FINAL REPORT

of the

Small Business Review Panel on
CFPB's Proposals Under Consideration for
Integration of TILA and RESPA Mortgage Disclosure Requirements

April 23, 2012

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1. INTRODUCTION

Under the Regulatory Flexibility Act ("RFA"),[1] unless the Consumer Financial Protection Bureau ("CFPB") plans to certify that a proposed rule will not have a significant economic impact on a substantial number of small entities, the CFPB must convene and chair a Small Business Review Panel ("Panel") to consider that impact and obtain feedback from representatives of the small entities that would be subject to the rule.[2] The Panel consists of representatives from the CFPB, the Chief Counsel for Advocacy of the Small Business Administration ("SBA"), and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget ("OMB").

This Panel Report addresses the CFPB's upcoming proposal to integrate the mortgage disclosures that consumers currently receive under the Truth in Lending Act ("TILA")[3] and Real Estate Settlement Procedures Act of 1974 ("RESPA").[4] Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), the CFPB must propose integrated rules and forms by July 21, 2012.[5] This report includes the following:

- Background information on the proposals that are being considered by the CFPB and were reviewed by the Panel;

- Information on the types of small entities that would be subject to those proposals and on the small entity representatives ("SERs") who were selected to advise the Panel;

- A summary of the Panel's outreach to obtain the advice and recommendations of those SERs;

- A discussion of the comments and recommendations of the SERs; and

- A discussion of the Panel findings, focusing on the following statutory elements:[6]

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[1] RFA (Pub. L. 96-354, approved September 19, 1980; 94 Stat. 1164) is codified at 5 U.S.C. 601-612 (http://143.231.180.80/view.xhtml?path=/title5/part1/chapter6).

[2] Under section 609(b) of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") and the Dodd-Frank Wall Street Reform and Consumer Protection Act, a Panel is required to be convened prior to the publication of the initial regulatory flexibility analysis ("IRFA") that the CFPB may be required to prepare under the RFA.

[3] TILA (Pub. L. 90-321, approved May 29, 1968; 82 Stat. 146) is codified in 15 U.S.C. 1601 *et seq.* (http://143.231.180.80/view.xhtml?path=/title15/chapter41).

[4] RESPA (Pub. L. 93-533, approved December 22, 1974; 88 Stat. 1724) is codified in 12 U.S.C. 2601-2617 (http://143.231.180.80/view.xhtml?path=/title12/chapter27).

[5] Pub. L. 111-203, approved July 21, 2010; 124 Stat. 1376. *See* Dodd-Frank Act sections 1032(f) (12 U.S.C. 5532), 1098, and 1100A (http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf); also attached as Attachment A to Appendix C-1.

[6] *See* RFA section 603 (5 U.S.C. 603); RFA section 609(b)(5) (5 U.S.C. 609(b)(5)).

- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

- A description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the rule's requirements and the type of professional skills necessary for preparation of the report or record;

- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and

- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

This Panel Report will be included in the public rulemaking record. The CFPB will consider the Panel's findings when preparing the proposed rule and IRFA.

It is important to note that the Panel makes its report at a preliminary stage of rule development and this report should be considered in that light. The Panel's findings and discussion are based on the information available at the time the final Panel Report was prepared. Additional analyses may be conducted and additional information may be obtained by the CFPB during the remainder of the rule development process. At the same time, the Panel Report provides the Panel and the CFPB with an opportunity to identify and explore potential ways of shaping the proposed rule to minimize the burden of the rule on small entities while achieving the rule's purposes.

Any options identified by the Panel for reducing the rule's regulatory impact on small entities may require further consideration, analysis, and data collection by the CFPB to ensure that the options are practicable, enforceable, and consistent with TILA, RESPA, the Dodd-Frank Act, and their statutory purposes.

2. BACKGROUND

2.1 Statutory and Regulatory Background

For more than 35 years, TILA and RESPA have required lenders and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs. This duplication has long been recognized as inefficient and confusing for consumers and industry.

The recent mortgage crisis highlighted deficiencies in consumer understanding of mortgage transactions, which may be attributed in part to shortcomings in mortgage disclosures. Prior to the creation of the CFPB, other government agencies took steps to address these shortcomings. Specifically, the U.S. Department of Housing and Urban Development ("HUD"), which was previously responsible for implementing RESPA, finalized rules in 2008 that substantially revised the RESPA mortgage disclosures (the "2008 RESPA rule").[7] In addition, the Board of Governors of the Federal Reserve System ("FRB"), which was previously responsible for TILA, proposed rules in 2009 that would have substantially revised the TILA mortgage disclosures.[8] However, neither agency had the authority to combine the TILA and RESPA disclosures.

On July 21, 2011, the Dodd-Frank Act transferred authority over TILA and RESPA to the CFPB. As noted above, the Act also specifically directed the CFPB to combine the TILA and RESPA mortgage disclosures.

2.1.1 TILA

In connection with any closed-end credit transaction secured by a consumer's dwelling and subject to RESPA, TILA and Regulation Z[9] (which implements TILA) require creditors to provide good faith estimates of loan terms (such as the annual percentage rate or "APR") within three business days after receiving the consumer's mortgage application (the "early TIL"). If the APR on the early TIL becomes inaccurate, TILA requires the creditor to provide a corrected disclosure at least three business days before closing (the "final TIL"). In certain circumstances, TILA imposes civil liability for violations of these disclosure requirements and provides for administrative enforcement by appropriate agencies, including the CFPB.

2.1.2 RESPA

In connection with any federally related mortgage loan,[10] RESPA and Regulation X[11] (which implements RESPA) require that lenders provide a good faith estimate of the amount or range of charges for certain settlement services the borrower is likely to incur in connection with the settlement (such as fees for an appraisal or a title search) and related loan information within three business days after receiving the consumer's application (the "Good Faith Estimate" or "GFE"). RESPA also requires that "the person conducting the settlement" (typically, the settlement or closing agent) provide the consumer with a completed, itemized statement of settlement charges at or before closing (the "HUD-1 settlement statement"). RESPA does not impose civil liability for violations of these disclosure requirements, but administrative enforcement by appropriate agencies is available.

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[7] 73 Fed. Reg. 68,204 (Nov. 17, 2008) (http://www.gpo.gov/fdsys/pkg/FR-2008-11-17/pdf/E8-27070.pdf).

[8] 74 Fed. Reg. 43,232 (Aug. 26, 2009) (http://edocket.access.gpo.gov/2009/pdf/E9-18119.pdf).

[9] Regulation Z is codified in 12 CFR part 1026 (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=b77ba4a55e2cc08bf5cc69ad5413a536&rgn=div5&view=text&node=12:8.0.2.14.18&idno=12).

[10] RESPA defines "federally related mortgage loan" broadly to encompass virtually any loan that is secured by a first or subordinate lien on residential real property designed principally for the occupancy of from one to four families.

[11] Regulation X is codified in 12 CFR part 1024 (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=527bcc8f016e5c387a75a560fd8841e9&rgn=div5&view=text&node=12:8.0.2.14.17&idno=12).

2.1.3 Dodd-Frank Act

The Dodd-Frank Act requires the CFPB to propose rules and forms combining the TILA and RESPA disclosures for loans subject to either law or to both laws by July 21, 2012.[12] The Dodd-Frank Act establishes two goals for the consolidation: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA.

The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA. In particular, the Dodd-Frank Act amended TILA to require the creditor to disclose in the early and final TIL the aggregate amount of settlement charges provided in connection with the loan, which was previously disclosed only by the settlement agent in the RESPA-required HUD-1 settlement statement.[13]

2.2 Related Federal Rules

The proposals under consideration by the CFPB that were reviewed by the small entity representatives and the Panel are intended to consolidate the overlapping and, in some cases, duplicative mortgage disclosure regulations under TILA and RESPA into a single set of requirements and to resolve conflicts between the two. The Panel is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposals under consideration.

However, the CFPB is currently developing other proposed or final rules required by Title XIV of the Dodd-Frank Act, including rules addressing ability-to-pay standards for qualified mortgages, mortgage loan originator compensation, mortgage loans subject to the Homeownership and Equity Protection Act (HOEPA), mortgage servicing, and appraisal practices. As discussed in greater detail below in Paragraphs 8.6 and 9.3.6 of this report, the CFPB is aware of concerns that aspects of the proposals under consideration could affect the CFPB's HOEPA rulemaking. The CFPB will coordinate its rulemakings to avoid, to the extent possible, any duplication, overlap, or conflict.

In addition, Title XIV of the Dodd-Frank Act amends TILA and RESPA to add new disclosures that must be provided in the Loan Estimate or Settlement Disclosure (*e.g.*, disclosure of escrow payment amounts and aggregate settlement charges). In addition, Title XIV adds other new mortgage disclosure requirements (*e.g.*, warnings regarding negative amortization and state anti-deficiency laws). Although the Dodd-Frank Act does not specifically include this category of new disclosures in the Loan Estimate and Settlement Disclosure, the CFPB plans to propose that, to avoid duplication, overlaps, and conflicts, these new disclosures be included in the integrated forms.

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[12] *See* Dodd-Frank Act sections 1032(f) (12 U.S.C. 5532), 1098, and 1100A (http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf); also attached as Attachment A to Appendix C-1.

[13] Section 1419 of the Dodd-Frank Act, adding section 128(a)(17) to TILA.

3. OVERVIEW OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED

The Panel and the small entity representatives reviewed proposals that the CFPB is considering to integrate the TILA and RESPA mortgage disclosures, as required by the Dodd-Frank Act. These proposals would apply to closed-end credit transactions secured by real property other than reverse mortgages (*i.e.*, home equity lines would not be covered). The CFPB plans to implement the Dodd-Frank Act requirement by proposing to amend Regulation X and Regulation Z, the respective implementing regulations for RESPA and TILA.

The CFPB has conducted one-on-one testing of the forms in nine cities across the country with more than 85 consumers and more than 20 industry participants.[14] In addition, the CFPB's Know Before You Owe website has received over 27,000 remarks on the prototype disclosures.[15] Based on this extensive qualitative testing and public feedback, the proposals under consideration would use the following forms to integrate the TILA and RESPA content:

- The "Loan Estimate" would be provided within three business days after application and replace the early TIL and GFE. This disclosure would summarize the key loan terms and estimated loan and settlement costs for consumers and can be used by consumers to compare different loans.

- The "Settlement Disclosure" would be provided to consumers prior to the closing of the loan transaction and replace the final TIL and HUD-1 settlement disclosure. In addition to summarizing the final loan terms and costs, this disclosure would provide consumers with a detailed accounting of the transaction.

In addition, the CFPB would seek to reconcile differences in the scope, terminology, and requirements of TILA, RESPA, and their current implementing regulations. According to the CFPB, the proposals under consideration would clarify and streamline current rules that have been identified as confusing by lenders, mortgage brokers, mortgage companies, and settlement agents, as well as for consumers who receive the disclosures. The CFPB believes that these clarifications will resolve ambiguities, eliminate redundant or unnecessary disclosures, and more effectively disclose mortgage loan terms and costs to consumers.

Paragraphs 3.1 through 3.7 below outline specific CFPB proposals under consideration and alternatives considered as they were presented to the SERs. The more detailed summary of those proposals and alternatives is appended to this Panel Report as Appendix C-1, includes alternative prototypes of the disclosure forms tested prior to February 2012, and focuses in part on the benefits and costs of the proposals under consideration for small entities. The CFPB also

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[14] Testing has been conducted in Baltimore, Maryland; Los Angeles, California; Chicago, Illinois; Springfield, Massachusetts; Albuquerque, New Mexico; Des Moines, Iowa; Birmingham, Alabama; Philadelphia, Pennsylvania; and Austin, Texas.

[15] Examples of consumer and industry responses to the prototypes of the disclosures can be seen on the CFPB blog, including at: www.consumerfinance.gov/know-before-you-owe-go; www.consumerfinance.gov/13000-lessons-learned; and www.consumerfinance.gov/know-before-you-owe-its-closing-time.

believes that the proposals under consideration will have substantial benefits for consumers, such as:

- The new prototype disclosure forms are simpler and more comprehensible. By conveying information on key loan terms clearly, the redesigned disclosure forms may improve the ability of consumers to shop for and compare mortgage terms across loan offers and improve their understanding of mortgage loan transactions.

- The proposals under consideration may reduce the magnitude and frequency of changes in costs between application and closing and may decrease the likelihood that consumers will face unexpected changes in costs due to "bait and switch" tactics.

3.1 Integrated Initial and Closing Disclosures

- As noted earlier in Chapter 3, the "Loan Estimate" would be provided to consumers within three business days after application and replace the early TIL and GFE, and the "Settlement Disclosure" would be provided to consumers prior to the closing of the loan transaction and replace the final TIL and HUD-1. See Appendices C-1, C-2, and C-3 for alternative prototypes.

- TILA authorizes the CFPB to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the CFPB to require the use of standard forms (*e.g.*, the prescribed GFE and HUD-1 settlement statement forms). Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders but provide consistency for both consumers and lenders. In light of these considerations, the CFPB is considering whether to propose a rule that requires use of standard Loan Estimate and Settlement Disclosure forms for mortgage loan transactions that are subject to RESPA. For transactions that are subject only to TILA, however, the forms would be models, consistent with the provisions of that statute.

3.2 Definition of Loan Application

- Under TILA and RESPA, a lender or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TIL and GFE until it has received an "application." Under the current regulations, the receipt of the following information by the lender or mortgage broker constitutes receipt of an "application": (1) borrower's name; (2) monthly income; (3) social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender.

Definition of "Application"

- The seventh item in the regulatory definition of "application" (*i.e.*, any other information deemed necessary by the lender) could allow lenders and mortgage brokers to delay providing the integrated Loan Estimate until relatively late in the loan process by delaying collection of information deemed "necessary." For example, the current rules allow a lender to delay providing a GFE while it gathers more information about the property or the consumer's assets and liabilities.

- The current rules encourage lenders and mortgage brokers to provide the good faith estimates early in the loan process by prohibiting lenders from collecting any fees from a consumer (other than a credit report fee) until the estimates are provided.

- In order to further encourage early provision of these estimates, the CFPB is considering a proposal that would remove the seventh item ("any other information deemed necessary by the lender") from the definition of "application." The CFPB will seek input and information on whether this change would result in less accurate estimates.

Alternatives Considered

- The CFPB has also considered removing additional items from the regulatory definition of "application," so as to limit the definition to only the information required to obtain a credit report and to estimate the loan-to-value ratio.

Preapplication Estimates

- The CFPB is considering proposing to require that any preapplication, consumer-specific written estimate of loan terms or settlement charges contain a prominent disclaimer indicating that the document is not the Loan Estimate required by TILA and RESPA. This requirement would not apply to general advertisements.

3.3 Changes in Settlement Costs/Redisclosures

- HUD's 2008 RESPA rule limits the circumstances in which a lender can charge the consumer more at closing than the lender estimated in the GFE provided to the consumer three business days after application.

    - The lender's charges for its own services, referred to here as "lender charges," generally cannot exceed the lender's estimates. This limitation is sometimes referred to as a "zero tolerance."

    - Charges for settlement services provided by third parties such as appraisals and title work, referred to here as "third-party charges," generally cannot exceed the amounts estimated in the GFE by more than 10% in total. This limitation is sometimes referred to as a "10% tolerance."

    - The rule lists certain limited exceptions in which higher charges are permitted. For example, higher charges are permitted when the borrower requests a change, when the GFE expires, or when a valid change in circumstance occurs (such as when new information about the borrower or transaction is discovered). However, the lender must provide the consumer with a new GFE disclosing the higher cost.

- The CFPB is aware of concerns by some that the 2008 RESPA rule is too lax, by others that it is too restrictive, and by many that it is difficult to understand. As a result, the CFPB is considering proposals that would balance the objective of improving the reliability of the estimates lenders give consumers shortly after application, with the objective of preserving lenders' flexibility to respond to unanticipated changes that occur during the loan process. The CFPB is considering whether it may be appropriate to hold lenders to a higher standard when estimating the cost of these services.

    - Specifically, the proposals under consideration by the CFPB would apply the zero tolerance to a larger range of charges. As a result, a lender would be required to retain documentation sufficient to show its supervisory agency that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the lender proves to be higher than estimated in the Loan Estimate.

    - Furthermore, the proposals under consideration would apply the zero tolerance and require the lender to show that an exception applies whenever a cost for a service provided by a company selected by the lender proves to be higher than estimated in the Loan Estimate. A company would be considered selected by the lender if consumers are required to choose only from a list of service providers prepared by the lender (*i.e.*, if consumers are not permitted to shop for their own provider).

    - In contrast, for services provided by other companies, the proposals under consideration would leave in place the current rule allowing the actual cost to be up to 10% higher in the Settlement Disclosure.

- The proposals under consideration by the CFPB also would seek to reduce unnecessary compliance burden by resolving ambiguities in the rule. For example:

    - The proposals under consideration would ensure that the rule does not require lenders to reissue the Loan Estimate unless and until the costs that are subject to the 10% tolerance standard increase based on valid changes in circumstance by more than 10% in total. The proposals under consideration also would ensure that the 10% leeway provided to lenders applies only when the lender has reissued the Loan Estimate based on a valid change in circumstance.

    - The proposals under consideration would revise the rule to provide more guidance and to facilitate use of average cost pricing.

    - The proposals under consideration would also reconcile certain inconsistences between RESPA and TILA terminology.

    - The proposals under consideration would further streamline and clarify the 2008 RESPA rule by incorporating prior guidance into the regulation or official commentary to Regulation Z, as necessary and appropriate, and by making it clearer and easier to use.

Alternatives Considered

- The CFPB has also considered the following alternatives:

  - Significantly narrowing the exceptions permitting increases in settlement charges in order to restrict the ability of a lender to charge more for its own services or for third-party settlement services than the lender initially estimated. However, the CFPB was concerned that this approach could prevent lenders from increasing settlement charges to reflect justifiable increases in costs.

  - Preserving the 2008 RESPA rule as-is. However, as discussed above, the CFPB believes that the rule can likely be improved by requiring lenders to provide consumers with more accurate estimates of settlement charges and reducing compliance burden for industry.

3.4 Providing Settlement Disclosure

- TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers and require different parties to provide the TILA and RESPA disclosure forms, as discussed in the more detailed summary attached as Appendix C-1.

- In order to meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, the proposals under consideration must reconcile these statutory differences.

Timing of Settlement Disclosure

- The CFPB is considering issuing a proposal to require delivery of the integrated Settlement Disclosure three business days before closing in all circumstances.

  - However, in order to prevent unnecessary closing delays, limited changes would be permitted after provision of the Settlement Disclosure to reflect common adjustments, such as changes to recording fees.

  - Reissuance of the Settlement Disclosure and an additional three-business-day waiting period would be required only if during the three business days after issuance of the Settlement Disclosure: (a) the APR in the Settlement Disclosure increases by more than 1/8 of 1 percent (which is the current threshold for redisclosure under TILA); (b) an adjustable-rate feature, prepayment penalty, negative amortization feature, interest-only feature, balloon payment, or demand feature is added to the loan; or (c) the amount needed to close shown in the Settlement Disclosure increases beyond a specific tolerance (amount to be determined).

