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October 18, 2016

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

Re: Docket No. CFPB-2016-0038 or RIN 3170-AA61 (submitted electronically)
<https://www.regulations.gov/docket?D=CFPB-2016-0038>

Dear Director Cordray:

On behalf of over 1.1 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the recent proposed rule amending the Consumer Financial Protection Bureau's (CFPB) "Know Before You Owe" (KBYO) mortgage initiative that harmonizes the *Truth in Lending Act* (TILA, Regulation Z) and the *Real Estate Settlement Procedures Act* (RESPA, Regulation X).¹ Consumer protection and financial transparency are central tenets of the CFPB, and since inception, KBYO has been striving to achieve these goals. By streamlining valuable information and promoting money saving comparison-shopping, KBYO has attempted to renovate the home loan process into a more manageable experience for consumers. However, outstanding compliance issues remain, costing time and money for all parties involved, that must be resolved in the final rule.

The National Association of REALTORS® (NAR) 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 residential and commercial real estate transactions and belong to one or more of the approximately 1,200 local associations and boards, and 54 state and territory associations. Working with a REALTOR® gives buyers, sellers, and investors the advantage they need to succeed in today's market, which is why NAR advocates for clear and efficient regulations within the industry.

Discussed in detail below, NAR urges the CFPB to incorporate the following recommendations in the final rule, to guarantee consumers enjoy a transparent and successful home buying experience. In the final rule, the CFPB should: (1) emphasize that lenders and title agents should share the closing disclosure (CD) with third parties, including real estate agents, in accordance with existing privacy law and regulation; (2) ensure lenders are able to revise the CD without undue delays to the closing to reflect valid changes in circumstances; (3) extend post-consummation timelines to correct minor KBYO errors; and (4) implement additional modifications to decrease consumer and industry uncertainty and increase credit availability.

I. Sharing of the Closing Disclosure with Third Parties

An unintended consequence of KBYO has been lenders' reluctance to share the new required CD with real estate professionals out of fear of liability for disclosing clients'

¹ Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 81 Fed. Reg. 54318 (Aug. 15, 2016). [Hereinafter Proposed Rule.]



nonpublic personal information. Regulation P, which governs the privacy of consumer financial information, was not amended by KBYO.² Yet some financial institutions and title service providers have raised arguable concerns regarding their compliance with Regulation P under KBYO requirements. As a result, lenders and title agents have been withholding the CD from third parties, including real estate professionals, and disadvantaging consumers seeking support with their transactions.

As noted in the proposed rule, before KBYO, real estate professionals had relatively unhindered access to the HUD-1, which allowed them to provide consumers with beneficial advice and useful resources. Now, real estate professionals are confronting a number of hurdles when seeking access to the CD, resulting in consumers being left in the dark when attempting to understand the numerous disclosures issued throughout the mortgage process. According to the CFPB's most recent Monthly Complaint Report, the third most-complained-about financial product or service was mortgages, accounting for 4,310 complaints in the month of September alone.³ To reign in confusion with obtaining a home loan, home buyers need real estate professionals' guidance when navigating the complexities of a sales transaction.

Lenders cite consumer's privacy concerns as the primary reason for not sharing the CD with real estate agents, with violations of lending laws as the second concern.⁴ Such misinformation is detrimental to consumers, who look to have smooth, timely, error-free transactions that real estate professionals help facilitate. In a recent NAR survey, approximately 46 percent of REALTORS® reported difficulties with obtaining the CD.⁵ When access was permitted, *more than half identified errors* within the document, including missing concessions, and incorrect names, addresses, fees, commissions, and taxes.⁶ Thus, lenders refusal to share the CD with real estate professionals – trusted advisors who frequently reviewed the HUD-1 with buyers and sellers – may adversely impact consumer transactions, including delaying the closing, depending on when such errors are discovered.⁷

The CFPB acknowledged in the proposed rule that an existing exception in Regulation P permits sharing of the CD – language that should be included the final rule. According to the proposed rule and Regulation P, “*it is usual, appropriate, and accepted for creditors and settlement agents to provide the combined or separate Closing Disclosure as a confirmation, statement, or other record of the transaction, to consumers, sellers, and their agents.*”⁸ The CFPB classified such records as informative to real estate agents representing consumers in the real estate transaction.⁹

Unfortunately, NAR's quarterly Survey of Mortgage Originators¹⁰ most recently revealed that the percentage of lenders *unwilling* to share the CD increased to more than 64 percent in the second quarter, up from 55 percent in the first quarter.¹¹ Moreover, since the privacy language highlighting the Regulation P exception was outlined in the proposed rule in late July, REALTORS® have reported no change in lenders' willingness to share the CD,¹² illustrating the importance of including this provision in the final rule – to protect the KBYO goal of transparency and accountability.

² 12 C.F.R. §§ 1016.1-1016.17 (2011).

³ Tracking consumer complaints of mortgages began in 2011, and is currently up to a total of 244,008 complaints. From October 2015, KBYO implementation, to now, submitted consumer complaints have ranged on a monthly basis from 3,794 to a high of 4,947 complaints. Consumer Financial Protection Bureau, *Monthly Complaint Report*, vol. 15 (Sept. 2016), http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/092016_cfpb_Monthly_ComplaintReportVol15.pdf.

