomone

2016 President, National Association of REALTORS®