Alternatives Considered

- The CFPB has also considered requiring provision of the Settlement Disclosure three business days before closing *only* when, after the Loan Estimate is given, the APR in the Loan Estimate increases by more than 1/8 of 1 percent or an adjustable-rate feature is added to the loan. In all other circumstances, the Settlement Disclosure would have been provided at or before closing. However, the CFPB is concerned that this approach would allow significant increases in the cash needed to close without sufficient notice to the consumer.

- In addition, the CFPB has considered expanding the current rules allowing consumers to waive the three-day waiting period in cases of bona fide personal financial emergency. However, the CFPB is concerned that such an expansion would enable lenders to pressure consumers into waiving the waiting period because consumers may be unwilling or unable to challenge a cost increase that occurs shortly before closing.

Responsibility for Providing the Settlement Disclosure

- The CFPB is considering proposing two alternative approaches for assigning responsibility for providing the integrated Settlement Disclosure to the consumer.
    - **Alternative #1**: The lender would be solely responsible for delivering the Settlement Disclosure to the consumer.
    - **Alternative #2**: The lender would be responsible for preparing the TILA-required information on the Settlement Disclosure, and the settlement agent would be responsible for preparing the RESPA-required information. However, the lender and settlement agent would be jointly responsible for providing the consumer with an integrated Settlement Disclosure three business days before closing.

Additional Alternatives Considered

- The CFPB has also considered making the settlement agent solely responsible for providing the Settlement Disclosure to the consumer. However, the CFPB understands that settlement agents may not have access to much of the information regarding loan terms that must be disclosed in the Settlement Disclosure.

3.5 Recordkeeping and Data Collection

- Currently, creditors must retain evidence of compliance with the disclosure requirements in Regulation X and Regulation Z for two to five years. Comprehensive data on the extent to which settlement costs and interest rates change between the initial and final disclosures will improve the CFPB's ability to monitor compliance with applicable requirements and to evaluate whether the rules adequately protect consumers against potentially illegitimate increases in settlement costs and interest rates. Accordingly, the CFPB is considering proposing new data retention requirements for the Loan Estimate and the Settlement Disclosure. Specifically, lenders would be required to maintain standardized, machine-readable, electronic versions of the Loan Estimates and Settlement Disclosures they deliver to a consumer and the reasons for any changes to the information provided in those disclosures. A proposed retention period is to be determined.

- To reduce the burden on small entities, the CFPB is considering proposing to exempt them from new electronic data retention requirements.

3.6 Annual Percentage Rate

- TILA and Regulation Z exclude many types of charges from the finance charge, especially for mortgage transactions. Concerns have been raised that these exclusions undermine the potential usefulness of the APR as a simple tool to compare the total cost of one loan to another, a basic purpose of TILA. In addition, these exclusions may encourage lenders to shift the cost of credit to excluded fees, which could be inefficient and also may increase regulatory burden and litigation risk.

- The CFPB is considering proposing to remove many of these exclusions, as the Board of Governors of the Federal Reserve System (FRB) proposed in 2009.

3.7 Implementation of New Disclosures Mandated by Dodd-Frank Act

- Title XIV adds other new mortgage disclosure requirements (*e.g.*, warnings regarding negative amortization and state anti-deficiency laws). Although the Dodd-Frank Act does not specifically require inclusion of these new disclosures in the Loan Estimate and Settlement Disclosure, the CFPB believes these forms should include the new disclosures.

- The CFPB believes that finalizing rules implementing the Title XIV disclosures simultaneously with the final TILA-RESPA rule would improve the overall effectiveness of the integrated TILA-RESPA disclosures. In addition, developing final rules simultaneously would reduce the burden on lenders since lenders would need to implement only one set of revised disclosure rules, rather than potentially needing to implement revised disclosure rules at least twice in a short period. Accordingly, the CFPB is considering a proposal to use its authority under TILA, RESPA, and the Dodd-Frank Act to exempt lenders from compliance with the Title XIV disclosure requirements temporarily until the TILA-RESPA disclosure rule takes effect.

4. APPLICABLE SMALL ENTITY DEFINITIONS

For purposes of assessing the impacts of the proposed rule on small entities, "small entities" is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A "small business" is determined by application of SBA regulations and reference to the North American Industry Classification System ("NAICS") classifications and size standards.[16] 5 U.S.C. 601(3). A "small organization" is any "not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). A "small governmental jurisdiction" is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[16] The current SBA size standards are found on SBA's website at http://www.sba.gov/content/table-small-business-size-standards.

5. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSALS UNDER CONSIDERATION

The CFPB identified six categories of small entities that may be subject to the proposed rule for purposes of the RFA. These are the categories of entities that may be required to provide, and maintain related records on, the integrated disclosures, either because they may make residential mortgage loans or because they may be responsible for completing or providing required disclosures. The categories and the SBA small entity thresholds for those categories are:

CATEGORY	THRESHOLD FOR "SMALL"
Commercial Banks[17]	$175,000,000 in assets
Credit Unions	$175,000,000 in assets
Mortgage Brokers	$7,000,000 in revenue
Mortgage Companies (Non-bank lenders)	$7,000,000 in revenue
Settlement (Closing) Agents	$7,000,000 in revenue
Nonprofit Organizations	Not for profit; independently owned, operated; not dominant in field

6. SUMMARY OF SMALL ENTITY OUTREACH

6.1 Summary of Panel's Outreach Meeting with Small Entity Representatives

The CFPB convened the Panel on February 21, 2012. The Panel held an outreach meeting/teleconference with small entity representatives on March 6, 2012 (the "Panel Outreach Meeting"). To help the small entity representatives prepare for the Panel Outreach Meeting, the CFPB sent to each of the SERs the materials described in Appendix B as "Materials Circulated in Advance of Panel Outreach Meeting." In addition, the CFPB posted these materials on its website and invited the public to email remarks on the materials.

Representatives from 16 companies and organizations were selected as small entity representatives for this SBREFA process and participated in the Panel Outreach Meeting (either in person or by phone). The PowerPoint slides forming the basis of discussion are attached as Appendix D.

The CFPB also provided the SERs with an opportunity to submit written feedback until March 13, 2012. The CFPB received written comments from 12 of the representatives and shared these comments with the other members of the Panel. Copies of these written comments are attached as Appendix A.

[17] For the purposes of this Report, the categories of commercial banks and savings institutions are combined under the label "commercial banks." The list of SERs identified in Chapter 7 of this Report includes one representative of a savings institution.

6.2 Other Outreach Efforts, Including to Small Entities

In addition to conducting the SBREFA process, the CFPB has organized and will continue to organize extensive outreach efforts to consumers, industry members, and representative groups—including small entities and representative organizations—regarding the development of proposals and forms to integrate the disclosure requirements in TILA and RESPA. The CFPB began meeting with industry stakeholders regarding integrated TILA-RESPA disclosure forms in September 2010. In May 2011, the CFPB launched its "Know Before You Owe" ("KBYO") project to share prototypes of the integrated TILA-RESPA forms with the public through its website as they were being developed.[18] This effort has resulted in over 150,000 visits to the KBYO website and more than 27,000 remarks on the proposed integrated disclosure forms, roughly half of which were provided by industry. The CFPB has used this feedback to refine the prototype disclosures.

In conjunction with KBYO, the CFPB has conducted over 100 one-on-one interviews with consumers and industry representatives regarding the prototype disclosure forms, as well as facilitated numerous roundtable discussions and teleconferences regarding the TILA-RESPA integrated disclosures with affected businesses and organizations, industry groups, consumer advocates, and other government agencies. Many of the individuals attending these meetings and roundtables represented small entities from different parts of the country. Through these efforts, the CFPB has solicited and received comments regarding the potential impacts of the TILA-RESPA integrated forms from consumers and industry members, including small entities. The CFPB will continue to collect information from stakeholders, including small entities, as the rule is developed.

7. LIST OF SMALL ENTITY REPRESENTATIVES

The following 16 small entity representatives[19] were selected to participate in the Panel process:

[18] *See* http://www.consumerfinance.gov/knowbeforeyouowe/.

[19] Three additional individuals representing three different industry categories (commercial banks, mortgage companies, and settlement agents) were identified by the CFPB as potential small entity representatives, but they ultimately did not participate in the process.

NAME/TITLE	BUSINESS NAME/LOCATION
Donna Hall	The Capital Bank Little Rock, AR
Larry Winum	Glenwood State Bank Glenwood, IA
Carolyn Mroz	Bay-Vanguard FSB Baltimore, MD
Jeanne Kucey	JetStream Federal Credit Union Miami Lakes, FL
Lori Thompson	Premier Federal Credit Union Greensboro, NC
Bernie Winne	Boston Firefighters Federal Credit Union Dorchester, MA
Kay Cleland	KC Mortgage LLC Castle Rock, CO
Dale DiGennaro	Custom Lending Group Napa, CA
Kevin Breeland	Residential Mortgage, LLC Anchorage, AK
Lynda Reilly	Lynmar Lending Group Naperville, IL
Steven M. Buckman	BuckmanLegal, PLLC Washington, DC
Pam Day	Day Title Services Richmond, VA
Celia Flowers	East Texas Title Company Tyler, Texas
Juliana Tu	Viva Escrow! Inc. San Marino, CA
David Windle	Cal-Sierra Title Company Quincy, CA
Holly Olson	Neighborhood Finance Corp. Des Moines, IA

These small entity representatives were selected from the following six industry categories:

Commercial Banks	3
Credit Unions	3
Mortgage Companies	2
Mortgage Brokers	2
Settlement Agents	5
Nonprofit Housing Organizations	1

The following is a breakdown of SERs by geographic region:

- Four SERs are from the Northeast and Mid-Atlantic regions.
- Three SERs are from the Midwest.
- Four SERs are from the South and Southwest regions.
- Five SERs are from the West.

The following is a breakdown of SERs by type of locality (*i.e.*, rural, urban, suburban, or metropolitan areas):

- Two SERs are located in small and/or rural areas with populations of less than 20,000.[20]
- Eight SERs are located in mid-sized urban or suburban communities with populations of less than 500,000.
- Six SERs are located in larger urban or metropolitan areas with populations of more than 500,000.

8. SUMMARY OF SMALL ENTITY REPRESENTATIVE COMMENTS

This Chapter summarizes the feedback provided by SERs during the Panel Outreach Meeting and in the written comments received by the Panel. As the discussion in this summary suggests, SERs' estimates of various costs often varied. Because the SERs were drawn from different industries and their experiences differed, the SERs understandably may have framed, referred to, or described similar costs differently. Similarly, the approach SERs used to distinguish types of costs may differ across SERs.

As discussed above, the SERs consisted of representatives from the following industry categories: mortgage companies, mortgage brokers, commercial banks, credit unions, settlement agents, and nonprofit housing organizations. In this Chapter, when referencing a comment made by a SER, the commenters generally are identified by their respective industry categories (*e.g.*, settlement agent SER, mortgage broker SER). However, the broader term "lender SERs" is used to refer collectively to representatives of commercial banks and credit unions.

8.1 Integrated Initial and Closing Disclosures

- <u>In General</u>. On the whole, SERs strongly preferred the CFPB's prototype integrated disclosure forms to the current TILA and RESPA forms. However, as discussed below, SERs also expressed concerns about the one-time and ongoing costs associated with providing the prototype integrated forms.

- <u>Compliance Costs and Timing</u>. SERs identified the following costs associated with providing the new integrated forms:

[20] The three additional individuals identified as potential SERs who ultimately did not participate in the process (noted in the immediately prior footnote) were located in small and/or rural areas.

- One-time costs. SERs generally reported that software upgrades and training would be the primary one-time costs.

  - *Software costs*: SERs stated that they generally pay an annual fee to vendors to produce the current TILA and RESPA disclosures.[21] Some SERs reported paying substantial one-time fees to vendors for the cost of upgrades resulting from the 2008 RESPA rule.[22] Others SERs stated that their vendors absorbed this cost but would not do so for upgrades to produce the new integrated forms.[23] Four settlement agent SERs, in a joint letter, estimated software update costs of $150 per employee.[24]

  - *Training costs*: SERs also provided a wide range of estimates of one-time costs of training staff and related parties to use the new integrated forms, updating systems and processes, and obtaining legal guidance.[25] One settlement agent SER also expected that the software vendor would charge training costs on top of the software update costs. A commercial bank SER stated that, based on its experience with the 2008 RESPA rule, it would have to raise its loan processing fee by at least $25 to account for an estimated 43 hours of employee time to implement the integrated disclosures (not considering the effect of software vendor costs).

- On-going costs. SERs generally stated that the integrated forms would make it easier to explain loan transactions to consumers, although some suggested that the forms' greater clarity might be partially offset by the fact that the forms are several pages

[21] One credit union SER reported that this cost is $2,500 per year.

[22] One settlement agent SER reported paying a one-time fee of $1,200 for 10 users.

[23] One settlement agent SER reported that, if its software vendor increased costs, the increase could be $10,000-$15,000.

[24] The letter did not provide any data sources or assumptions for this estimate. The settlement agent SERs also stated that, based on their discussions with the industry's software providers, the differences in line numbers and section headings between the Settlement Disclosure and the HUD-1 would require substantial software reprogramming that will cost each software provider an estimated $1.5–$2.0 million. The SERs stated that many software providers have indicated that these additional costs will be passed on to them as software users. The letter does not detail the relationship between the $1.5–$2.0 million figure and estimated software update cost of $150 per employee.

[25] One credit union SER reported that these costs totaled $3,500 for the 2008 RESPA rule changes. A mortgage company SER estimated costs for the 2008 RESPA rule changes of approximately $160,000 at the Panel Outreach Meeting, but gave a lower estimate of $85,000-$100,000 in a comment letter. A commercial bank SER reported $50,000 in training costs associated with the 2008 RESPA rule changes and anticipated similar training costs for the proposals under consideration. Four settlement agent SERs, in a joint letter, estimated training costs for the proposals under consideration of $650 per employee ($350 for software training fee plus $300 for lost productivity due to training) as well as $2,360 to provide training to lenders, realtors, and other customers. A mortgage broker SER estimated costs of $100,000 to comply with the 2008 RESPA rule changes, and hoped the implementation costs for the proposals under consideration would be the same or lower. A mortgage company SER stated that internal IT, training, and beta testing costs for the proposals under consideration could be several hundred thousand dollars.

long and by the difficulty of explaining particular disclosures to consumers, as discussed below.[26] Some SERs anticipated that vendors' annual fees to produce the new integrated forms would be the same as the current fees to produce the TILA and RESPA disclosures. However, other SERs estimated that these fees could increase by up to 20%. SERs also cited possible increased costs for compliance reviews, training,[27] and external audits regarding the new integrated forms. As noted below, SERs indicated that compliance and audit costs could be mitigated by clear guidance on completing the forms. In addition, lender SERs anticipated higher costs if they become responsible for disclosing the content on the current HUD-1.

- o Time needed to comply. Largely because of the need to upgrade systems to produce the integrated forms and to train staff in the use of the systems and forms, SERs requested that the CFPB provide 12 to 18 months after issuance of the final rule for financial service providers to come into compliance.[28] Some SERs requested that the CFPB test the forms on actual transactions before finalizing them. One settlement agent SER requested that the CFPB prohibit use of the integrated disclosures during the compliance period so that lenders and settlement agents could not be forced to use the new forms earlier than required. A commercial bank SER suggested a six-month grace period from penalties following the issuance of the final rule to enable the industry to identify errors and systems issues without fear of liability. A mortgage broker SER suggested phasing in the Loan Estimate and Settlement Disclosure changes separately.

- Clear Guidance. SERs generally stated that ambiguity in the application or interpretation of the current RESPA disclosure requirements produces substantial costs in the form of legal fees, staff training, and, for settlement agents, preparing forms differently for different lenders.[29] To address this concern, SERs generally requested that the CFPB provide clear guidance on how to fill out the forms, similar to that currently provided in Regulation Z. In addition, four settlement agent SERs, in a joint letter, requested that use of the integrated

[26] Four settlement agent SERs, in a joint letter, estimated that each closing would on average take 15 minutes longer and consequently result in a 20% decrease in annual revenue. This estimate assumed that each affected person currently conducts eight closings per day and would lose two closings per day. The letter does not provide additional detail on the data or assumptions that underlie this estimate.

[27] One credit union SER believed that ongoing staff training will be minimal, especially since the credit union reviews the forms once a year for compliance updates in the regular course of business. A commercial banker SER reported that the bank has spent thousands of dollars on training and has continued to have new training every year because of changing guidance, but this was reported in the context of the 2008 RESPA rule implementation.

[28] This request was made by settlement agent, mortgage company, commercial bank, and credit union SERs. One commercial bank SER reported that the 2008 RESPA rule had required six months for system upgrades and training. A credit union SER reported four months for implementation of the 2008 RESPA rule.

[29] The joint letter from four settlement agents stated that small settlement agents currently lose at least 30 minutes per closing due to regulatory uncertainty and compliance burdens associated with the current rules, which they stated would be significantly reduced, if not eliminated, were the CFPB to require the use of standard forms and provide clear and concise regulatory guidance.

forms be mandatory because, if the integrated forms are only models, lenders will establish inconsistent requirements, which will be more expensive for small settlement agents.

- Total Interest Percentage and Average Cost of Funds. SERs strongly urged the CFPB to eliminate two new disclosures required by the Dodd-Frank Act because they are not helpful to consumers and would be difficult to calculate and explain, thereby increasing costs for lenders, mortgage brokers, mortgage companies, and settlement agents. These disclosures are the Total Interest Percentage (the total amount of interest paid as a percentage of the loan amount) and the Average Cost of Funds (the approximate cost of the funds used by the lender to make the loan).[30]

- Use of Line Numbers. The settlement agent SERs, one mortgage broker SER,[31] and one mortgage company SER requested that the line numbers on the current HUD-1 be retained, stating that using the revised line numbers in the prototype integrated Settlement Disclosure would significantly increase programming costs.

- Optional Signature Line. Several SERs expressed concern about the optional signature line on the prototype integrated Settlement Disclosure, which explains that, by signing, the consumer is only confirming receipt of the form and is not obligated to complete the transaction. These SERs stated that this language could mislead consumers because, at closing, the consumers will become obligated to complete the transaction once they sign a note. One settlement agent SER questioned the effect of making the signature line optional because a signed HUD-1 currently is required in some states for audit purposes and in some counties to verify the property sale price for transfer and recordation tax purposes.

- Sharing of Borrower and Seller Information. SERs raised concerns that the prototype Settlement Disclosure does not provide for a separate disclosure for the seller. As a result, the borrower and seller would see each other's information, which could violate privacy laws.

8.2 Definition of Loan Application

- In General. Some lender, mortgage broker, and mortgage company SERs stated that eliminating the seventh item in the regulatory definition of "application" (*i.e.*, any other information deemed necessary by the lender) was not a concern because they currently

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[30] *See* Dodd-Frank Act § 1419 (amending TILA to add new sections 128(a)(17) and (19), requiring creditors to disclose, for residential mortgage loans: "(17). . . the approximate amount of the wholesale rate of funds in connection with the loan…"; and "(19)…the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan…").

