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October 10, 2017

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 via: <https://www.regulations.gov/docket?D=CFPB-2016-0038>*

Dear Director Cordray:

On behalf of over 1.2 million members of the National Association of REALTORS®, I appreciate the opportunity to comment on the recent proposed rule examining 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).<sup>1</sup> One of the most comprehensive reforms to the mortgage disclosure process in recent years, Know Before You Owe continues to evolve, with the latest rulemaking examining how creditors may use a Closing Disclosure (CD) to reflect changes in costs imposed on consumers.

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 consumers the advantage they need to succeed in today's market, which is why NAR advocates for clear and efficient regulations within the industry to ensure successful outcomes for consumers.

Without a specific provision, under the current rule, creditors are not allowed to use a CD to reset tolerances if there are four or more days between the time the revised version of the disclosures is required to be provided and consummation. As a result, creditors are often not able to reset tolerances when an increased cost arises if a consumer has already been provided the CD. This forces creditors to possibly delay the transaction and/or absorb costs to be passed on to other consumers. The proposed rule would make a substantive change allowing for creditors to reset tolerances for a valid changed circumstance with a CD, either initial or revised, irrespective of the date of consummation, to prohibit such harm from being imposed on the consumer. The CFPB's

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<sup>1</sup> Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 82 Fed. Reg. 37794 (Aug. 11, 2017).



willingness to reduce ambiguities and increase flexibility by amending this rule is welcomed by the real estate industry and will facilitate a smooth and transparent home buying experience for consumers.

### **Timing Issues and Cost Concerns**

Real estate professionals educate and guide consumers throughout the real estate sales transaction, receiving a copy of the CD, which enables them to better advise their clients and catch potential errors. However, events occurring close to the time of consummation may affect lenders' closing costs, often happening after the initial CD has been provided to the consumer and the real estate professional.<sup>2</sup> These changed circumstances that result in additional appraisal fees, inspections costs, or rate lock extensions, could mean delayed timelines for settlement. As such, there must be flexibility for lenders addressing such issues and resetting fee tolerances when permissible within the existing regulations, which is what this rule purports to achieve. By encouraging lenders to provide the CD early in the process and then providing flexibility when valid changes arise, the CFPB is facilitating better consumer communication and ensuring the overall process is more transparent, without imposing unnecessary delays that can result in additional costs, as described through the data below.

In a survey of REALTOR<sup>®</sup> members conducted by NAR's Research Division, when asked about their most recent buy-side transaction, nearly 60 percent of REALTORS<sup>®</sup> reported receiving the initial CD between three and seven days before settlement.<sup>3</sup> Only 6 percent received the CD more than seven days before settlement and 27 percent, less than three days before settlement. Approximately 29.8 percent of respondents reported lingering issues with gaining access to the CD,<sup>4</sup> despite the CFPB's recent final rule acknowledging an existing exception within the *Gramm-Leach-Bliley Act* and implementing Regulation P that allows lenders to share the CD with third parties.<sup>5</sup>

Feedback from respondents on their recent buy side transaction also revealed that only 28.4 percent experienced having a CD re-issued, compared to 55.1 percent who reported no second CD. When the CD was re-issued, 79.2 percent had the transaction close on time with no delays. Only 19.2 percent of respondents reported a closing delay when the CD was revised. Depending on when the CD was re-issued may have impacted potential closing delays, with 43.8 percent of respondents reporting receipt of the re-issued CD less than three days before closing, contrasted with 45.2 percent receiving the re-issued CD between three and seven days before closing.<sup>6</sup>

Under the current regulatory framework, as evidenced through the survey described above, initial CDs are issued moderately early in relation to closing. In the instances when revised CDs are necessary, receipt is closer to closing, but not necessarily indicative of a closing delay. Should the proposed rule be adopted, lenders, real estate professionals, and consumers, will benefit from the ability to reset tolerances for a valid reason falling within the existing regulations with a revised CD without causing settlement delays.

When there are delays, consumers bear the brunt of the costs, which can be both financially and emotionally frustrating. Families may be forced to move into hotels for extended periods of time, delay registering their children for schools, or reschedule movers and potential renovations - all of which can be avoided with adequate review and accurate disclosures. Limiting third party costs of services even when there is a valid basis to increase such costs by

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<sup>2</sup> 12 C.F.R. §1026.19(e)(3)(iv)(A-F).

<sup>3</sup> An internal survey conducted by NAR's Research Division examined members' perceptions of the closing disclosure receipt, timing, and impact on consumers. Survey responses were collected in September 2017, with a response rate of 5.0 percent, from 49,571 members. [Hereinafter NAR CD Survey.]

<sup>4</sup> *Id.*

<sup>5</sup> Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z), 82 Fed. Reg. 37656 (Aug. 11, 2017).