⁴ The National Association of REALTORS® Research Division, *TRID: A Year Later*, (Oct. 2016), <http://www.realtor.org/reports/realtors-and-the-new-closing-process-survey>. [Hereinafter NAR One Year Survey.]

⁵ *Id.*

⁶ *Id.*

⁷ According to EllieMae Origination Insight Reports, peak closing time for all loans since KBYO was enacted was 50 days. The latest report revealed an average time to close of 46 days for the month of August. EllieMae, *August 2016 Origination Insight Report*, (Aug. 2016), http://www.elliemae.com/origination-insight-reports/Ellie_Mae_OIR_AUGUST2016.pdf.

⁸ See Proposed Rule at 54356 and 12 C.F.R. § 1016.14(b)(2)(iii).

⁹ *Id.*

¹⁰ National Association of REALTORS® Research Division, *Survey of Mortgage Originators, Second Quarter 2016*, (Aug. 8, 2016), <http://www.realtor.org/reports/survey-of-mortgage-originators-second-quarter-2016>. [Hereinafter NAR Loan Originator Survey, 2016 Q2.]

¹¹ National Association of REALTORS® Research Division, *Survey of Mortgage Originators, First Quarter 2016*, (May 9, 2016), <http://www.realtor.org/reports/survey-of-mortgage-originators-first-quarter-2016>.

¹² NAR One Year Survey.

Beyond restating the Regulation P exception in the final rule, the CFPB should tell lenders and settlement agents to share the CD with real estate professionals to ensure the consumer has complete knowledge of their home purchase transaction. A survey by the American Land Title Association (ALTA) further illustrated consumers' trusted reliance of real estate professionals and the need to share the CD with agents.¹³ The survey asked current homeowners who they sought help from when understanding the closing process and who was the most helpful in answering questions during the home buying experience. *Real estate agents ranked highest among attorneys, title or settlement companies, lenders, and housing counselors.*¹⁴ Contacting a real estate agent was also typically the first step consumers took when looking to buy a home.¹⁵ Such data confirms the trustworthy reputation real estate professionals have when it comes to making the home buying and selling process easier and the need for the CFPB to support this important relationship with consumers.

As stressed by many other real estate professionals' in their comments, the CFPB should maintain the language in the proposed rule acknowledging that sharing the CD with third parties is permitted as a record of the transaction to provide lenders and title agents with certainty of protection, and further emphasize that sharing the disclosures is required to increase consumer comprehension and avoid unnecessary and costly slowdowns for real estate closings.

II. Changes in Circumstances after the Closing Disclosure has been Issued

NAR appreciates the clarification in the proposed rule that allows lenders to re-baseline costs on a revised closing disclosure after an initial closing disclosure has been sent to the consumer to reflect a valid change in circumstance.¹⁶ By easing the timing restrictions after the CD has already been provided, a lender may now issue a revised CD as long as it is within three business days of learning of the valid changed circumstance.¹⁷ This additional information provided on the timeframes that are allowed for changed circumstances to be reflected on the CD will help minimize transaction disruptions and aid in on time closings.

Under this new guidance, lenders will no longer bear the costs of certain fees imposed thanks to the added ability to revise the CD to reset tolerances reflecting updated estimates after it has been sent to the consumer. Such flexibility increases lender confidence in addressing unintended consequences that may arise after a CD has been provided to the consumer. However, more explanation may be warranted to explain the three-day timing period for changed circumstances for lenders issuing revised disclosures. As such, the CFPB must either include additional language in the final rule or provide alternative written guidance with examples clarifying these circumstances.

III. Loan Salability to Investors

The CFPB did not include additional provisions for curing errors in the loan estimate or closing disclosure, including post-consummation, based on an unwillingness to disrupt existing systems and uncorroborated claims that such cures would undermine compliance incentives. Further, according to the proposed rule, adopting cures procedures would have been extraordinarily complex and involve substantial reprogramming of systems. As a result, lenders (and investors) face continued frustration when participating in the secondary market that could negatively impact consumers seeking access to credit.

Under the current rule, lenders have only 60 days to correct particular errors, even though errors often occur after this point, resulting in costly expenses for lenders that may ultimately be passed along to consumers. For example, according to one mortgage lender, a \$19 variance cure was issued on day 67 after being discovered through an investor purchase review. A refund was issued to the borrower and a corrected CD was provided, but because the 60-day cure period had expired, the loan would have become non-saleable and resulted in up to \$115,000 of expenses for the lender had the consumer not agreed to refinance.¹⁸

¹³ The ALTA survey focused on consumer experiences related to purchases of title insurance and the KBYO-required disclosures. American Land Title Association, *Consumer Title Insurance Shopping Survey*, (Sept. 2016), <http://www.digitaljournal.com/pr/3088093>.

¹⁴ *Id.*

¹⁵ Recommendations provided by real estate agents were also the primary factor consumers considered when selecting a title/settlement company. *Id.*

¹⁶ § 1026.19(e)(4).