[31] This mortgage broker SER expressed a related concern that the line numbers of the Settlement Disclosure where origination charges and lender credits toward brokers fees are disclosed would be confusing to consumers, and cited a study in support of this comment. *See* James M. Lacko and Janis K. Pappalardo, "The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment" (February 2004) (http://www.ftc.gov/be/workshops/mortgage/articles/lackopappalardo2004.pdf).

provide the RESPA GFE based on some but not all of the other six items.[32] However, other lender, mortgage broker, and mortgage company SERs stated that removing the seventh item would create uncertainty about when provision of the Loan Estimate is required and would require them to provide the Loan Estimate earlier in the loan process, which could lead them to give less accurate cost estimates and increase their re-issuance of the Loan Estimate. These SERs also stated that they generally use the seventh item to require the consumer to select the loan product before providing the consumer the disclosures. These SERs said that issuing a separate Loan Estimate for each product would be burdensome and that they would have to change their systems so that each Loan Estimate would not be treated as a separate application for Home Mortgage Disclosure Act ("HMDA") reporting purposes.

- Additional Information. There was considerable disagreement among SERs who opposed the elimination of the seventh item about what additional information was needed to provide a reasonably accurate Loan Estimate. Some SERs stated that it was necessary to know the loan product or type selected by the consumer; one SER stated that it was necessary to know the amount of the down payment; one mortgage broker SER reported that it typically needs to collect information about the consumer's liquid assets; and another SER stated that it was necessary to know the property type.[33]

8.3 Changes in Settlement Costs/Redisclosures

- In General. SERs generally expressed concern about the potential unintended consequences of applying the zero-percent tolerance (instead of the current ten-percent tolerance) to affiliate fees and fees charged by lender-selected providers, as discussed below.[34] Some SERs stated that changes in the tolerances were unnecessary to protect consumers because settlement cost increases had become less prevalent since tolerances were first imposed by HUD in 2010. However, SERs generally supported additional clarification regarding the current tolerance rules. In particular, settlement agent SERs noted that lenders often do not agree how to complete the current documents because there are multiple ways to interpret the regulations. As a result, settlement agents are forced to follow different sets of rules for different lenders, which adds time and expense.

- Potential Unintended Consequences. SERs raised the following potential unintended consequences of reducing the tolerance for certain charges from ten percent to zero percent:

[32] In particular, two commercial bank SERs stated that the property address, which is currently one of the six specific items, was not necessary to provide a GFE.

[33] Some SERs suggested that the signed purchase agreement or documentation of the consumer's bank account or other asset information was necessary to provide a Loan Estimate. However, the current rules prohibit lenders from requiring consumers to submit such documentation as a condition of providing a GFE. *See* 12 CFR 1024.7(a)(5). One SER suggested that information regarding liabilities was necessary, but the current definition of application provides for collection of social security number to obtain a credit report.

[34] One commercial bank SER expressed support for inclusion of affiliate fees in the zero-percent tolerance, but stated that lenders could not control the fees charged by other providers.

- <u>Exact estimates not possible</u>. Most SERs stated that they are almost always able to deliver their services within the current ten-percent tolerance.[35] Two settlement agent SERs reported that they currently comply with the ten-percent tolerance even in circumstances where that tolerance does not apply. However, if the zero-percent tolerance were applied, SERs generally stated that even a small increase in the cost of a service could not be passed on to the consumer without a valid changed circumstance and a re-issued Loan Estimate. These SERs stated that lenders often could not estimate affiliate and lender-selected provider costs with greater accuracy than other provider costs.[36] A mortgage company SER estimated the cost of reissuance to be $35 per occurrence, while a mortgage broker SER estimated that it currently costs $100-200 to reissue a GFE depending on the complexity of the change.[37]

- <u>Increased lender control</u>. Settlement agent SERs expressed general concerns that lenders are steering consumers to affiliated service providers and were specifically concerned that, if lenders are held to a zero-percent tolerance standard for services provided by affiliates and lender-selected providers, they will seek to control the settlement process to control risk, potentially reducing or eliminating the role of independent settlement agents in favor of affiliates. Although the proposal under consideration would hold lenders to a ten-percent tolerance standard for services provided by unaffiliated, non-lender-selected providers, two settlement agent SERs stated that this less restrictive standard would not mitigate the extent to which lenders will seek to control the settlement process. Lender, mortgage broker, and mortgage company SERs generally agreed that lenders would have greater incentives to control the settlement process if the tolerances were tightened.

- <u>Investor requirements</u>. Some SERs noted that, although the current rules do not limit fee increases in all cases, some entities that purchase mortgage loans from lenders will not buy loans where the fees increase by more than ten percent, so that the lender or settlement agent must absorb any overage. These SERs expressed concern that, if the tolerance were zero percent, investors would force lenders or agents to absorb all increases.

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[35] SERs generally stated that increases in settlement costs above the permitted tolerances were infrequent, although one settlement agent SER reported seeing 20 violations since the beginning of 2012 and some settlement agents SERs stated that lenders often shift increases from one fee to another to avoid tolerance violations. Many SERs said that, when tolerance violations occurred, they were small, often less than $10 per occurrence. However, one settlement agent SER reported seeing multiple tolerance violations of $2,000 to $4,000 by a large bank lender.

[36] One commercial bank SER, however, commented that compliance with the expanded zero-percent tolerance rule would require similar staff time to what was required to comply with the 2008 RESPA rule (*i.e.*, 10 hours combined for two senior employees to review and discuss the issues with the bank's settlement attorney).

[37] Another mortgage broker SER commented that the time and expense of redisclosure is difficult to estimate because the process is handled differently depending on the company (*i.e.*, some companies have staff dedicated to disclosure review and redisclosure, while in other cases the originator handles the redisclosure).

- Provider lists. The 2008 RESPA rule introduced a requirement for lenders to provide consumers with "written lists of providers." Settlement agent SERs reported that lenders responded by developing exclusive lists, which pushed small, independent providers out of business. These SERs expressed concern that eliminating any tolerance for affiliate and lender-selected fees would make the lists more important to lenders, push even more independent providers out of business, and lead to increased prices for consumers due to decreased competition.[38] Two settlement agent SERs stated their belief that these impacts were likely to occur even if stricter tolerances were applied when the lender required consumers to select providers off the lists.

8.4 Providing Settlement Disclosure

Timing of the Settlement Disclosure

- In General. SERs strongly opposed requiring provision of the integrated Settlement Disclosure three business days before closing. They raised the following concerns:

  - Longer process. SERs stated that consumers usually wish to close as quickly as possible and will not want to wait three additional days after the numbers are complete and the paperwork is in order. One SER suggested that, to prevent delays, closed-end second mortgages be exempted from the current TILA requirement that certain terms and costs be disclosed at least seven business days prior to closing.[39]

  - Potential closing delays. SERs stated that, because changes almost always occur shortly before closing, it is not possible to complete the Settlement Disclosure three business days in advance. As a result, SERs stated that closings would be delayed, which would harm consumers. SERs identified the following potential sources of cost changes shortly before closing: [40]

    - Recording fees
    - Property tax bills
    - Property issues discovered during the walk-through the night before closing
    - Delayed resolution of judgment liens and delinquent real estate tax liens
    - Changes requested by the consumer (such as changes in the amount of cash needed at closing)
    - Consumers' selection of homeowners' policies
    - Provision of surveys and appraisal annotations
    - Changes in secondary market requirements

[38] In addition, one settlement agent SER also stated that sellers' interests would be negatively affected because the vertical integration of the settlement process would force them to use providers affiliated with or chosen by buyers' lenders.

[39] *See* TILA section 128(b)(2)(A).

[40] The list details some of the potential sources of cost changes shortly before closing that were identified by the SERs, but it is not exhaustive. In particular, the joint letter submitted by four settlement agents included a one-page exhibit containing a number of these items.

    - Payoff statements from other lenders
    - Real estate owned (REO) property issues
    - Notary fees (particularly if a "mobile" notary is required after-hours)
    - Requests for title endorsements

- Existence of Other Protections. SERs stated that it may not be necessary to require that the Settlement Disclosure be provided three business days before closing because the limitations on increases in the settlement costs disclosed in the Loan Estimate (discussed above) will protect consumers from large, unanticipated cost increases. One SER noted that the three-business-day right of rescission also protects consumers in refinancings.

- Proposed Alternatives. SERs suggested several alternatives to providing the Settlement Disclosure three business days prior to closing:

    - A requirement to provide the Settlement Disclosure one business day before closing

    - A requirement to provide the Settlement Disclosure three business days before closing only when certain fees have increased by more than 10 percent

    - An exception for loans with no or low fees, where there is little risk that consumers could be surprised by increases in closing costs

    - Re-disclosure of an updated Loan Estimate three business days before closing, along with a clear list of costs that may change within the three-business-day period and a requirement that lenders cure tolerance violations at closing

Responsibility for Providing the Settlement Disclosure

- SERs generally preferred Alternative #2, under which the lender would be responsible for preparing the TILA-required information and the settlement agent would be responsible for preparing the RESPA-required information but both parties would be responsible for ensuring that the consumer receives the completed disclosure three business days before closing. SERs stated that this was preferable to Alternative #1 (which would make the lender solely responsible for the Settlement Disclosure) because it was closer to the current responsibilities of lenders and settlement agents. In addition, some SERs noted that the buyer's lender may not have the necessary information to provide disclosures to the seller.

- One settlement agent SER expressed concern that lenders would direct borrowers to the lenders' preferred providers on the grounds that the lenders' systems are compatible with the preferred providers' systems. This would put small settlement agents who use manual data entry at a competitive disadvantage due to the prohibitive expense of upgrading their systems to make them compatible with the lenders' systems.

- A group of settlement agent SERs suggested bifurcating the Settlement Disclosure into a lender-prepared "Part A" and a settlement agent-prepared "Part B." In absence of that approach, these SERs preferred that settlement agents provide the Settlement Disclosure.

- One settlement agent SER suggested that the lender provide the Settlement Disclosure and the settlement agent give the seller and the buyer a separate closing statement (not the HUD-1 settlement statement) showing disbursement of all funds in the transaction. Alternatively, the SER proposed that the settlement agent deliver the current HUD-1 settlement statement, whose line numbers should be aligned with pages 2 and 3 of the Settlement Disclosure.

8.5 Recordkeeping and Data Collection

- All SERs use vendor-supplied computer systems to prepare TILA and RESPA disclosures and retain scanned images of those disclosures electronically. However, most SERs do not retain those records in machine-readable format. SERs whose files are not in machine-readable format reported that the cost of implementing such a system could be substantial. Accordingly, the SERs requested an exemption for small entities or, in the alternative, that the CFPB develop a system that would extract the necessary data from scanned images. One settlement agent SER suggested that the lender be responsible for maintaining electronic records of the disclosures. One mortgage company SER, however, stated that a small entity exemption is not necessary because large lenders that purchase loans from small lenders will require the small lenders—and the settlement agents that work with them—to develop systems for retaining the disclosures in a machine-readable format.

8.6 Annual Percentage Rate

- In General. Most lender SERs supported the more inclusive approach to the finance charge proposed by the FRB in 2009.[41] However, several lender SERs expressed concern that the resulting increases in the APR could subject them to additional requirements under HOEPA and state laws.[42] In addition, they expressed concern about the inclusion in the finance charge of taxes and insurance that are required to be paid to an escrow account.

- Additional Requirements. SERs expressed concern that an unintended consequence of a more inclusive approach to the finance charge could be that more loans would qualify as high-cost loans subject to additional requirements under HOEPA or similar state statutes that use the finance charge or the APR as a trigger. SERs stated that this risk was particularly high for smaller dollar amount loans. Some SERs commented that they do not make HOEPA loans because of the stigma that they carry. As a result, the SERs generally requested that the CFPB adjust these thresholds, to the extent possible, to account for the more inclusive finance charge.

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[41] One credit union SER stated that this change would benefit small lenders' competitive position relative to larger lenders since consumers who are comparison shopping would be more inclined to trust small lenders to calculate the APR transparently.

[42] One settlement agent SER opposed changing the current method of calculating the finance charges and APR on the grounds that it would require extensive changes to processing systems. This SER also suggested that a more inclusive finance charge was unnecessary because consumers already receive detailed lists of charges.

- Escrowed Taxes and Insurance. The SERs generally expressed concern about the FRB's proposal to include escrowed taxes and insurance in the finance charge because these are potentially large amounts that may not be knowable three business days after application. One SER commented that Massachusetts state credit union law requires credit unions to escrow taxes and insurance if the loan-to-value ratio is below a certain rate, such that a rule requiring those amounts to be included in the finance charge would have a disproportionate effect on state credit unions. Another SER commented that a rule that included escrowed taxes and insurance in the finance charge could discourage lenders from escrowing taxes and insurance, although escrows can benefit consumers.

9. PANEL FINDINGS AND RECOMMENDATIONS

9.1 Number and Types of Entities Affected

The following table provides the CFPB's estimate of the number and types of entities that may be affected by the proposals under consideration, as described in this Report:

TILA-RESPA Integrated Disclosures: Estimated number of affected entities and small entities by NAICS code and engagement in closed-end mortgage transactions

Category	NAICS	Small entity Threshold	Total entities	Small entities	Entities engaged in closed-end mortgage transactions	Small entities engaged in closed-end mortgage transactions
Commercial banks & savings institutions[a]	522110, 522120	$175M assets	7,730	4,254	7,501	4,094
Credit unions[b]	522130	$175M assets	7,491	6,569	4,333	3,417
Mortgage brokers and mortgage companies (Non-bank lenders)[c]	522310, 522292	$7M revenues	10,566	10,275	10,566	10,275
Settlement agents[d]	541191	$7M revenues	8,261	8,131	8,261	8,131

a. Asset size obtained from December 2010 Call Report data as compiled by SNL Financial. Savings institutions include thrifts, savings banks, mutual banks, and similar institutions. Estimated number of lenders originating any closed-end mortgages based on 2010 HMDA data and, for entities that do not report to HMDA, loan counts are projected based on Call Report data and counts for HMDA filers.
b. Asset size and engagement in closed-end mortgage loans obtained from December 2010 National Credit Union Administration Call Report. Count of credit unions engaged in closed-end mortgage transactions may include some institutions that make only first-lien, open-end loans.
c. Total number of entities and small entities estimated based on the Nationwide Mortgage Licensing System and Registry Mortgage Call Report (MCR) data for Q2 and Q3 of 2011. Entities that report to MCR are considered to be engaged in closed-end mortgage

transactions if they report either: (1) originating or brokering at least one closed-end mortgage; or (2) a positive dollar value of originated or brokered loans. The estimated number of small entities is based on predicting the likelihood that an entity's revenue is less than the $7 million threshold based on the dollar value and number of loans originated and the dollar value and number of loans brokered. Revenue is not reported for over 90 percent of entities considered to be engaged in closed-end mortgage transactions, so this estimate may contain substantial estimation uncertainty and may be more sensitive to model specification than if revenue were available for a larger fraction of entities. Entities that are considered to have brokered but not originated any closed-end mortgages and that did not report revenue are assumed to be small entities because nearly every entity that reported revenue that brokered but did not originate loans had revenue less than $7 million.

d. Total number of entities and small entities estimated based on 2007 Economic Census data. All entities are assumed to engage in closed-end mortgage transactions.

9.2 Related Federal Rules

As required by the Dodd-Frank Act, the proposals under consideration would consolidate the overlapping and, in some cases, duplicative mortgage disclosure regulations under TILA and RESPA and resolve conflicts between the two. As summarized in Paragraph 8.6 of this Panel Report, some SERs expressed concern that a more inclusive definition of the finance charge could lead to more loans qualifying as high-cost loans subject to additional requirements under HOEPA. The Panel is aware that the CFPB is currently developing other proposed or final rules required by Title XIV of the Dodd-Frank Act, including rules for mortgage loans subject to HOEPA. The Panel recommends that, before issuing a final rule to integrate the TILA and RESPA mortgage disclosure requirements, the CFPB consider the impact of the more inclusive finance charge on its other rulemakings, and that it adopt any alternatives or adjustments in the final TILA-RESPA rule or the CFPB's other rulemakings that would reduce burden on small entities while still accomplishing the goals of the more inclusive finance charge.

9.3 Panel Findings and Recommendations

9.3.1 Integrated Initial and Closing Disclosures

Prototype Forms

On the whole, SERs strongly preferred the CFPB's prototype integrated disclosure forms to the current TILA and RESPA disclosure forms. However, SERs expressed concerns about the one-time costs and ongoing costs associated with generating the prototype integrated forms. In particular, the SERs anticipated significant one-time software upgrade and training costs, though their estimates varied greatly. SERs generally stated that these costs would be less burdensome if the CFPB provided a substantial compliance period to upgrade systems and to train staff, but SERs requested a variety of periods. The Panel recommends that the CFPB provide a compliance period that permits sufficient time for small entities to make necessary system upgrades and provide training, and that the CFPB solicit public comment on the amount of time needed for such upgrades and training.

Testing

The Panel recognizes that the CFPB has developed the prototype forms through qualitative, one-on-one testing with consumers, lenders, mortgage brokers, and settlement agents. The Panel also recognizes that the CFPB has solicited extensive public feedback on the prototype forms through its website. Several SERs suggested that the forms could be further improved through testing on actual loan transactions. The Panel recommends that the CFPB explore the feasibility of conducting such testing before issuing a final rule.

Clear Guidance

In light of comments from the SERs, the Panel recommends that the CFPB provide detailed guidance on how to complete the integrated forms, including, as appropriate, samples of completed forms for a variety of loan transactions. Several SERs requested that use of the integrated forms be mandatory. The Panel recommends that the CFPB consider whether mandating use of the integrated forms would result in more consistent disclosures for consumers while also easing the compliance burden on small entities. The Panel also recommends that, in the proposed rule, the CFPB solicit public comment on mandating use of the integrated forms.

Total Interest Percentage and Average Cost of Funds

SERs expressed concerns that the Total Interest Percentage and Average Cost of Funds disclosures would be difficult to calculate, difficult to explain to consumers, and likely not helpful to consumers. The SERs did not provide specific estimates of the costs to calculate these amounts or to explain these amounts to consumers. The SERs also did not provide evidence to support the claim that this information would be unhelpful to consumers.

The Panel recognizes that these disclosures are required by the Dodd-Frank Act. However, the Panel recommends that the CFPB consider revisions to these disclosures that would minimize the burden on small entities while still ensuring that consumers receive important information about mortgage transactions. The Panel also recommends that the CFPB solicit public comment in the proposed rule on whether these disclosures would be helpful to consumers and the costs, if any, these disclosures would impose on small entities.

Use of Line Numbers

Several SERs stated that removing the current HUD-1 settlement statement line numbers from the integrated Settlement Disclosure would significantly increase the cost of software upgrades. The Panel recognizes that the prototype Settlement Disclosure was developed through consumer testing to enable consumers to compare the final costs to those provided in the Loan Estimate. The Panel also recognizes that the proposals under consideration would necessitate reordering and relabeling of many of the line numbers on the current disclosures (*e.g.*, due to the proposed revisions being considered to the tolerance rules). The Panel recommends that the CFPB solicit comment on whether an alternative design or numbering format (including incorporating the current HUD-1 settlement statement line numbers to the extent consistent with the proposals under consideration) would impose a lower amount of software-related costs on lenders, mortgage brokers, mortgage companies, and settlement agents while enabling consumers to compare loan terms to the same extent as the current prototype forms.