<sup>6</sup> Only 1.9 percent received the re-issued CD more than seven days before settlement. NAR CD Survey.

making it more restrictive beyond the existing regulations may disrupt delivery of such services, resulting in unfavorable delays for both the consumer and lender. Flexibility in accounting for unforeseen circumstances that arise during the closing will enable lenders reset tolerances in the closing process, prevent delays, and protect consumers' interests.

### **Early Information Dissemination**

As discussed in the proposed rule, there is a concern that CDs provided early on in the lending process, followed by a revised CD issued closer to consummation changing the final loan terms, will have a negative effect on consumers. However, having such information early in the process would be more helpful than harmful, even if there were potential for that information to change, which would only occur within the existing limitations outlined in the regulations. When asked about the possible harm imposed on consumers as a result of this proposed modification, a majority of REALTORS® – nearly 70 percent – were in favor of the consumer having the CD earlier before closing, even if a revised CD changing terms and costs was later issued.<sup>7</sup>

When compared to the HUD-1 statement, many REALTORS® describe the new CD as confusing, causing anxiety and hardship for consumers. As one REALTOR® reported in comments from the NAR CD survey, *“Lenders are not consistent... Nearly all of our buyers say [t]his the last house I want to buy - you were great, but the process is ridiculous. We don't want to go through this again.”*

To reduce such confusion, early information dissemination, even if modified down the road for a valid reason, will provide familiarity and necessary comprehension of the many costs and services associated with the transfer of property. Additionally, rather than being overloaded with multiple CDs, consumers would better understand why such changes were to occur with increased opportunity for communication with the closing parties, including being able to ask their real estate professional important questions, improving overall transparency of the process.

While KBYO processes and related changes are relatively new, consumers' experiences in buying a home is not, illustrating a potential comfort level with the purchase transaction but not necessarily with the new required disclosures. According to NAR's most recent profile of home buyers and sellers, repeat home buyers in 2016 made up 65 percent of all home buyers.<sup>8</sup> Thus, many repeat home buyers who may have been familiar HUD-1 may be receiving the CD for the first time, demonstrating the need for early disclosure to allow time for adequate review.

Over 65 percent of REALTORS® felt they would benefit from having the CD earlier also, despite the potential for a revised CD.<sup>9</sup> When REALTORS® are getting the CD from lenders, having early access is the most advantageous to offer beneficial advice and useful resources to consumers, whether they are first time or repeat home buyers and sellers. Real estate professionals' guidance and review for errors would also be improved with an earlier CD. This would help moderate consumer expectations, with agents and brokers' preparing and assisting consumers with potential changes to the CD that could arise and keep the sales transaction on track.<sup>10</sup>

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<sup>7</sup> NAR CD Survey.

<sup>8</sup> National Association of REALTORS® Research Division, 2016 Profile of Home Buyers and Sellers, (Oct. 5, 2016), <https://www.nar.realtor/research-and-statistics/research-reports/highlights-from-the-profile-of-home-buyers-and-sellers>.

<sup>9</sup> NAR CD Survey.

<sup>10</sup> *Supra*, note 2.

A 2016 NAR survey of mortgage originators revealed that while KBYO-related delays may still be occurring, cancellations attributed to the new processes have decreased.<sup>11</sup> The adaptability proposed by this rule should further decrease KBYO barriers that have been challenging the industry and provide a better experience for the consumer by minimizing transaction disruptions to facilitate on time closings.

## Conclusion

Under the proposed rule, lenders could use either an initial or corrected CD to reflect changes in costs for purposes of determining if an estimated closing cost was disclosed in good faith, independent of when the CD is provided in relation to consummation. Such flexibility provides lenders with the ability to make valid changes and promptly notify the consumer without delaying the transaction.

As a REALTOR® survey respondent stated, “[KBYO] is a right-minded, logical response to the excesses of the pre-crash lending environment. When I explain the changes to my clients, they are always appreciative. Combined with knowledgeable and communicative mortgage officers and title company staff, [KBYO] is a win-win for homebuyers. But, like all financial regulations, it needs to be implemented consistently and it requires an approach of continuous improvement.”<sup>12</sup>

NAR encourages the CFPB to continue providing clarity for the industry on matters within its jurisdiction through notice and comment rulemaking, as it has done here with this latest KBYO proposal. We appreciate the opportunity to comment on this important issue and look forward to continue working to protect and enhance consumers’ experiences during the entire real estate sales transaction.

Sincerely,



William E. Brown  
2017 President, National Association of REALTORS®

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<sup>11</sup> National Association of REALTORS® Research Division, Survey of Mortgage Originators, Third Quarter 2016, (Aug. 8, 2016), <https://www.nar.realtor/research-and-statistics/research-reports/mortgage-originators-survey/survey-of-mortgage-originators-third-quarter-2016>.

<sup>12</sup> NAR CD Survey.