¹⁷ Proposed Rule at 54376.

¹⁸ Example of non-saleable loan from Prosperity Home Mortgage, LLC in Chantilly, Virginia.

NAR therefore continues to advocate for the extension of post-consummation timelines to correct minor KBYO errors to 180 days. The CFPB should reconsider the exclusion of cures provisions and work with stakeholders to determine the impact of technical errors on loan salability. Additionally, assignee liability for errors is still raising questions and should also be addressed in any final rule to provide lender and investor certainty.

With the CFPB now ending restrained enforcement on KBYO errors, investors and due diligence firms are also paying closer attention to minor errors during exams, which threatens lenders' ability to sell loans in the secondary market. Refusal to buy loans, even with nonmaterial errors, could result in huge losses for lenders, affecting overall liquidity and ability to originate mortgages. The latest NAR Survey of Mortgage Originators revealed that lenders had grown more reluctant to originate smaller loans and half of respondents had increased fees to consumers to offset compliance costs due to KBYO.¹⁹ At a time when lower-income and first-time homebuyers are already struggling to enter the market, the CFPB should be working to promote access to credit, not imposing unnecessary liability on lenders and additional costs on consumers.

NAR's annual Profile of Home Buyers and Sellers revealed that first-time homebuyers in 2015, with a median age of 31 years-old, represented the lowest share (32 percent) of sales since 1987 (30 percent).²⁰ More recently, the U.S. Census Bureau reported the homeownership rate for 18 to 35 year-olds was 34.1 percent, the lowest level on record dating back to 1994.²¹ The CFPB must work to reduce impediments to credit availability to ensure young adults are able to enjoy the long-term stability and wealth creating opportunities that home ownership provides by extending post-consummation timelines to correct KBYO errors rather than increasing costs for these consumers just entering the market.

IV. Additional Provisions

The proposed rule included a number of other provisions, such as clarifying the classification of cooperative units and simplifying obscurities surrounding construction mortgage loans, which purport to remove ambiguity for certain real estate transactions. For example, in order to promote the use of housing finance agency down payment assistance loans, the proposed rule clarifies that some payments, such as transfer taxes payable at consummation, do not upset eligibility for a partial exemption for certain mortgage loan requirements. By reducing the procedural burdens associated with such payments, which previously caused amounts to exceed the one percent of total loan threshold requirement, the CFPB is enabling creditors to make more housing assistance loans available for low and moderate income consumers.

NAR supports efforts that decrease harmful and confusing regulatory burdens while increasing the availability of credit and transparency in the process for home buyers, sellers, and the industry. It is imperative that the provisions in the final rule strike a delicate balance of protecting the best interests of the consumer without encumbering regulated entities.

Conclusion

Real estate contributes over \$2 trillion annually to the national economy, accounting for at least 15 percent of overall economic activity.²² NAR's most recent Housing Opportunities and Market Experience (HOME) survey, which tracks progress in this important economic sector by monitoring consumer sentiment, revealed that 71 percent of people believe now is a good time to buy a home.²³ As consumers remain largely optimistic about participating in such an integral part of the economy, the CFPB must focus on ensuring these individuals are able to purchase homes by promoting credit accessibility without unnecessary regulation that could hinder the home buying process.

¹⁹ Half of lenders reported passing on costs to consumers with a weighted average increase of \$258. NAR Loan Originator Survey, 2016 Q2.

²⁰ National Association of REALTORS® Research Division, *2015 Profile of Home Buyers and Sellers*, (Nov. 5, 2015), <http://www.realtor.org/reports/highlights-from-the-2015-profile-of-home-buyers-and-sellers>.

²¹ U.S. Census Bureau, *Residential Vacancies and Homeownership in the Second Quarter 2016*, (July 28, 2016), <http://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

²² National Association of REALTORS® Research Division calculations based on Bureau of Economic Analysis industry data. E.g. National Association of REALTORS® Research Division, *Housing's Large Economic Impact*, (Aug. 28, 2015), <http://economistsoutlook.blogs.realtor.org/2015/08/28/housings-large-economic-impact/>.

²³ National Association of REALTORS® Research Division, *HOME Survey, Housing Opportunities and Market Experience*, (Sept. 2016), <http://www.realtor.org/reports/2016-q3-homeownership-opportunities-and-market-experience-home-survey>.

Even with an ongoing learning curve, KBYO has resulted in more transparency for consumers and better accountability of financial institutions. As a new agency tasked with developing thoughtful and effective regulation that empowers safe and responsible lending practices, the CFPB should welcome valuable input from industry leaders on beneficial changes to advance the pursuit of homeownership.

With the aforementioned recommendations in mind, NAR advocates for expedited rulemaking on the provisions of the proposed rule that provide immediate relief, especially the clarification on sharing the CD with third parties. If you have any questions or concerns, please do not hesitate to contact me or Christie DeSanctis, Business Issues Policy Representative at (202) 383-1102 or CDeSanctis@REALTORS.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Salomone". The signature is fluid and cursive, with a long horizontal stroke at the end.

Tom Salomone
2016 President, National Association of REALTORS®