<u>Optional Signature Line</u>

Some SERs were concerned that consumers might be confused about the effect of signing to acknowledge receipt of the Settlement Disclosure. In response to SERs' concerns about the signature language on the prototype Settlement Disclosure, the Panel recommends that the CFPB consider whether the language on the prototype forms should be revised, or whether additional guidance should be provided to clarify the effect of a signature on the consumer's legal obligations.

9.3.2 Definition of Loan Application

The Panel recognizes that SERs disagreed about whether the seventh item in the definition of application ("any information deemed necessary by the lender") was necessary to provide a reasonably accurate Loan Estimate. Moreover, there was lack of consensus among the SERs who opposed elimination of the seventh item about what additional information is needed. The Panel recommends that the CFPB solicit public comment on what, if any, additional specific information beyond the six items included under the proposed definition of application is needed to provide a reasonably accurate Loan Estimate.

9.3.3 Changes in Settlement Costs/Redisclosures

SERs generally expressed concern about the potential unintended consequences of applying the zero-percent tolerance (instead of the current ten-percent tolerance) to affiliate fees and fees charged by lender-selected providers. However, SERs generally supported additional clarifications and guidance regarding the current tolerance rules. The Panel recommends that the CFPB consider alternatives to expanding application of the zero-percent tolerance that would increase the reliability of cost estimates while minimizing the impacts on small entities. The Panel also recommends that the CFPB solicit comment on whether the current tolerance rules have sufficiently improved the reliability of the estimates that lenders give consumers, while preserving lenders' flexibility to respond to unanticipated changes that occur during the loan process.

9.3.4 Providing Settlement Disclosure

SERs opposed requiring provision of the integrated Settlement Disclosure three business days before closing. The Panel recognizes that statutory requirements limit the discretion of the CFPB to shorten the three-business-day waiting period. The Panel recommends that the CFPB continue to explore whether the potential impact of the three-business-day requirement on small entities can be mitigated while maintaining the benefits to consumers by, for example, permitting limited changes after provision of the Settlement Disclosure.

The Panel agrees with the CFPB's plan to propose two alternatives regarding responsibility for provision of the integrated Settlement Disclosure. The Panel recommends that the CFPB use the public comment process to gather additional information about the benefits and costs of these alternatives.

9.3.5 Recordkeeping and Data Collection

SERs reported that they use vendor-supplied computer systems to prepare TILA and RESPA disclosures and retain scanned images of those disclosures electronically. However, SERs reported that they do not retain those records in machine-readable format. The Panel recognizes that retention of disclosure forms is currently required under both TILA and RESPA. The Panel understands, however, that a requirement to maintain the records in machine-readable format would likely impose costs on small entities.

Because it appears that small entities already generate TILA and RESPA disclosures electronically, the primary costs of the proposal under consideration would likely be the one-time expense of upgrading systems to store those disclosures in a machine-readable format. The Panel recognizes that, in some cases, these costs may be substantial. The Panel also recognizes that these software changes may be made in conjunction with software upgrades required to generate the new disclosure forms. As a result, the costs associated with generating machine-readable data may be lower than if these software upgrades were not done simultaneously. The Panel recommends that the CFPB solicit public comment on those costs and explore whether an exemption from any requirement to maintain the required records in machine-readable format should be provided to small entities. The Panel also recognizes that, even if the CFPB provides such an exemption, large entities that are subject to a requirement to maintain records in machine-readable format and that purchase loans originated by small entities may insist that the small entities also maintain their records in machine-readable format. The Panel recommends that, when the CFPB determines the larger entities' compliance period for any such recordkeeping requirements, the CFPB take into account that, even if exempted, some small entities may need to develop systems for machine-readable records.

9.3.6 Annual Percentage Rate

Most lender SERs supported the more-inclusive definition of finance charge, but some SERs expressed concern about including taxes and insurance that are required to be paid to an escrow account in the finance charge. Some SERs also expressed concern that one unintended consequence of this approach could be that more loans would qualify as high-cost loans subject to additional requirements under HOEPA and under similar state laws.

The Panel recommends that the CFPB consider excluding escrowed taxes and insurance from the more inclusive finance charge, unless those amounts would otherwise be considered finance charges under the expanded definition. Moreover, as discussed above in Paragraph 9.2 of this Panel Report, the Panel recommends that, before issuing a final rule to integrate the TILA and RESPA mortgage disclosure requirements, the CFPB consider the impact of the more inclusive finance charge on its other rulemakings, and that it adopt any alternatives or adjustments in the final TILA-RESPA rule or the CFPB's other rulemakings that would reduce burden on small entities while still accomplishing the goals of the more inclusive finance charge.

Appendix A

Written Comments Submitted by SERs

[See attached]

March 7, 2012

Consumer Financial Protection Bureau
Rachel Ross
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Ms. Ross:

I write today to follow up on questions the Consumer Financial Protection Bureau (CFPB) asked during its recent Small Business Review Panel. First, I would like to thank you for the opportunity to participate. It was an incredibly enlightening and informative experience. As the President and CEO of a small federal credit union, it is reassuring to know that the agency is carefully considering the impact of its rules on small institutions. I was pleased that the panel discussion left so much time for each individual participant to speak. Nonetheless, I wanted to take this opportunity to provide written comments to some of the agency's questions. For simplicity, I have organized my comments in the same order that the agency used during the panel discussion.

Integrated Initial and Closing Disclosures

JetStream FCU uses LoanLiner generated forms to make the current disclosures. The cost is approximately $2,500 per year. Unlike many of the other panel participants, I expect that our vendor will charge additional costs in order to update forms to comply with the changes the CFPB is proposing. JetStream FCU is a low volume mortgage lender. Consequently, we do not sign the more expensive annual service contracts which often provide updates free of charge. That being said, given the scope of the proposed changes, I would be somewhat surprised if vendors did not pass on some additional costs, even to their larger customers.

JetStream FCU did have to revise the GFE and HUD-1 forms as a result of the 2010 RESPA changes. The process took approximately four months from beginning to end, with two senior executives, in particular, spending a large part of each day working on the project. We initially consulted with our vendor and legal counsel on creating and mapping the forms. Once draft forms were approved by legal counsel, our vendor began the mapping process which took between four to six weeks. After the vendor finished, we tested the forms for accuracy and they were again reviewed by outside counsel. Once that process was completed, we began training personnel on the new forms and updated our internal policies and procedures as necessary. The total costs for JetStream FCU was approximately $3,500. That includes our vendor costs and legal fees. That figure, however, does not include the time spent by credit union staff to oversee the process.

I expect the initial costs for the current proposal to be higher than what was required for the 2010 RESPA changes simply because the CFPB is proposing very substantial changes to the current process. To be clear, I think the draft forms are a very positive improvement over the current forms; however, the changes, as you know, are significant.

At this point in time it is difficult to project whether our ongoing costs will be more or less than they are now. The agency is still considering which party will be responsible for filling out the forms. That decision is a significant variable in determining the ongoing costs. Certainly, if the agency decides to make the lender responsible for filling out the RESPA portion of the settlement disclosure, I would imagine the result would be higher ongoing costs as that would be a new a responsibility.

Definition of Loan Application

I am very concerned with the proposed changes to the definition of what constitutes a loan. JetStream FCU currently requests the following additional information: property type, loan type, and information on the first mortgage if the loan request is for a fixed Home Equity loan. JetStream FCU could provide – in most cases – a reasonably accurate estimate; however, the estimate will obviously be more precise if we have access to the additional information listed above. I recommend the CFPB reconsider this portion of the proposal for three reasons. First, the agency's two goals; speed and accuracy are in conflict. Second, as a lender, I am apprehensive about being provided less time to send out applications while simultaneously being held to even stricter tolerances than currently allowed; all with less information. Finally, I am uncertain if these changes will actually add value for consumers.

The agency's two goals in this regard; speed and accuracy are in conflict. While I understand the reasoning behind the agency's proposal, I believe altering the definition of what constitutes a loan is a step too far. The less information a lenders possesses when it provides the early disclosure, the more likely it is that the disclosure will be inaccurate. For example, assets and liabilities are an important underwriting factor and could have a significant impact on the interest rate. A rule that would require lenders to provide the TILA early disclosure before investigating all of the borrower's assets and liabilities would simply lead to uninformed disclosures. The lender is entitled to alter the interest rate; however, there is a significant added cost if lenders have to routinely re-examine the loan as each new piece of information is gathered. Further, the proposal would seem to do little to further the agency's goals as it would improve speed but only at the expense of accuracy. Less accurate forms, in turn, diminish their usefulness as a tool for comparison shopping, which is the purported reason for altering the definition in the first place.

Perhaps the best evidence of the problems with the proposal is illustrated by another CFPB initiative created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The CFPB is currently considering an ability-to-repay rule for mortgage loans, which will require lenders to examine several factors beyond the six items that the CFPB would proposes for an application. While I fully understand that lenders could ask for additional information, it is somewhat counterintuitive that the agency expects lenders to provide reasonably accurate disclosures with only very basic information regarding the borrower, while at the same time the agency will presumably require lenders to consider a much more comprehensive set of criteria before making the ability to repay decision. If the CFPB expects lenders to consider a broader range of factors in making the ability to repay determination, it is only reasonable that lenders should have access to at least some of those same factors before sending out the early disclosure.

Second, I am apprehensive about lenders being required to send out the early disclosures even earlier in the process, with less information, while also being held to stricter tolerances for items in the good faith estimate (GFE). The additional items lenders may require from borrowers, such as debt-to-income ratio, obviously will have little impact on settlement services. Nonetheless, as several other members of the panel pointed out on Wednesday, there are additional items, beyond the six factors the CFPB is considering, that are necessary in order to provide accurate figures on the GFE. The fact that JetStream FCU may be held to a zero tolerance rule for a wider array of fees (charged by third parties), all while working with less information from the borrower is very worrisome. Taken together, the proposal would require the early estimate to be more accurate, with less information; all while being provided in an even shorter period of time.

Finally, it is not clear that any of these new burdens will provide tangible benefits for borrowers. I understand that the CFPB would like for borrowers to be able to receive several early estimates that they can then use to comparison shop. In my experience, however, borrowers do not shop for a mortgage in that fashion. Most borrowers have already performed the basic due diligence by the time they have found a home to purchase. At that point in time – where a sales contract has likely already been signed – the borrower generally has already decided what lender to use.

For all these reasons, I encourage the CFPB to reconsider the proposed changes to the definition of “application.”

<u>Changes in Settlement Costs/Redisclosures</u>

On average last year, approximately 33% of JetStream’s mortgages required redisclosure of the estimate of costs. The most common reasons for redisclsoures are members changing terms or amounts, changes in the appraisal or qualifying criteria and verification of new information such as property type.

The CFPB should closely consider the unintended consequences that limiting tolerances may have on competition for settlement service providers. JetStream FCU currently covers the cost of all fees during the mortgage process. Consequently, this portion of the proposal will not have a significant impact on our operations. However, I know that my credit union is the exception in this regard and if we ever alter that practice, this portion of the proposal would be very problematic. Currently, lenders are responsible for making borrowers whole if a fee exceeds the tolerance. This fact naturally encourages the lender to control the process as much as possible. The more tolerances for which the lender is liable, the more reason the lender has to exert control over the process. Consequently, as a lender, I have an interest in requiring borrowers to use only settlement providers with whom I have a working relationship as I can be reasonably certain those lenders will not exceed the tolerances. As a general matter, any rule that naturally encourages less competition and that directly limits consumer choice should be closely considered. I understand the agency's goals in this regard. However, I am not convinced that there are any widespread problems with the current system. Moreover, even if there are some problems, I am not certain the agency's proposed solution is the correct remedy.

Providing Settlement Disclosures

Like the rest of the panel, I am concerned with the proposed three day requirement for settlement disclosures. As a preliminary matter, this would likely add at least some new costs; most notably, JetStream FCU would likely be required to pay overtime on occasion in order to ensure the forms are sent out in time. In addition, there are several fees that cannot always accurately be determined three days in advance. While I understand the CFPB would provide exceptions for certain items such as seller credits, recording fees, etc., the strict three day requirement remains a concern.

I wanted to follow up regarding a specific question I was asked during the discussion on Tuesday. I mentioned that I am concerned about possible liability issues if failure to provide the disclosures three days in advance (and a subsequent rescheduled closing date) leads to the borrower being harmed. For example, a rate lock or the sales contract could expire in the interim. This is particularly problematic if the delay is a result of a third party provider. I expressed this concern at the meeting and was asked why JetStream FCU, unlike large lenders, might not have indemnification agreements with third party providers. There are several reasons why JetStream FCU does not have such agreements.

First, this particular issue has not been a concern before and consequently, there was little reason to consider such a contract. Second, as a practical matter, we cannot now – and could not in the future – sign indemnification contracts with every potential third party provider to a loan. By contrast, larger lenders who encourage borrowers to only use their preferred providers have the resources to negotiate such contracts. Further, the volume a large lender generates provides ample justification (in the form of increased business) for a third party provider to agree to an indemnification clause. A lender such as JetStream FCU, simply does not possess that bargaining power. Moreover, as a small volume lender, the benefits of negotiating such an agreement with numerous third party providers has, to date, never justified the costs.

All of the above assumes the delay is the result of a third party. Even if the lender caused the delay, a strict three day waiting period seems unduly burdensome. While lenders should be held responsible for their own mistakes, it is counterproductive to create a potentially very large problem for the lender to cure simply to comply with the proposed three day waiting period.

Finally, in terms of which party should be responsible for making the disclosure, I agree with Alternative 2, which would make lenders responsible for filling out the TILA portion of the settlement disclosure while settlement agents would be responsible for the RESPA information. It would be a significant new burden, and a significant cost, if lenders were required to fill out the RESPA information. Accordingly, there is little reason for the CFPB not to adopt Alternative 2, which would fairly closely reflect the current process.

Recordkeeping and Data Collection

Currently, JetStream FCU does not keep the disclosures in a machine-readable, electronic format. I do not know exactly what the cost would be to add this function; however, I imagine it would be significant.

Annual Percentage Rate

The CFPB is considering altering the definition of the APR. I understand the CFPB's rationale in proposing an APR that is more inclusive of all costs. The agency is well aware of the industry's concerns in regards to the impact that a new definition of APR will have on other state and federal laws. Consequently, I will not belabor the point here. However, I would simply ask that, if the agency does move forward with this proposal, it use its authority as a regulator to minimize the impact the change would have on other requirements; such as the need to escrow for higher priced loans. Additionally, if the CFPB does move forward – and some problems cannot be resolved through the regulatory process – I am hopeful the agency will encourage Congress to make statutory changes as necessary.

Additional Feedback

Finally, I am hopeful that the CFPB will consider using its authority to eliminate or modify the "lender cost of funds" disclosure. I understand that the disclosure is a statutory requirement and thus the CFPB needs strong justification in order to eliminate it. The disclosure is, in my opinion, useless at best, as consumers are unlikely to understand what it means. Given that the goal of the consolidation project is to simplify the disclosures, there seems little reason to add new statements that provide consumer no useful information. Further, the disclosure is undoubtedly misleading. On a 15 or 30 year fixed rate mortgage, no lender or regulator can say with any certainty what the cost of funds will be over the life of the mortgage.

Conclusion

In closing, I would like to again thank the CFPB for the opportunity to participate. While I have expressed concerns with several specific parts of the proposal, I want to reiterate that the draft forms are a significant improvement over the current system. A large part of the reason the forms have been so well received is because of the process the CFPB has employed throughout the project. I have not had the opportunity to comment on the several draft forms the CFPB has released to date, however, inviting comment from all interested parties throughout the process has, undoubtedly, led to a better final product. If you have any questions, please feel free to contact me directly at 786-449-3080.

Sincerely,

Jeanne Kucey

Jeanne Kucey
President/CEO

Dear Ms. Ross

I appreciated the opportunity to participate in the TILA-RESPA Integrated Disclosure Rulemaking process through the SBREFA Panel Outreach process. The March 6th Outreach meeting was very informative and a great opportunity for all meeting participants to hear and discuss various viewpoints regarding the TILA-RESPA changes and rulemaking process. Like the other participants, Glenwood State Bank is a small institution which proudly serves our rural community by making good common sense loans of all types. We pride ourselves on delivering good and friendly service and sound banking products that help our community grow.

I am supportive of the CFPB's efforts to clarify and streamline both the TILA and RESPA regulations making them clearer and easier to comply with while providing consumers with an easy to read, clear and meaningful set of disclosures that help them better understand the costs of a mortgage loan transaction. These changes should also improve service to consumers and not cause needless delays. It's in that spirit I offer the following comments.

1. **Exempt closed end second mortgages from early disclosure requirements.** As I discussed during the meeting, many of our customers use a closed end second mortgage to purchase vehicles, do major home improvements, or finance other large purchases. Making them wait 10 days to close and fund the loan delays their ability to complete their purchase or start the home improvement work and leads to unhappy customers. Many times we make a short term unsecured loan which is paid off by the second mortgage, to enable them to complete their purchase or start their project, but this too creates additional trips to the bank for the customer and potentially additional cost.
2. **Definition of Loan Application –Drop property address as a required item.** While I have not seen many (if any) customers use the Good Faith Estimate as a tool to go shopping with, the current policy makes it impossible to do so. As I stated in the meeting, most consumers today do their research online when looking for a mortgage loan. If the goal is to have consumers use the Loan Estimate to shop for a mortgage loan, the property address should be eliminated as a required item for a purchase transaction. This would enable the bank to provide an initial Loan Estimate to the customer, which would then be revised and reissued once a property has been selected.
3. **Changes in settlement costs/redisclosures- Zero tolerances on required charges will increase costs and result in closing delays.** My bank does not have an affiliated title company, however, we do have certain approved appraisers and other vendors we use

on a regular basis. While we typically don't charge lots of fees to customers, some of these costs such as the appraisal are passed through. I can't control the appraiser's fees, survey fees, and typically the realtor controls which title agent is used. The current system works fine today and I don't feel that having those fees subject to a zero tolerance will improve customer service, but rather will result in higher prices for those services.

4. **Providing Settlement Disclosures- Allow the Lender flexibility to determine who provides the settlement disclosure.** We currently close refinance loans at the bank and as such we provide the settlement statement. This also saves our customers money by not having the loan closed by a title company. Purchase money loans are closed at the title company. This flexibility helps us deliver quicker service while keeping costs down.
5. **Timing of Settlement Disclosures- Do not require delivery to the borrower 3 business days prior to closing.** Requiring the customer to wait 3 business days to close after receiving their Settlement Disclosure will lead to more consumer complaints. Customers want to close sooner, not later. With the safeguards provided by the changes in Regulation Z on mortgage loan officer compensation and the requirements around what can and cannot change on the settlement disclosure, consumers should not be subject to the "bait and switch" tactics which were used by some unscrupulous lenders in the past. Also, on a purchase there are other parties to the transaction such as the property seller or builder, moving companies for both the borrower and property seller, that will be delayed as well, further extending the timeline and increasing the cost and frustration to purchase and move into a home. Providing the customer 24 hours to review the settlement statement and obtain the funds needed for closing is more than adequate.
6. **Record Keeping and Data Collection- Permit lenders the choice of paper or electronic format.** Our loan documents are kept in paper form today. We are dependent on our vendor to provide electronic imaging services, and those are costly. Also, our current vendor does not provide storage in a "machine readable format" which would permit data extraction as discussed during the meeting. Most vendors generally only offer storage as an imaged document. Upgrading to machine readable format would be costly. As we discussed, I agree that SBEs should be exempt from this requirement. Additionally, the lender should maintain the loan disclosures used in the transaction.
7. **Annual Percentage Rate calculation- Do not change the components used to calculate APR.** The APR calculation is embedded in our processing system. Any changes would require additional upgrades to that system which will be costly, and it would also require a retraining of staff. I am also concerned that inclusion of additional items into the APR calculations would drive the APRs higher causing more loans to be higher-priced mortgage loans which require escrows for taxes and insurance. This would pose

problems for many community banks, like mine, who do not have the ability to escrow for taxes and insurance, and many of our long time customers don't want the bank to escrow for those items. Most customers that I deal with are not interested in the APR but rather the actual interest rate on the loan. Since we provide them a listing of all their loan fees and charges now, changing the APR to include most if not all of them seems to be unnecessary and costly.

8. **Impact on Business Credit- Minor impact on business credit.** As discussed, we rarely use a first mortgage for small business lending. There are better loan products for that purpose.
9. **The Forms- Drop the "average cost of funds" and the "total interest percentage" from the Loan Estimate and Settlement Disclosure.** Both of these items provide no value to the customer and will cause additional confusion. The settlement disclosure provides the total of payments and the total finance charge which is clear and easy for consumers to understand.
10. **Costs and Implementation-** The costs to implement these changes are difficult to estimate. We will rely on our vendor to support these changes and our maintenance agreement may cover some of the changes however, there will be some technology cost to implement all of this. Time to train staff will depend on how drastic the final policy changes are. In a small bank people wear many hats, so when those staff are training on one item, there are things that are not getting done, which creates more burden on the rest of the staff. I would encourage some type of beta test to see how these new forms and the proposed policy work in a live environment. Once that's completed, I recommend a 12- 18 month implementation period.

Thank you again for the opportunity to participate on this panel. I hope the CFPB staff found the session useful and will thoughtfully consider all of our comments and statements when developing the final rules regarding TILA/RESPA. If you have any questions regarding this letter, please email me at lwinum@glenwoodstatebank.com.

Sincerely,

Larry W. Winum

President and CEO

-----Original Message-----
From: Donna Hall [mailto:Donna.Hall@thecapitalbank.com]
Sent: Monday, March 12, 2012 8:49 PM
To: Ross, Rachel
Subject: Comments---Thanks!

Rachel,

In an effort to save time for both of us, I will make my comments informal and short.

ANNUAL PERCENTAGE RATE
APR as it currently stands is a very confusing and misunderstood number. A change in the way it is calculated is need. However, if you choose to put in all fees, it would be critical to move all other markers (i.e. Higher Priced Loans, Section 32 Loans, etc.) to reflect this change, as the APR will substantially increase from the current calculation. Small loan amounts will be affect the greatest. This will generally have a disparate impact on the low to moderate income borrower. Escrows should be excluded. Taxes and Insurance will have to be paid on all property, whether or not a loan is involved.

A preferable solution might be an APR that includes only interest and fees paid to the lender (i.e. origination, underwriting, application fee, not fees for a third party) and a disclosure of a total of all other fees due at closing.

LOAN APPLICATION
Though this might not be a popular idea among all bankers; I believe eliminating the address requirement would get the early disclosures in the hands of the consumer sooner. I must say, I don't believe the average consumer is shopping. But, shopping or not, this allows the consumer to have a good idea of the cost and payments on their loan. Change of circumstance should allow flexibility for changes that occur due to the actual property selected.

CHANGES IN SETTLEMENT COST
Currently, the 10% tolerance seems to work well. Please do not include vendors that are on the "Provider List" in the zero tolerance group. As lenders, we have no control over their prices or when they change. As long as the lender receives no income from this provider, do not include it in the zero tolerance. Having said that, I understand a true affiliate (common ownership) might need to be included.

TIMING OF SETTLEMENT DISCLOSURES
Adding a requirement of Settlement Disclosure going to the consumer 3 days prior to closing will delay closing by 3 days. That's just how it works. The question becomes, as with the ROR when it was initiated, does the cost out way the benefit? I did hear this compared to the APR re disclosure now in place. Please understand, it is very different. When the APR has to be re disclosed, it can be done immediately upon the change (and it normally is). This means it is very rare that you get to closing and discover a need to re disclose. This will not be the case with the Settlement Disclosure. It will have to be ready in its final form 3 days before closing.

One approach might be to only require this if the fees outside of the 10% group have changed by more than a certain percentage. At that time, the Loan Estimate could be re issued without a Change of Circumstance to show the new cost and a 3 day period ensue.

RECORD KEEPING AND DATA COLLECTION
This would be very costly for most small banks. The number of loans you would get would be minimal as a percentage of total loans subject to the rules. I think this is a perfect place for a small bank/business exemption. I believe the threshold should be set pretty high on this one. The largest banks (who account for the majority of these loans) could do this. This might be a great time to make this subject to banks falling under the direct supervision of the CFPB.

Thanks so much for considering these comments. I hope they help in the quest for a better disclosure. This does need to be done. As a person who is truly on the frontline, I have tried to provide insight that is both fair to the bank and the consumer. Please know that as community bankers we want to help our customers. We want to provide clear and easy to understand disclosures, and balance that with timely customer service. Some days it's tough out here!

If you need anything else, please let me know.

Donna C. Hall, CPA, CRCM
The Capital Bank
Senior Vice President
12224 Chenal Parkway
Little Rock, AR 72211
Telephone 501-228-6000
Fax 501-228-6006

Viva Escrow! Inc.
2549 Huntington Drive, Suite 103, San Marino, CA 91108
Tel: 626.584.9999 • Fax: 626.584.9939

March 12, 2012

Consumer Financial Protection Bureau
3501 Fairfax Drive
Arlington, VA 22226

Attn: Mr. Dan Sokolov

Re: TILA-RESPA Intergration Small Business Review Panel
March 6, 2012 meeting

Dear Mr. Sokolov,

First and foremost, thank you for inviting me to be a part of your SBREFA panel. The March 6th meeting was illuminating and even though I could only attend by phone, the meeting was conducted so well that I did not feel I was left out at any time. Or course, I wished that I had been able to attend in person because sometimes, it is easier to convey thoughts and ideas in person, where you could see, feel and hear a person's dedication and intensity to the subject matter.

DESCRIPTION OF CALIFORNIA'S SETTLEMENT SERVICES.
There are 3 types of settlement services companies operating in California. (We call settlement services – "escrow" – in this State.) The title insurance companies are governed under the Department of Insurance; the real estate broker affiliated escrow departments are governed under the Department of Real Estate, and the small, privately owned independent escrow companies are governed under the Department of Corporations. I am one of the last and am proud to represent their interests as best I can.

Of the 3 governing entities named above it is the **Department of Corporations** that is absolutely **pro-consumer**, the "watch dog" in protecting the consumers' interests in financial transactions, as stated on their website. Governed by this entity means that we, in turn, are extremely aware of the consumers' rights and obligations. There are approximately 700 independent escrow agents licensed under the Department of Corporations and approximately 900 locations. We are predominantly small, minority driven companies owned by women and staffed by women. We may have anywhere from 2 to 15 people at each location and we have been hit very, very hard the last four years. We don't have the deep pockets that the larger settlement entities affiliated with the Coldwell Bankers, the Century 21s, the First American, Fidelity or Chicago title insurance companies have, where costs can be shared between many branches. For us small business entrepreneurs who are already fighting against the large settlement service providers to stay alive, the cost for software/hardware upgrades and changes may be the breaking point of whether we can afford to stay in business. We have no one else that will give us the money that will allow us to stay afloat.

THE COST.
And the costs can be very high. The software companies that we use have told me that the last HUD-1 revision in 2009 cost them more than $100,000.00 to put out, and that was not even a truly major change because the bulk of the form was kept almost intact. This upcoming change will cost them at least triple that amount because the whole existing HUD-1 format will disappear.

Now, I am lucky. I had the foresight years ago to go on a monthly per user maintenance fee program with my software company. That means changes, whether government required or just standard upgrades, are at no cost to me, now. Whether this fee will go up with the new forms is not something they can project at this time but we all know that costs are passed down, from them to us, from us to the consumer and so forth down the line. That is the way the economics work. However, I do know that there were many small companies who were not on a monthly maintenance program. Their cost for the 2009 software was approximately $10,000.00, plus the cost to upgrade their hardware.

OUR ROLE IN THE SETTLEMENT PROCESS.
What is a Settlement Agent? We are a neutral third party who holds money and documents until all the conditions agreed upon between parties are met. The parties can be a Buyer and a Seller in a sale transaction or a Borrower and a Lender in a loan/refinance transaction. In a sale transaction the lending process is only one part of the whole process, a means to an end, the end being the transfer of ownership to a Buyer and the remittance of sale proceeds to the Seller. <u>The RESPA law only applies to about 65% of our total business</u>. The rest of our business involves "all cash" transactions, non-owner occupied 5 units or more income property, commercial property, vacant land, and the sale of businesses.

It was brought up and emphasized several times at the meeting that the <u>TILA is the Lending industry's responsibility</u>. I submit then to you that the new **"Loan Estimate" and the "Settlement Disclosure" forms are their responsibility** also, as is the present responsibilities to cure tolerances on the HUD-1. It is not the role of the Settlement Agent to give out disclosures, only to receive instructions and act upon them.

REACTION FROM CONSUMERS.
Almost all of us Settlement Agents like the forms presently drafted which combines the TILA and the GFE. The forms do present necessary and important disclosures to the consumer. We commend the time and effort the CFPB has put into finalizing these forms and we appreciate your allowing for our input through the "Know Before You Owe" outreach program.

However, I would like to put on record that there was feedback from these consumers who we are trying to enlighten. My colleague (and also owner of a small escrow company) handed a Seller and a Buyer (different transactions, different times) a copy of the last drafts (Tupelo Bank and Basswood Bank) for comments. The clients were told that this would be the new closing statement/ HUD-1 that was being proposed. Both clients were aghast. The Seller's reaction was disbelief, with the comment, "You've got to be kidding me" and "This form has nothing to do with me." The Buyer's comment was, "You're not serious! They're not really going to do that? Who is going to read all that?" It did not go well.

SUMMARIZATION OF POINTS TO CONSIDER.

Given that we are required by Congress in the Dodd Frank Act to go forth, and with the background preamble that I provided above, these are the following points that I would like to list as alternatives/comments to minimize the impact to my business while still providing the consumers with the disclosures mandated by the CFPB:

1. The "Loan Estimate" and the "Settlement Disclosure" forms should be generated by the **Lende**r and given to the Borrower within the time periods required. The Settlement Agent will provide (just like we do now) to the Lender/Loan Broker an estimated Closing Statement to show all the "Other Costs" and to show the amount of money the Borrower/Buyer needs to bring in. The "Settlement Disclosure" is then generated by the Lender together with the actual loan documents that require Borrowers to sign, which will then conform to the TILA- RESPA disclosure regulations. Lenders are ultimately responsible for the providing their accurate disclosures and loan documents. They should not shift their burden of disclosure or related duties to the Settlement Agent.

2. At the closing, the Borrower/Buyer and Seller will receive a final **Closing Statement** (not a HUD-1 form). The Closing Statement is the form of choice for Borrowers/Buyers and Sellers. This statement is clean and easy to read and specifically breaks down where every penny of our clients' funds is applied. It does not lump the sums together as it does on the HUD-1. After 35 years in the business, I can tell you unequivocally that my clients prefer to review a Closing Statement for the costs and charges rather than a HUD-1 form. Let us provide a Closing Statement as the final disbursement statement to our clients.

3. If item #2 above cannot be considered, then another option is for the Settlement Agent to provide the HUD-1 form as we do now. This HUD-1 form must match page 2 and 3 of the "Settlement Disclosure". Under this option I recommend that the format of "Closing Cost Details" on page 2 and "Summaries of Transaction" on page 3 of the "Settlement Disclosure" be revised to match the present HUD-1 form, using the same line itemization we have been using for the last 30 some years. This will go a long way to solving the software issues for the Settlement Agents.

4. The "Settlement Disclosure" is a disclosure form to a Borrower/Buyer who is borrowing money from a Lender. It has nothing to do with a Seller. Eliminate the

Seller's side of the "Settlement Disclosure". Due to privacy issues we do not disclose figures to the other party if it were a sale transaction.

5. Tighten standardization and interpretation of the forms. Do not allow Lenders to interpret the forms anyway they want. Our most difficult issue with the present 2009 form was that every Lender interpreted certain costs a different way and demanded Settlement Agents itemize it according to their way of interpretation. There wasn't even standardization within the same Lender! A different branch or underwriter might require the costs to be listed in different sections creating a lot of headaches to Settlement Agents and cure tolerance and compliance issues.

6. The 3 business days proposal for the Settlement Disclosure will not be beneficial to the consumers. At its worst it may provide for an imagined avenue for Buyers to amend or even renege on the contract they have with the Seller. By the time they review the "Settlement Disclosure", which should be provided with their loan documents, the Buyer should already know and have agreed to the terms and conditions of their loan and how much money they need to bring in. That being said, California is not a "table closing" state. Paperwork and signatures from both parties have to be obtained prior to the closing date. We normally don't close a transaction until a few days after the loan documents are signed, so the 3 business days affect us less. However, there are transactions in which, due to other factors and delays, imminent closing is required and having a 3 business day hold may cause the transaction to fall apart.

7. Please take into consideration that no matter how hard we try to pinpoint and date down, certain figures may change between the issuance of the "Settlement Disclosure" and the final closing. These are some of the items that may change and examples:

- Notary and mobile notary fees – Borrower decides at last minute that he cannot come to the settlement office during office hours and needs a mobile notary to come to his house at 10:00 at night. The original notary fee of $50.00 may now be $250.00.
- Title insurance endorsement fee – The demand for additional title insurance endorsements is conveyed by Lender in the loan package with together with the "Settlement Disclosure" form. The Lender may request a special endorsement, let's say a 100.28 (mineral rights, damage to improvements) and the cost may be 20% of the $1,372.00 premium of title insurance for a $500,000 sale. Right there the extra unforeseen cost is $274.40.
- Last minute property tax bills – 2 days before closing we find out the Tax Collector filed supplement taxes in the amount of $500.00. This amount must be paid by both Buyer and Seller as to their own proportion.

Making the "Settlement Disclosure" the "final" statement of closing costs will not work. Who will pay for these last minute costs? Or will there have to be redisclosure? I recommend that the wording on the "Settlement Disclosure" be changed to: "This form is a statement of your final loan terms and an **estimate** of your closing costs. Compare this document with your Loan Estimate."

8. Most Settlement Agents will obtain signatures of the Borrowers/Buyers and the Sellers on an estimated closing statement or HUD-1. Again, because California is not a "table closing" state, obtaining signatures on the **final** closing statement is not practical.

9. Tolerance limits are a Lender liability and responsibility and it should be made a regulatory compliance matter, taken entirely out of the closing process. Consumers or the Settlement Agent should not have to deal with possible pre-closing delays or post closing HUD-1 revisions to cure tolerances.

10. With our reaction from the consumers who saw the draft disclosures I highly recommend that the "Loan Estimate" and "Settlement Disclosure" be put through beta testing in a large enough market and through a national lending institution.

11. Allow for 12 – 18 months after the final regulations are set for the software companies to write the software and then an additional 6 months for the lending industry (and the settlement industry) to re-train and re-vamp their process.

12. Continuously request feedback and response from the consumers, the lending industry and the settlement industry regarding the new regulations to confirm if the goals of the Dodd Frank Act are being met.

Thank you for your patience in reading over this 5 page summarization. As the neutral central depository of funds, documents and instructions, the Settlement Agent stands in the center of the settlement process yet the general public has no real idea of what we do. They know we call them in to sign loan documents, we ask them for money, we send them their net proceeds, and we provide them with an accounting of where their money went. But they fail to realize **our most important function**: to protect our clients' interests as they proceed in their realization of achieving their American Dream.

Sincerely,

Viva Escrow, Inc.

Juliana Tu, CSEO, CEO, CBSS, CEI
President and Escrow Manager
Direct Tel. #(626) 744-1684
E-mail: JulianaT@vivaescrow.com

Ross, Rachel

From:	Dale DiGennaro <dale@clgroup.net>
Sent:	Tuesday, March 13, 2012 3:01 PM
To:	Sokolov, Dan
Cc:	Ross, Rachel; Edmonds, Andrea
Subject:	Written response to SBREFA panel outreach 3/6

Dear Dan Sokolov and the Consumer Financial Protection Bureau,

I applaud the CFPB for reaching out, taking the time to solicit small businesses in our industry and listening to our feedback related to the proposals outlined. The 2010 GFE has done nothing to help consumers understand the costs associated with their transactions and has cost the industry innumerable hours to adjust systems, provide training and make technical corrections. All with no real benefit to the consumer! Most loan officers still use the previous GFE and TIL to explain a borrower's transaction costs, credits, payments and cash to close. The 2010 HUD GFE has been a tragic folly at a time when both the mortgage industry and America could least afford such a fiasco.

It is with this back drop in mind that I hope the Bureau will take my comments, as well as the SBREFA group, to heart and not move forward with unnecessary regulations and time frames that don't truly benefit the consumer.

As a mortgage broker for the past 25 years and owner of a small business in a small town, I pride myself in giving my customers the best knowledge and information about rates, terms, costs and timing involved with each transaction. Nearly 85% of my business is returning customers or referrals from my clients. I have been truly blessed by my clients continued trust and continued business.

I would like to point out that most of my returning customers are thoroughly confused by the 2010 GFE, Itemization of financed charges, state disclosures, HUD 1s, changed circumstance GFEs and a host of other documents generated by the mortgage industry which don't seem to provide clear answers and all to often appear to have conflicting numbers and information. It is truly a mess! We could not have confused the consumer more if we had intentionally tried.

My answers to the CFPB's specific questions are below in red.

Topic 1: Integrated Initial and Closing Disclosure

DISCUSSION POINTS

1. How do you currently generate the TILA and RESPA disclosures provided to consumers? Both electronically and in paper formats. What are the type and amount of costs associated with generating the forms? Software updates, education and time. I would estimate the cost to be $100 - $200 each time a GFE/TIL is generated. Time is expended by the loan officer, processor, lender and borrowers to create the correct disclosure information, make sure it is compliant, as well as time to deliver and review with clients.

2. If you had to revise your GFE and HUD-1 forms as a result of the RESPA rule changes that went into effect in 2010:

a. What actions were required to revise or update your processes and systems? Software updates, training, time, differing interpretations of required changes, lengthy explanations to customers and loss of industry credibility to consumers.

b. How much did these changes cost? An unbelievable amount of lost productivity, time, hard costs, lost transactions, delays, lost loan locks, and very confused clients. I would estimate for a very small business like myself. $100,000. There was a great deal of controversy on how the 2010 GFE should be completed by different wholesale lenders we work with. One wanted it this way, another that. This can often create a great deal of delay for our customers, which is just wasted time in a very time sensitive industry.
There are situations where our lender partners do not even accept a GFE (due to their interpretations) and don't allow corrections to be made, causing a client to lose their locked in rate. This situation is still far to prevalent within our industry 2 years after the original roll out date!

c. How long did the changes take to implement? Getting ready for the changes, implementation and adjustments after, I would say 12 months.

d. What would be your normal schedule for the next update of these processes and systems? Our systems are updated on an ongoing basis and so is our training.

3. Do you expect that the number of staff hours expended and the cost of external services and products sought as a result of the proposals under consideration would be comparable, higher, or lower than the costs attributable to the changes in the 2010 RESPA rule? I would hope lower. This is provided that the CFPB rolls out the changes in a well thought out manner with clarity for the industry, as well as our consumers. Beta testing in particular areas of the country, or with particular lenders, brokers and providers would be extremely helpful for all concerned. Additionally, phasing in certain changes would be preferred rather than hitting the whole industry like a ton of bricks with a whole lot of changes.

4. Once the initial changes are made, do you expect the type and amount of your ongoing compliance costs to be the same, greater, or less than they were before the new forms? Anticipating the same, however, I would hope it to be less.

Topic 2: Definition of Loan Application

1. Currently, before providing an early TIL or a GFE, do you request or collect any information about the borrower or property that falls under the catch-all category of "any other information deemed necessary"? Yes. If so, what type of information do you typically collect and for what purpose is it used? Type of loan requested (loan product) and assets (typically liquid). In order to provide meaningful information and loan estimates to the client.

2. Would you be able to issue an accurate Loan Estimate based only on the first six elements of the definition of loan application set forth above?
No, they would not be accurate nor meaningful to the consumer/client.

Topic 3: Changes in Settlement Costs/Redisclosures

1. Currently, in what percentage of loan transactions do you revise and reissue GFEs to reflect changed circumstances or increases in the fee amounts? 90%.

a. On average, for each mortgage transaction in 2011, how many times did you reissue a GFE as a result of changed circumstances or for other reasons?
2-6. So, on average 3.

b. What are the most common reasons for issuing a revised GFE? Appraised value, borrower request (loan amount, product change), lock extensions, rate lock.

c. On average, how much does it costs to reissue a revised GFE, including costs associated with documenting changed circumstances? $100 - $200 depending on the complexity created by the change.

2. If the limitations on fee increases are expanded as described in the Outline of Proposals, what types of impacts would this have on your business? It would be limited, however, typically the consumer would then pay more for these services on average and it could cause delays.

3. In your experience, do you regularly incur costs to address inconsistent terminology between TILA and RESPA, ensure compliance with the

2008 RESPA rule, train employees on disclosure requirements, or obtain legal guidance regarding these disclosure requirements? If so, what do you estimate that you spent on these activities in a typical month in 2011? Yes.
$1,000 - $2,000 per month including re-issues of GFEs. Also leads to a loss of credibility with clients due to inconsistencies.

Topic 4: Providing Settlement Disclosures

Timing of Settlement Disclosure: 3 Business Days Before Closing

1. What changes in your processes and systems, if any, would be required
to comply with such a requirement? Upgrades by software vendor.

a. Would these changes result in additional costs? Yes.

b. If so, please describe the type and amount of cost? Education,
training and software. Cost to company estimated at $2,500. Cost due to delays both for us and our clients will be me frustration, lock extensions, liability (both consumer and us) of purchase transactions not closing within contract time frames. Overall cost would be extremely high and would not outweigh the benefits to just a few.

2. Are there any charges or fees that generally cannot be determined in
time to provide the Settlement Disclosure 3 business days before closing? If so, please describe them, and identify the reasons why such information may not be known yet know by that time. Rate lock extensions, charges by seller for non-performance within ratified contract and additional fees that may be imposed by lender being paid off.

3. Would the proposal affect the ability to schedule settlements or close
loans as planned? Yes. It would almost be as if we would have two closings.
Three, on a refinance where there may be an additional three days after signing, due to recession rights.

Who Provides the Settlement Disclosure:

Alternative #1: Lender provides the disclosures.

1. What changes to your current business processes and systems, if any,
would be required for the lender to provide the completed Settlement Disclosure? Working more closely with lender and settlement provider prior to settlement statement being issued to address specific transaction timing and circumstances.

2. What do you estimate the costs of these changes would be? Again, hard
to determine but very high due to further transaction delays (3 day waiting).

3. Would the lender need to make additional changes to provide the completed Settlement Disclosure 3 business days before closing? Yes.

4. What impacts would such a requirement have on arrangements among lenders, settlement agents, and other third party providers?

There would need to be much more advanced communications and much more attention given by lenders to specific transaction circumstances.

Alternative #2: Lender provides TILA-required information and settlement agent provides RESPA-required information.

2. Describe any burdens you believe would arise from this "division of labor" approach. None because this is generally the way things are now (other than the 3 day settlement waiting period).

3. What impacts would such a requirement have on arrangement among lenders, settlement agents, and other third party providers? Not significant (again, other than the 3 day settlement waiting period).

Topic 5: Recordkeeping and Data Collection

1. Do you currently retain copies of TILA or RESPA disclosures provided to loan applicants? Yes.

a. If so, in what format do you maintain those records (i.e., paper or electronic)? Both

b. If electronic, please describe the format or system used to retain records. Kept in our LOS system and with some wholesale lenders in mechanical format within their system/software.

2. If the electronic recordkeeping requirements were adopted in a final rule, what specific actions would you need to take initially to comply with the requirements? Most likely software updates.

a. How much would the initial compliance actions cost? Unsure.

b. What do you expect would be the effect on your ongoing recordkeeping costs? Minimal after initial software upgrades.

3. Which entity involved in the transaction do you believe is best positioned to electronically maintain records of the disclosures provided, and why: Lenders (wholesale in my case) we work with, as many I believe already have this capability and are most times involved in the disclosure process.

a. The lender
b. The mortgage broker
c. The settlement agent

Topic 6: Annual Percentage Rate

1. Would you implement this change yourself through in-house systems and procedures? Or do you use a vendor that would make the changes for you?
We actually are calculating the APR this way on most of our refinance transactions (with exception of recurring closing costs). When we do a "no closing costs loan" all non-recurring costs are included in the interest rate and therefore the APR is essentially the same.
2. What do you expect the costs of this change would be (including software and compliance systems, legal fees, training, and other costs)?
Minimal on our part. Cost would be due to changes to existing law and regulations (state and federal) to make adjustment to high cost loan thresholds. Otherwise, it may cause a retraction in lending to many borrowers, many low income clients.

Topic 7: Impact on the Cost of Business Credit

1. Do you as a lender extend closed-end mortgage loans that are used primarily for personal, family, or household purposes but that are used, secondarily, to finance a small business?
Yes

a. If so, what percentage of all of your closed-end consumer mortgage loans are such loans, i.e., loans used secondarily for business purposes by a small business. What is the average amount of the credit extended on such loans? Less than 5% right now due to market conditions. Low appraisals, higher rates charged for cash out transactions, more difficult underwriting and poor overall small business environment!
b. For your customers who use mortgage credit secondarily to finance a small business, what percentage of the credit extended do these customers use for a business purpose? 10-20%.
c. Would the proposals under consideration cause you to increase the rates or fees you charge for such credit? No. If yes, please describe the increase that you anticipate, your basis for anticipating that increase, and any feasible alternatives to the proposals under consideration you would recommend to minimize that increase.
d. Do you believe these customers could instead obtain home-secured business loans (i.e., a home-secured loan used primarily for business purposes) from you or another lender? No, generally not.

2. In the past year, have you, as a small entity, taken out a closed-end, home-secured loan that was primarily for personal, family, or household purposes that you also used secondarily to finance your small business? No.

a. If so, in the past year, what percentage of your business costs did you fund through such credit?
b. Do you believe that the proposals under consideration would cause you to pay higher rates or fees for such loans? No.
c. If yes, please describe the increase that you anticipate, your basis for anticipating that increase, and any feasible alternatives to the proposals under consideration you would recommend to minimize that increase.
d. As an alternative to this type of credit, could you obtain a home-secured business loan (i.e., a home-secured loan used primarily for business purposes)?

ADDITIONAL FEEDBACK

1. Are there any feasible alternatives to the proposals under consideration that would minimize any significant economic impact on your business while accomplishing the CFPB's statutory mandate and objectives?
Beta testing proposals and phasing in the regulations in order to create less liability to consumers and lenders both. Be very, very clear on what is expected and allow for some compliance with the spirit of the changes, even if the execution was not perfect in a particular instance, at least for a specified time.
2. Are there any other federal rules that you believe may duplicate, overlap or conflict with the proposals under consideration? The 3 day rescission period on an owner occupied refinance with this proposed 3 day waiting period after initial settlement disclosure idea.

PLEASE NOTE: We are in an escrow type state in California.. Typically over the years (I have been in business 25+), most clients do not exercise their right to rescind, but often there is not enough time on the clients rate lock to allow 3 days to funding after the borrower signs. The vast majority of lenders here include the 3 day rescission in the rate lock time frame.
THIS I FEEL IS WRONG. There are only two wholesale lenders that I am presently aware of that don't, so it is most certainly possible. I have had many, many clients that have been negatively impacted by this well intentioned regulation. They have to pay for rate extensions or lose their rate commitment altogether. THIS IS NOT RIGHT. In practice this right to rescind costs my client more money not less! LENDERS SHOULD BE RESTRICTED FROM INCLUDING THE RESCISSION PERIOD WITHIN THE LOCK PERIOD. The lender should be

committed to fund on the day the borrowers sign. The rescission is for the borrowers benefit NOT THE LENDER! I am afraid that consumers would be negatively impacted in the same manner if you impose the 3 day waiting after initial settlement disclosure, unless you took steps to close this type of lender behavior down. As a side note..lenders are ALWAYS afraid to let borrowers waive their 3 day rescission period for fear they will get in trouble with a regulator or secondary market purchaser.

The expanded time frames set in place from the initial GFE/TIL under MDIA have also caused numerous delays, conflicts and created an immense amount of frustration for our clients. Again, not seen as consumer friendly nor efficient and no adjustments allowed due to extenuating circumstances.

Sincerely,

Dale DiGennaro

Broker/Owner/President

Custom Lending Group

1529 4th Street, Napa, CA 94559

(707) 252-2700 office I (707) 738-0878 cell

DRE lic.# 00966782 I NMLS lic.# 298353

Immediate Past President, CAMP

California Association of Mortgage Professionals

"Excellence and Integrity in Lending"

March 13, 2012

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Re: Know Before You Owe Mortgages Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel

Dear Director Cordray,

Thank you for the opportunity to participate as Small Entity Representatives in the Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel session on March 6, 2012 regarding the Consumer Financial Protection Bureau's (CFPB) TILA-RESPA Integration rulemaking. The purpose of this joint letter is to provide written comment and clarification in addition to our statements before the Panel last week. Our main concerns expressed below include (1) CFPB's consideration of who will complete the Settlement Disclosure Form (SDF), (2) the "3 Day Rule", and (3) the cost of implementation, all of which will significantly impact small businesses such as ours.

We appreciate the difficulties the CFPB faces in achieving Congress' mandate to integrate the disclosure required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). If done carefully, this project can meet the CFPB's dual goals of helping improve consumers understanding of their mortgage transaction and facilitating industry compliance with TILA and RESPA. The draft forms and regulatory outline put forward by the CFPB for the Panel meeting represent a strong first step toward reaching these goals, but we believe the minor adjustments discussed below are necessary to avoid any unintended consequences for the entire real estate transaction, harm consumers by reducing their choice of service providers and unnecessarily high costs of implementation for small business title and settlement providers.

The title industry estimates that using the current versions of CFPB's draft forms in accordance with the regulatory outline will increase costs to small business settlement providers by as much as $800 per employee in upfront implementation and training costs; $2,360 to train lenders, Realtors and other customers; a 20% increase in their yearly software maintenance fee; and a 20% decrease in annual revenue due to decreased productivity. An itemization of these costs is detailed in Exhibit "A". These significant additional costs are due mainly to four distinct problems with the draft forms and regulatory proposal: 1) the reformatting of the settlement statement, 2) the lack of uniformity in lender practices, 3) the requirement to provide the settlement disclosure three days in advance of closing, and 4) the logistics of coordinating delivery of the settlement disclosure when some costs are known only to the lender while other costs are known only to the settlement agent. In addition, if a model form is adopted rather than a single, promulgated form, the estimates listed above would significantly increase.

The Important Role of Title and Settlement Agents in Real Estate Transactions

Settlement agents serve as the independent, third-party facilitator of the real estate transaction. In this role, settlement agents serve two major purposes. First, we ensure that the transaction closes quickly, honestly and in accordance with all the parties' instructions. We handle the funds deposited by the borrower and the lender, disburse monies to the appropriate parties in the transaction and document the closing of the entire real estate and mortgage transaction, including providing the Uniform Settlement Statement (HUD-1) to the borrower, lender and seller (as applicable), as required by RESPA. Second, we serve as the last resource for consumers' questions about their transaction.

Settlement Agents are Overwhelmingly Small Businesses

In a 2010 survey of its membership, the American Land Title Association estimated that over 88% of the nearly 21,000 titles and settlement agents across the country qualify as a "small business" according to guidelines of the Small Business Administration which defines a small business settlement agent as having than $7 million in annual revenue. In fact, roughly 60% of settlement agents gross less than $500,000 in revenue and have five or fewer employees. These companies will be greatly impacted by the CFPB's proposed regulatory outline.

Federal Mortgage Disclosures are One Part of a Larger Real Estate Transaction Governed by State Law and Local Practice

Settlement – or closing as it is known in some parts of the country —designates the point in time at which the contemplated transaction is concluded, title to the property is transferred from seller to buyer, a mortgage (or "deed of trust") is given by the buyer/borrower to the lender and the funds from the buyer and lender are transferred to the seller. While the settlement process differs from state to state (and in some cases county to county), the timely and efficient outcome is virtually the same in every jurisdiction. This complex process is accomplished quickly and efficiently for one main reason: an independent, third party professional has already pulled together all of the documentation and other requirements necessary to close the transaction.

The buyer and the seller negotiate a target closing date when reaching a purchase agreement. This date is fluid and will typically change at least once depending on the underwriting of the loan, the results of the title search or changes to the agreement due to the walkthrough and inspection. For consumers, delays to closing can prove costly as they require the consumer to pay to extend their rate lock, increase payoff amounts and interest paid on lines of credit or put the entire transaction at risk if the purchase agreement states time is of the essence. Because of this potential negative financial impact on the consumer, seller, lender, settlement agent, real estate agent and other service providers, all parties will typically seek to close immediately once all the underwriting and walkthroughs are completed.

During the negotiation process, the buyer and seller will also select a settlement agent. Consumers can shop around to select a settlement agent to perform the settlement functions, or they can rely on a recommendation from their real estate agent or lender. While variances occur throughout the country, a settlement agent is typically an attorney, a title company, or an escrow company.

The settlement agent acts as a clearinghouse collecting all the necessary documentation, including the deed, mortgage, title and homeowners insurance policies, payoffs (if there are liens on the property that must be released) and pest inspection reports. The settlement agent also handles the exchange of monies, including any earnest money deposit, mortgage funds and personal funds of the parties and forwards payment to any previous lender, other lien holders, tax collectors, municipalities, credit card holders, surveyor fees, realtor fees, inspection fees and pay all of the other parties who performed services in connection with their closing. Lastly, the settlement agent prepares the HUD-1 Settlement Statement which documents all costs for both the buyer and seller associated with the transaction and in some portions of the country, also instructs the settlement agent for the appropriate disbursement of funds, and therefore is signed by the parties to the transaction.

RECOMMENDATIONS

The CFPB's draft disclosure forms and the regulatory outline will be costly for small settlement agents to implement and could put small agents out of business by making the lender responsible for producing the settlement disclosure. However, we believe that if the CFPB adopts the following recommendations, it will improve the CFPB's draft disclosure forms and regulatory outline, prove less costly for small businesses to implement and less disruptive to the larger real estate transaction.

Problem: The integrated settlement disclosure presents costly logistical hurdles because some costs and information are known only to the lender while other costs are known only to the settlement agent

Solution: Bifurcate the settlement disclosure form into a lender and settlement agent provided sections

CFPB's regulatory outline indicates it is exploring two different options for allocating responsibility for providing the Settlement Disclosure, the lender or the settlement agent. Depending on which policy choice CFPB makes, the impact upon smaller settlement agents will range from significantly debilitating to catastrophic. However, there is a third option (unconsidered in the CFPB's outline) that if implemented would achieve CFPB's desired goals and inflict little to no harm on small business settlement agents, bifurcation of the Settlement Disclosure.

Without bifurcation, if the settlement agent will continue to provide the Settlement Disclosure (which is our preferred approach), their software system must be adapted to accept nearly 3 pages of additional disclosures not currently contained in system. The programming costs would be significant and the time table for **development would far exceed the 18-month window mentioned above**.

Similarly, if a lender's system is chosen (which would not be ideal), significant amounts of information would need to be provided by the settlement agent to the lender, including transactional information having no bearing on the loan. Settlements will likely move in house to the lender or larger competitors, eliminating an entire business line for smaller settlement agents, likely leading many to staff layoffs or business closure.

Regardless of who delivers the Settlement Disclosure, small business settlement agents would likely be replaced in the marketplace by lenders or larger competitors who are able to effectively absorb the significant software development costs. Smaller settlement agents will be at a competitive disadvantage because they will have lower staff productivity due to the manually transfer of information between the lender and settlement agent.

To avoid this drastic impact on smaller settlement agents, we suggest that a reordering of the pages of the Settlement Disclosure into lender prepared and settlement agent prepared sections or parts would be the most efficient and least impactful resolution. The CFPB's current draft Settlement Disclosure Form contains approximately 3 pages of lender known information (either required currently by TILA or by Dodd-Frank) that could be segregated into a "Part A" completed by the lender using the existing or revised lender systems. The portions of the current CFPB draft form resembling the current HUD-1 should be moved (and changed as suggested above) into a “Part B” to be completed by the settlement agent using the information already in the settlement agent’s system.

Under this design, the lender would prepare their part and then transmit that part to the settlement agent along with the closing instructions. The settlement agent would add their part and provide the completed form to the consumer at settlement. This would clearly delineate the responsibilities of the lender and settlement agent based on the information they typically possess during the process.

Problem: CFPB’s draft settlement disclosure form requires unnecessarily costly software programming that could be passed on to small settlement agents.

Solution: Maintain the formatting and line numbering from the pre-2010 HUD-1 Settlement Statement.

We find no consumer benefit gained by reordering the sections or altering the line numbering on the Settlement Disclosure Form from the existing HUD-1 Settlement Statement and its previous version. However, these changes do come with substantial costs to the settlement industry and its small businesses in particular. We suggest the panel recommend that CFPB revert back to the format and line numbering of the HUD-1(prior to the 2008 rule).

The CFPB’s current draft of Settlement Disclosure Form contains heading and numbering systems substantially dissimilar to versions of the HUD-1 Settlement Statement promulgated by HUD over the last 35 years. These changes of location or numerical reference cause significant system programming issues and are one of the largest drivers of software development costs and implementation time.

Based on discussions with the industry’s software providers, these changes will require significant programming time and expense **of roughly $1.5 to $2 million dollars per software provider and require at least 18 months of programming and testing**. Further, since most software system providers recently absorbed the costs of the 2008 RESPA changes to their software, many have informed their customers that they will have to pass on these costs to the customer. For small business and other subscribers this cost increase (itemized in Exhibit A) will likely run into the thousands of dollars based upon current estimates.

However, if the CFPB chose to revert back to the historical numbering of the pre-2008 HUD-1 Settlement Statement for documenting the transaction’s receipts and disbursements on the integrated form, costs to small businesses would likely be minimal, if any. The software coding for thepre-2008 HUD-1 Settlement Statement was retained in most software systems and would require minimal software development costs to bring them back into use. While the current version of the HUD-1 Settlement Statement possesses the less costly line numbering, it also includes references to the Good Faith Estimate which would need to be eliminated through software coding.

Problem: Small settlement agents unnecessarily incur at least half an hour of lost productivity per closing due to discussing appropriate compliance requirements with lenders due to regulatory uncertainty.

Solution: CFPB should promulgate mandatory forms with clear and detailed completion instructions and rules to increase uniformity in lender and settlement agent practices.

A lack of uniform compliance practices by lenders adds unnecessary costs for settlement agents. Because of uncertainty surrounding the current requirements of TILA and RESPA, each lender utilizes differing formats of the TILA disclosure and places cost items in different locations on the HUD-1 Settlement Statement. This uncertainty forces settlement agents to waste at least 30 minutes per transaction negotiating with the lender to ensure proper compliance. Rather than have small settlement providers bear these unnecessary costs, CFPB should provide clear, concise and authoritative guidance to lenders and settlement agents, mandating the format of the disclosures and the placement of each cost item on the form.

A promulgated form, as currently provided by HUD in their RESPA regulations, is preferable to the model disclosure regime currently allowed under TILA. Having one promulgated form allows settlement agents to work with a number of lenders because despite variation in lender practice related to where cost items are located on the form, the settlement agent must only maintain the capability to produce a single form design. However, if CFPB adopts model forms as TILA currently allows, then small settlement agents will have to maintain the ability to produce each lender's desired format for a settlement disclosure. This capability will be extremely costly and potentially prohibitive to small settlement agents.

This type of environment will drive small businesses out of the market and lead to only a few larger settlement agents capturing the majority of the business available. However, a promulgated form will virtually eliminate this small business concern.

In addition to a promulgated form, clear, concise and authoritative guidance and instructions will dramatically reduce costs for small settlement providers. In 2008, HUD published the current regulations governing RESPA. This regulatory regime was a wholesale and sweeping change from the previous regulation and changed business practices in existence for over 30 years. While HUD provided some guidance (primarily by means of publically available FAQ's), it was not sufficiently responsive to industry inquiries, leaving many questions unanswered. Further, informal guidance provided at trade or professional meetings was so limited as to provide no reduction in cost for small entities.

The lack of specific information regarding the 2008 rule, on a formal and public basis, prevents businesses from reliably gauging if an action is compliant under the regulation, or if a violation has occurred. This uncertainty has increased the time to process a loan application and added layers of internal decision making and ultimately increased costs to consumers.

The use of a promulgated form by all lenders along with clear and concise guidance and instructions, will significantly reduce, if not eliminate, this small business concern.

Problem: A "Three Day" rule will produce operational inefficiencies and costs for small providers

Solution: Limit application of "Three Day" disclosure rules to TILA information

The effect of the CFPB's "Three Day" rule will be to delay closings by three days rather than force lenders and other service providers to move their timelines up three days. This mandatory delay will almost always lead to higher costs for the consumer and small settlement agents.

We agree with the CFPB's goal to provide consumers with greater certainty as to the terms of their loan and the cash needed to close the transaction prior to settlement, but there are better ways to achieve this goal than requiring the provision of the Settlement Disclosure three days in advance of closing.

If small settlement agents are required to prepare and deliver the entire Settlement Disclosure form to the consumer three days in advance of settlement they will incur increased costs related to allocating staff time to 1) collecting settlement cost/loan information from the lender and other service providers and 2) answering questions from consumers in advance of the formal settlement. The cost of collecting information to complete the disclosure will likely be high at the beginning of implementing the new regulation, as it is a large sea change from the current practices of most of the people connected to real estate transactions including lenders, settlement agents, attorneys, appraisers, pest inspectors, homeowners associations, etc. The cost of providing staff to answer consumer questions prior to settlement will be ongoing after the initial implementation phase. This cost will be fairly problematic for small settlement agents because it in essence requires them to duplicate the settlement process, first informally for the consumer and then at the official closing.

Beyond the cost to the settlement agents, a larger cost will be borne by the consumer in the form of increased transaction costs due to a delay in closing. Many transactions we currently process involve payoff of consumer and credit card debt; delays of closing in such situation can increase payoff amounts significantly given the often high interest rates such financing contains. The consumer, seller, lender, settlement agent, real estate agent and other service providers will be negatively impacted (financially) by this rule.

Due to the highly variable nature of real estate transactions (as distinct from loan transactions), predicting exactly when the transaction will be ready to close, and whether the transaction will have at least one settlement cost change in the three days prior to the scheduled settlement date is impossible. In addition, many transactions have last minute adjustments to the settlement statement predicated by or agreed to by the consumer.

To reduce the cost and potential consumer harm discussed above and meet the CFPB's goal, we believe CFPB should make the following two changes to the "three day rule":

1. **Require lenders to provide an updated Loan Estimate three days prior to closing.** TILA requires that the creditor send an updated disclosure of loan costs to the consumer three days in advance of consummation if the APR changes more than 1/8 of one percent from the initial disclosure. We believe this requirement is valuable to the consumer and should be continued. In addition, the concept of tolerance, making lenders responsible for their settlement cost estimates they provide on the Good Faith Estimate (soon to be Loan Estimate) should ensure that the cash to close estimate provided by the lender three days after application should make that information more reliable. Thus, if the lender were required to provide an updated Loan Estimate (or Settlement Disclosure Part A as discussed above) three days prior to settlement, the consumer should have with reasonable certainty the cost of their loan and the cash need to close.

2. **The CFPB should define fees that can change within three days of settlement to exempt changes in those costs from trigger a re-disclosure and three day waiting period**. This exemption should be based on the attached list of costs that typically change within three days prior to closing.

Beyond these two steps, the CFPB could also require that lenders cure any tolerance violation at the closing table instead of the current RESPA regulation's 30 day post closing window. With this change, the consumer would know the cash needed to close with a high degree of certainty by reviewing the Loan Estimate provided three days before closing. If a cost (subject to tolerance) did fluctuate dramatically in that period, then the lender would be responsible for the difference between the estimate and the final disclosure.

Most importantly, this approach would provide the same certainty to the consumer without the increased cost to small business.

Problem: Mandating that the integrated disclosure be maintained in a standard machine readable format will be cost prohibitive for small settlement agents.

Solution: Provide an exception to the machine readability requirement for small settlement agents.

In its outline CFPB indicates it is considering requiring copies of all Loan Estimates and Settlement Disclosures provided to borrowers be available and maintained in a standard, machine readable, electronic format. Currently we believe the vast majority of small business closing agents maintain the HUD-1 form in either paper or scanned image, but not in a machine readable format.

Requiring a machine readable format will require software upgrades for small business settlement agents. The cost to obtain this technology would be prohibitive to small settlement agents. The CFPB should provide an exception to the machine readability requirement for settlement agents that fall under a particular threshold of closings or revenue. This would be similar to what the IRS requires for electronic versus paper reporting of 1099-S forms by settlement agents. Without the exemption, small agents would not be able to compete with larger competitors who can offer this functionality.

SMALL BUSINESS RELIEF FROM ADOPTING SUGGESTED CHANGES

If the suggestions above are adopted by CFPB, we believe implementation costs and training will be significantly reduced or eliminated, causing a substantial reduction or elimination of many of the costs set forth on Exhibit A. Also, the implementation time for the settlement agent portion of the a bifurcated Settlement Disclosure will likely **decrease from a period in excess of 18 months to 12 months.**

Lastly, separate and apart from the important changes suggested above, the CFPB should take care to not propose rules which can only reasonably be achieved by larger players in the settlement industry. One of the unintended consequences of the recent revisions in the 2008 HUD RESPA Rule lenders now limit the settlement agents with whom they work to close transactions because of increased liability. Not only will small settlement agents be hurt by this inability to compete, but consumers will be harmed as well from the lack of consumer choice, ultimately leading to higher costs. The basic tenet of Section 4 of RESPA should ultimately guide CFPB's direction: that "the form prescribed under this section shall be completed…by the person conducting the settlement." We strongly believe that a neutral third party conducting the settlement is absolutely necessary for CFPB to achieve its dual goals of improving consumers understanding of their mortgage transaction and facilitating industry's compliance with TILA and RESPA.

We appreciate the opportunity to present our thoughts and ideas to the Panel and welcome the opportunity to provide additional guidance as the Panel considers its recommendations.

Sincerely,

Steven Buckman
Pam Day
Celia Flowers
David Windle

Exhibit A

Implementation costs		
Cost	**Reason**	**Detail**
$150 per employee	Software Update	
$350 per employee	Software Training Fee	
$300 per employee	Lost Productivity due to training	Estimate 2 days of training at $18.75 per hour (median wage for a title abstractor according to the Bureau of Labor Statistics)
$1405.80	Provide training to lenders	Estimate 9 days at $20.15 per hour (median wage for a title abstractor management according to the Bureau of Labor Statistics)
$967.20	Provide training to realtors and other customers	Estimate 6 days at $20.15 per hour (median wage for a title abstractor management according to the Bureau of Labor Statistics)
Recurring Costs		
Cost	**Reason**	**Detail**
20% increase	Yearly Software Maintenance Cost	
20% decrease	Revenue lost	We are estimating an additional 15 minutes per closing. With an estimate of 8 closings per day per closer, this extra time will cost 2 closings per day per closer.

Exhibit B

If Settlement Statement is Required Three Days Before Closing and Closing is Delayed the Following Charges Would Change

- Prorations
  - Real Property Taxes
  - Assessments
  - Sewer Fees
  - Home Owner's Association Dues and Fees
  - Leases and Rents (*i.e.* seller remaining in possession after close for short period of time)
  - *Etc.*
- Interest on Payoffs
  - Existing Loans
  - Judgment Liens
  - Delinquent Real Estate Tax Liens
  - *Etc.*
- Late Charges if Payoff Deadline Missed
- Prepaid Interest on the new loan
- Expiration of Interest Rate Lock on borrower's new loan which could result in an increase in the interest rate or the need for additional funds to buy the interest rate back down.

Other Reasons Charges Could Change

- Last minute negotiations between the parties
  - i.e. buyer walk through may result in issues that buyer wants seller to pay for or that the parties agree to split
  - i.e. buyer and seller are still negotiating the contract until time of closing
- REO Seller requirements that were unclear on the Purchase Agreement
- REO Seller change their mind on what can and can't be paid by buyer or what can come back to the buyer.
- REO Seller fails to clear title requirements and closing is delayed and buyer is charged additional fees by the REO seller. (in addition proportions described above may change.)
- Short sale instructions from lender receiving payoff don't arrive until last minute.
- Demands received at the last minute
  - Lender
  - REO Seller
  - HOA
  - Real Estate Agent (i.e. administrative fee for broker paid by buyer)
- After buyer's inspection buyer demands credit from seller that exceeds lender's allowable seller credits and lender adjusts the loan amount
- Buyer's cash to close is more than lender verified buyer had and lender adjusts the loan amount
- Buyer's cash to close is less than a government loan program requires and lender adjusts the loan amount
- Borrower's cash back from closing exceeds lender's guidelines and lender adjusts the loan amount
- Borrower doesn't want to bring cash to closing so loan amount must be increased to cover payoffs and closing costs

Celia C. Flowers
Owner - Attorney at Law
Cell: 903.521.7340
cflowers@etextitle.com

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March 13, 2012

Mr. Richard Corday
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20006

Re: Small Business Review Panel

Dear Mr. Cordray,

Thank you for allowing me to serve on the Small Business Review Panel and for taking the views of a small business person under consideration in your rule making.

By way of background, I am a small business woman from Texas who owns and operates a number of small title agencies in East Texas. I have been in the land title business for over 30 years and have been a small business owner for nearly 20 years. Additionally, I am a former President of the Texas Land Title Association. I think I can speak for the 500 or more title agents who represent small business throughout Texas. We serve the consumers of Texas by acting as a neutral third party to make their home purchase function smoothly and fairly.

I agree with the goals of the CFPB to make it easier for the consumer to understand the home buying process, keep costs reasonable, and to reduce surprise fees at closing. However, I would strongly urge you to proceed cautiously so that you do not have the opposite result in your final rule making.

When integrating TILA and RESPA, I am very worried that a zero tolerance, even for affiliates and especially for third party providers listed on the "provider list", will drive the few and largest mortgage lenders in the U.S. to vertically integrate settlement services. This will eventually drive small and independent title agents, underwriters and many lenders out of business, and prices will increase over time due to a lack of competition. Zero tolerance will eventually mean zero competition. This would be a terrible result for your typical American consumer and home buyer. Also, overlooked in this process is the interest of the seller who may be forced to use the buyer's lender or affiliated settlement agency and will not have any independent voice at the settlement table. The tolerance provisions implemented in the 2010 RESPA changes are reducing (if not eliminating) significant variations in funds due by the borrower at the closing table. Thus, any tightening of these tolerances are not necessary and could significantly change the business to the detriment of the consumer and small settlement agents.

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The same can be said for the proposed lack of a bi-furcated process in preparing the settlement disclosure document. I believe the party whose job is to perform the settlement ("closing") of the transaction (whether it be a title agent, settlement agent, attorney or even a lender) must be responsible for preparing the settlement portion of the Settlement Disclosure. This form should be promulgated and mandated. The proposed rule should not take the neutral settlement agent out of the process and put this function in the lender's hand. Due to CFBP's proposed merger of the loan information and settlement statement in the Settlement Disclosure, if the lender is actually designated to prepare the entire form, it will reduce the role of independent settlement agents. This will lead to the lender controlling the entire settlement process, and I fear, raise costs and fees, exactly what the Agency is trying to avoid.

In closing, your agency arose from the crisis we had in mortgage lending. Small title agents, settlement agents and community financial institutions did not play a role in that crisis. In fact, the steering of lending and settlement away from small business helped create greater problems. For decades, the modern title industry has been the neutral third party at the closing table. Moving away from the neutral third party at settlement into the hands of the largest lenders in the U.S. is bad public policy and will increase costs to consumers. CFPB needs to do everything it can in crafting new rules to avoid this result.

So that you are aware that the small businesses in the title industry are united in their recommendations, I am also attaching for your review a letter signed jointly by all of the title industry participants on the small business review panel.

Thank you for your consideration of these recommendations.

Celia C. Flowers

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

RE: Small Business Regulatory Enforcement Fairness Act (SBREFA) Panel

Dear Director Cordray,

It is my honor to have been chosen to serve on the Small Business Review Panel as a Small Entity Representative. I found the meeting on March 6th to be a great opportunity to share our mortgage industry viewpoints and real life consumer and small business experiences.

I am a small mortgage business in Castle Rock, Colorado and have been in the industry for the last 28 years. I am a Past President of the Colorado Association of Mortgage Professionals and a current board member of NAMB, The Association of Mortgage Professionals, which represents the mortgage originator and small business.

We appreciate and support the CFPB's process to help the consumers by combining the mortgage disclosures under TILA and RESPA, and furthermore clarifying the specific guidelines for all industry professionals. The following are comments with regard to each Topic.

TOPIC 1 INTEGRATED INITIAL AND CLOSING DISCLOSURES

There is consumer confusion with regard to the TILA and RESPA forms that result in increased costs. Past studies have been performed by HUD and the Federal Reserve confirming the confusion. It is imperative that the loan originator deliver the Loan Estimate to the consumer to help them understand the forms and the costs in order to make an informed decision. The goal is for the consumer to begin the shopping process immediately, therefore the mortgage broker originator should continue to be able to provide the Loan Estimate.

Consumers shop mortgages for loan amount, monthly payment, closing costs, interest rate and product, which include loan type and down payment. The new streamlined disclosures show the loan features with more clarification, detail, and less duplication.

Currently consumers often choose the higher costs loan during comparison shopping due to the originator charges and credit section of the Good Faith Estimate. The same form for the same loan is completed differently depending on the type of originator: a broker, a mortgage banker or a bank.

It is important that specific guidelines be generated on the new disclosures to eliminate confusion and create more consistency. The goal should be to avoid the 2010 GFE confusion, which to this day, has different lenders with different interpretations on how to complete the GFE. One suggestion would be to implement training with the CFPB prior to the rollout of the new disclosures.

The training that goes with this change is significant. A small broker shop, one with few employees, training entails closing the office for days to ensure proper training. NAMB survey indicates on average, a typical small mortgage brokerage shop has 5-7 employees. Loan origination stops for this office until training is complete and understood causing burdens to small market participants. Clear, specific guidelines, with no need for interpretation need to be given to all parties at the beginning of this change to eliminate excessive training and inconsistencies throughout the industry.

Disclosures are printed by computerized loan origination software. Changes must be made with the software companies and is generally included in the annual fee. Software companies should be included in future panel discussions prior to any change. All wholesale lenders will have to reprogram their systems, which is a time consuming and costly process. Software changes and training will result in higher costs to the consumer as evidenced with the 2010 GFE change.

Increase compliance costs will also occur with this implementation. RESPA and TILA are complex laws. Lenders must ensure compliance and employ attorneys and auditors. With every change, compliance must be monitored. HUD has provided FAQs in an attempt to help originators comply with their RESPA regulations, however there is still a lack of consistency throughout the industry.

It is very difficult to know how much time will be required to re-educate originators and staff, however it will significantly impact the consumer and small business. Depending on the position held, it is likely that the mortgage staff needed at least 50 to 100 hours of education with the 2010 change.

TOPIC 2 DEFINITION OF LOAN APPLICATION

Mortgage Broker shops would be able to issue an accurate Loan Estimate with 6 elements, however we do believe that 7 elements create more flexibility and accuracy for the consumer. For example, it is also important to know the loan product and the down payment for comparison shopping purposes, which would be included in the 7th element.

TOPIC 3 CHANGES IN SETTLEMENT COSTS/REDISCLOSURES

A change of circumstance happens on every loan when you lock your loan. We see about 4-5 additional changes consistently. Examples include: lock extensions, loan amount changes, sales contract renegotiations, loan to value, product change and appraisal issues. With every change the loan must go back through redisclosure and underwriting. This process may result in a lock extension that is paid by the consumer. The additional time frames could also result in missed closing dates further resulting in expenses directly to the consumer such as: moving, rent, storage, child care and time off work.

Services that the originator selects, are subject to a 10% tolerance. This process is currently working with minimal costs to the broker and the lender. The title company charges the broker and lender through the cost to cure process. An example of a tolerance violation could be when a lender requires a title policy endorsement, a survey, or a 2nd appraisal. To require no tolerance could create a burden on brokers, lenders and providers that would increase costs to consumers.

It is difficult to count the cost of re-disclosure since it is handled very differently at all companies. Some companies have a staff dedicated to disclosure review and re-disclosure. In smaller companies it may be handled by the originator. If a typical re-disclosure takes an hour to prepare and review, with wages in the $30 to $40/hour range for specialized staff with benefits, it can easily cost several hundred more dollars on each loan to prepare and review the changes.

TOPIC 4 PROVIDING SETTLEMENT DISCLOSURES

We believe that Alternative #2 is in the best interest of the consumer. This process is currently in place without issue. Having the title company prepare and insure the closing allows the lender to have a third party validation in the transaction.

TILA's MDIA has built in a time frame for the consumer to review fees prior to going to closing. This process created additional staff and procedures for wholesalers and additional costs to consumers. With the safeguards provided by the current and proposed TILA, RESPA and MDIA, there should be no reason to delay settlement for an additional 3 days.

Completing a settlement disclosure 3 days prior to closing will create additional costs, staffing and training. The costs could be significant to the consumer. The increased costs include, but are not limited to: lock extension fees, additional credit report pulls, moving delays and contract extensions.

In addition to consumer costs, there are also other parties involved in purchase transactions. When our consumer is buying a house and the seller is buying another house on the same day, our delays will create their expenses.

Unless the exact date of settlement is absolutely known, the exact settlement figures cannot be determined.

The change in terminology and the numbering of the Settlement Statement to the Settlement Disclosure will cause a major reprogramming for lenders, brokers and title companies. This process will be a major undertaking for all parties.

There is a definite concern with regard to the Origination Charges and Lender Credit on the Settlement Disclosure. Example SD 2/12 is very confusing. This is a Lender Paid loan showing $4300 paid by others (Line A-2) , however there is a loan origination fee of $1000 on line 04. This disclosure applicable to any entity that brokers a loan (regardless of corporate charter) is duplicative in the disclosure form. First, the amount appears in the form as a payment of $4,300 and this amount is also reflected in the interest rate applicable to the loan. This is again confusing to consumers, requires the small business owner to explain the charges to the consumer. There are Paperwork Deduction Act implications in requiring this disclosure and NAMB would like to claim, under the act, that it violates the Act in terms of time and burdens on the public and business and needs to be addressed in this rulemaking. This is especially true in light of the 2004 Study conducted by the FTC that such disclosure is confusing to consumers [1] NAMB suggests two avenues to correct this consumer confusion: (1) not require the disclosure of the amount on Line A-2 and leave the interest rate the same on page one; or (2) leave the Line A-2 amount disclosed and reduce the interest rate the corresponding amount in order to permit consumers to compare documents from all market participants such that this confusion is eliminated.

This Settlement Disclosure is the same form for all originators, however it is completed differently depending on the type of originator: a broker, a mortgage banker or a bank. On this point, the CFPB should be vigilant in requiring lenders, credit unions and banks, which act in the capacity of brokering a loan, follow the loan origination and other rules applicable to any entity that brokers a loan. We believe the CFPB should increase market understanding of this legal requirement.

We would like to emphasize the importance of giving specific direction to the industry professionals with very little room for interpretation to eliminate inconsistencies.

TOPIC 5 RECORDKEEPING AND DATA COLLECTION

Most small business's keep their files in paper and pdf format. There would be a significant cost to store files into a machine readable format.

[1] The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment; James M. Lacko and Janis K. Pappalardo February 2004

Everyone that has interest in the transaction should maintain supporting business records. The CFPB should work with the state regulatory agencies to ensure a uniform record keeping process.

TOPIC 6 ANNUAL PERCENTAGE RATE

Very few consumers understand what APR means. Many have mistakenly seen the figure on the TIL disclosure and assumed it was their interest rate. Others assume it is the actual interest rate rather than the

Note rate. Most simply ignore it. Consumers do not realize that they are being presented different loan terms that produce a different APR. It is very common to see APRs on different loan-to-value ratios that have dramatic variances since lower loan-to-values do not have mortgage insurance. Consumers are not aware of how this affects the APR. Consumers hear an advertisement for a low APR and don't realize that a shorter term produces a lower APR. Adjustable-rate mortgages can produce an APR that does not align to what borrowers may eventually pay. Even loan size can affect the APR. Low loan amounts can easily trigger HOEPA violations. If CFPB removes exclusions, more loans will fall into the violation category, which could affect state law. For example inclusion of escrows in high closing costs states could have an impact on consumers applying for smaller loan amount mortgages.

The majority of small mortgage broker offices utilize software such as Calyx. Changes to the software are generally included in the annual fee, for now. It is possible with all of the changes that have taken place, we will begin to see increased fees. The change of APR fees will cause the wholesale lenders to reprogram and retrain. This process will take time, money and staff, which will ultimately be passed on to the consumer.

TOPIC 7 IMPACT ON THE COST OF BUSINESS CREDIT

Residential mortgage originators generally do not give loans for business purposes. Our guidelines do not allow for start up business loans, nor do we have the ability to get a loan for our start up business. Small banks are the primary source of small business loans.

Thank you for the putting together the panel of small business representatives and allowing us to give you feedback and ideas that affect our day to day activities and our consumers. We truly appreciate and thank you for the opportunity. I look forward to continuing to work with the Consumer Financial Protection Bureau in its mission to protect the consumer and support small business.

Sincerely,

KAY A CLELAND

CMC, CRMS, CML, CFS, Lending Integrity Seal, Military Specialist- www.usacares.org
NMLS #265374, CO#100026748
Regulated by the Division of Real Estate
NAMB Board of Directors and 2012 Membership Chair
CO Association of Mortgage Professional Board of Directors KC Mortgage LLC, #374307, A Colorado Small Business Cell: 720-670-0124, Efax: 720-306-3213
kay@kcmortgagecolorado.com
www.kcmortgagecolorado.com

Residential MORTGAGE, LLC
AK167729

March 15, 2012

Mr. Dan Sokolov
Small Business Review Panel Chairman
Consumer Financial Protection Bureau
1801 L St. NW
Washington, D.C. 20036

Re: TILA-RESPA Integration Small Business Review Panel

Dear Mr. Sokolov,

I would like to begin by saying that I appreciate the Bureau's efforts on this issue, asking good questions, having concern for small business and consumers. As I said in my closing remarks on Tuesday, the task in front of you is significant. My comments are brief and will follow my PowerPoint presentation.

Topic 1: Integrated Initial and Closing Disclosure

The GFE and HUD-1 documents that our company uses have been computer generated for a number of years. That process only continues to improve. The costs that we will incur when this next integration occurs will be similar to the costs incurred when the last GFE changes took effect in January 1, 2010. Training staff, IT man hours and BETA testing all add up. Then there is the software cost which again will be small in some cases, but not all. As I mentioned, our costs were in the range of $85,000 to $100,000 and I would anticipate the costs for the next revision will be similar.

Once the last changes were made, we discovered many different interpretations on relevant issues which were discussed in HUD's FAQs. You can't anticipate every problem that will occur when writing regulations and drafting forms but it would seem to be in everyone's interest for the CFPB to implement clear regulations and FAQs that anticipate as best as possible the unintended problems that may occur. Working closely with consumers and small business can help to resolve in advance many of the problems that might occur. Our experience has shown that allowing for a 12 to 18 month period for these regulations to go into effect should help in overcoming unintended consequences.

The GFE should have a comparable worksheet that works in harmony with the GFE itself. Our experience has also shown that consumers aren't necessarily shopping lenders; they are shopping loan programs that meet their needs. Additional changes need to be made to the TIP, Total Interest Percentage, and the ACF, Average Cost of Funds. Our experience with consumers has been that they like transparency rather than too much paperwork or long explanations. The TIP and ACF as currently drafted will confuse borrowers, eliminating the opportunity for consumers to a have a comfortable and seamless transaction. I would also suggest as to the GFE that it would be easier if the HUD-1 disclosure continues to use the HUD-1 section numbers as they exist today. Hence, instead of the GFE using letters, such as A for origination charges, it uses Section 800. This would enable the consumer to match their GFE to the HUD-1 they are receiving. The worksheet should also use the numbers as well. That would allow the consumer to match the worksheet with their GFE. A worksheet for estimates is needed and should be a universal document.

Topic 2: Definition of Loan Application

Under the current definition of a loan application, the 7th item has been the Executed Purchase Agreement. Additionally it includes letters of credit explanations, further verification of cash on hand, and other issues regarding documentation for credit decisions**.** Under the current GFE structure a GFE produced by the lender is subject to the 10% tolerances. The lender has the ability to make changes if they qualify under the Changed Circumstances. Under the current guidelines, the 7th item(s) allows the lender to produce an accurate GFE. The Executed Purchase Agreement and the ability to have further questions regarding credit history, cash on hand, employment, etc is critical to the loan application and the tolerances that are triggered when a GFE is done.

If you took the current GFE and created an Estimate Worksheet using the same version of the proposed GFE, then the six items proposed for the loan application would be acceptable. The Worksheet GFE would say have that title across the top, it would not trigger any tolerance issues, and it would give both the lender and the customer an opportunity to review various loan products regarding an amount the customer qualifies for, not what they are hoping to buy. The consumer would be required to sign the Worksheets and they would become part of the permanent file. The consumer would get better information and the lender would be protected from the tolerance triggers that could prove costly later in the process.

Topic 3: Changes in the Settlement Costs/Redisclosures

Lender affiliates have no more control over their cost structures than non-affiliated lender service providers.. In most states, the fees for these service providers, such as title insurance companies, are fixed due to competition or state regulation. Having a zero tolerance for lender affiliates would create an uneven field among service providers..

Additionally a zero tolerance could lead to a revival of "packaging", which was considered for years and rejected for a number of reasons before the new GFE went into effect. Packaging benefits the large lenders and it has the potential of putting the small lenders out of business. The large lender and the service companies they select would be able to create service packages at a price they dictate. However, the smaller lenders and their service providers would not be able to compete with these apparent economies of scale and market power. Once that occurs, and history in America has proved this time and time again, competition is reduced and the consumer ultimately pays a higher price. Leaving tolerances in its current form works very well for all companies and most important it works well for the consumers.

Terminology is the area of the proposed Settlement Cost form that will create the most confusion and the most expense. Using the proposed system of letters, both on the GFE and the HUD-1, rather than the proven and well working process of the numbering system currently in pace, will cause software changes costing in excess of $100,000, which is burdensome on small businesses. . The lender then has to do retraining, expend IT time and do BETA testing. This added work will create at the very least another $100,000 in costs. If the current numbering system used on the HUD-1 is placed on the GFE, the consumer will be better able to compare the two at closing. Our experience has taught us that the less changes made to the simple parts, the better the consumer likes it.

Topic 4: Providing Settlement Disclosures

Of all the proposed changes by the Bureau, this change has the potential of creating more problems at closing than the proposal will cure. Allow me to expand. First, when the closing is in motion, consumers want to move in today. Requiring that the consumer receive the Settlement Disclosure three days in advance will frustrate the borrowers at a critical time in this stressful process.

Second, the lender and the settlement agent will now handle the file at least one additional time for the early settlement statement. Lenders and settlement agents will have to determine if current staffing levels will be able to handle the additional requirement. The lender and settlement agent may have to train and add staff to meet these deadlines. This new requirement will create a market where small business could be priced out because of increased staff costs.

Under this added requirement, if the buyer and seller disagree, the lender will have to handle the file again, produce new settlement disclosures, and then everyone wait another three days. In the consumer’s case, six days is a long time to close once you have all explanations in at final underwriting and then having to reclose twice...not to mention what APR changes you might have.

Topic 5: Recordkeeping and Data Collection

The Bureau's consideration of a carve out concerning this issue for small entities is commendable. However, there is a problem with that proposal. Software providers will have to make their software products Machine-Readable. Small entities are going to be required by large lenders to whom the loans are sold to have these capabilities. The same will be true for the settlement agents and the underwriters used by the respective companies. I could not begin to estimate the cost of this change, but it is likely to be around $150,000. Currently the lender and settlement agent keep their respective versions of the file, but experience tells us that the lender keeps the entire record of the transaction.

Topic 6: Annual Percentage Rate

This part of the transaction has worked well for lenders for years. Experience tells us that this type of change will create software reprograming and further confusion for the consumer. It is a critical part of the process and the current process works. This should not change. Just the software and training costs alone make this change very expensive, again probably in the neighborhood of $100,000.

Topic 7: Impact on the Cost of Business Credit

Business credit today is one of the hardest, if not the hardest type of credit to obtain today. Investor guidelines don't allow today's cash out refi's due to uncertainty as to continued employment, an inability to verify income, the uncertainty as to the effect upon the consumer's credit and the lack of control on how the cash will be used. These loans are better left to Community Banks and Credit Unions**.**

Closing:

I applaud the efforts of the CFPB regarding mortgage issues and thank the CFPB for allowing us to be a part of your panel. I found the experience informative and very positive. The staff of the CFPB have been attentive and expressed a willingness to discuss all parts of an issue. I went away from the process knowing more about how regulation occurs..

The comments of the panel should be followed....we are the people on the ground working with consumers all day. As I stated two problems exist with transparency, you either get to little, or too much. I would request the CFPB to look at the issues closely and refer to the panel and their comments for the best methods for the TILA-RESPA Integrated Rulemaking.

Best Regards,

Kevin M. Breeland

Kevin M. Breeland, CMB
Senior Loan Officer, Production Manager
Residential Mortgage, LLC
100 Calais Dr
Anchorage, Alaska 99503
breelandk@residentialmtg.com
843-709-3600

Bay-Vanguard
Federal Savings Bank

March 16, 2012

By electronic delivery to:
Dan.Sokolov@cfpb.gov

Mr. Dan Sokolov
Deputy Associate Director
Research, Markets & Regulations Division
Consumer Financial Protection Bureau
1700 G Street, N.W.,
Washington, D.C. 20006

Re: Comments of Small Entity Representative Carolyn Mroz to the small business review panel for the rule making to integrate the RESPA-TILA disclosures

Mr. Sokolov:

I appreciate having the opportunity to serve as a small entity representative (SER) to the Small Business Regulatory Enforcement Fairness Act Review Panel (SBREFA Panel) assembled to provide input on the costs and benefits of proposals to integrate the disclosures required by the Truth-in-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). I would like to begin by commending the Bureau's staff, and particularly Mr. Ben Olsen, for conducting an outstanding outreach meeting on March 6, 2012 that brought together a diverse group of stakeholders and encouraged broad input from each of us. As requested at the close of the meeting, I offer the following written comments about the proposals under consideration.

I am the President and Chief Executive Officer of Bay-Vanguard FSB, a federal savings bank founded in 1873 that is headquartered in Baltimore, Maryland. Bay-Vanguard currently has an asset size of $147 million, operates four branches in the Baltimore metropolitan area, and has 35 full-time employees. Bay-Vanguard is a full-service, community-oriented financial institution dedicated to serving the banking needs of consumers and businesses within our market area. We originate fixed and adjustable rate mortgage loans, construction loans, and home equity loans and lines of credit. I have worked in a variety of positions at the bank since 1972, including almost 15 as a loan officer, and assumed the position of President and Chief Executive Officer in 1982.

In addition, I serve as Bay-Vanguard's Chief Compliance Officer, overseeing the bank's compliance with all consumer protection regulations with the help of members of the bank's Compliance Committee, a committee made up of senior officers responsible for lending, deposits, operations, human resources, and our controller. Together we work to understand the requirements of applicable regulations and to implement policies, procedures, and controls to ensure that our operations comply with supervisory expectations. Thus, I am keenly aware of our compliance obligations and am also responsible for overseeing all change management. I understand the time and effort required implement regulatory changes – the changes to forms, systems, policies, and procedures necessary to comply with a new or modified regulatory requirement as well as the employee training, monitoring and auditing required to ensure that bank has successfully navigated the change.

www.bayvanguard.com
7114 North Point Road, Baltimore, Maryland 21219
(410) 477-5000 • SINCE 1873 • Fax (410) 477-1020

I appreciate how each regulatory change siphons time and resources from lending and deposit operations, impeding our ability to serve our customers and to help the Baltimore metropolitan area recover from the recession. In addition, I have concerns about its impact on my employees who chose the banking field because they wanted to work with customers to help them meet their financial needs and goals, but who are increasingly frustrated by the time they must spend studying new regulations and determining how each one will impact our products, services, and operations. My loan officers and loan administrative staff are the most discouraged. They have struggled since 2008 to keep pace with a seemingly never-ending stream of poorly coordinated and often conflicting mortgage-related regulatory proposals, and anticipate even more change as the Bureau implements the requirements of Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). As my chief loan officer reports, it used to be fun to help a customer with a mortgage loan – a home purchase is such an exciting and significant milestone in life – but today's regulatory uncertainty and the fear of making a mistake have changed the focus from helping the consumer understand and navigate the process to a fixation on rules, forms and procedures.

My concern about the impact of regulatory change – and particularly the level and lack of coordination of change applicable to mortgage lending – was the impetus for my agreement to serve as a SER. I am cautiously optimistic that the SBREFA process offers the opportunity for the Bureau to gather qualitative and quantitative information about the impact of a proposed regulatory change on small entities and on the availability and cost of credit. I firmly believe that this information can help the Bureau propose regulatory amendments that achieve statutory consumer protection goals in the least burdensome manner.

However, I also want to express my frustration with the timetable established for SER participation. I received a phone call inviting me to serve as a SER on February 17, 2012. A few days later, I received an email with additional information about the SBREFA process and the convening meeting which was scheduled less than two weeks later. With the many work-related demands on my time and that of my staff, the time provided was inadequate to permit a thorough review of the proposed alternatives being considered, to consider the ramifications of each, and to try to gauge their potential impact on our compliance costs and mortgage lending operations.

For the SBREFA process to improve rulemaking and to reduce regulatory burden on small entities, I firmly believe that the Bureau must provide SERs with more time to prepare for the initial meeting. Given additional time, for example, I could have spent more time consulting with my staff about required policy and process changes and our third-party vendors about anticipated software and system changes. Similarly, additional time would have permitted me to have conversations with other mortgage market participants that might have surfaced additional issues – and perhaps less burdensome alternatives – for consideration by the Bureau.

I encourage the Bureau to schedule follow-up meetings with SERs. These follow-up conversations could occur via conference call and need not consume an entire day, but they would permit the discussion to delve further into the proposed alternatives and to identify issues for which additional discussion and data is needed. Also, extending SER participation over a longer period would facilitate greater interaction between SERs, increasing opportunities to reach consensus on a regulatory framework that will work for consumers and small entities.

That being said, I offer the following supplemental responses to the items discussed at the convening meeting. In addition, appended to my comments are general responses and cost estimates from other bankers engaged in mortgage origination activities at banks with assets under $175 million

1. **Description of our implementation process integrated TILA-RESPA disclosures and estimate of time required to complete each step.**

As noted above, I do not have quantitative data about costs incurred to comply with the 2008 RESPA rule, but I can describe the steps we took to implement those changes and the hours of staff time consumed. I anticipate that the steps and time required to implement the integrated disclosures will be similar to that experience. Please note that my lending staff consists of three loan officers, two loan processors, and two loan servicing employees.

- Review and analysis of the regulatory changes: 10 hours

  My Senior Vice President for Lending, Jeffrey Collier, and I each will spend 4-5 hours reading and taking notes about the *Federal Register* notice announcing the final rules and any summaries provided.

- Discussion about impact on bank operations: 8 hours

  Jeff and I will meet for at least 2 hours discussing how the bank will comply and identifying required changes to forms, policy and procedure. In addition, Jeff will have discussions with lenders and loan administration staff, adding at least 2 more hours to time spent determining the rule changes impact on operations. Finally, Jeff will have multiple telephone conversations totaling at least 2 hours with representatives of LaserPro/Harland Financial Services, the vendor that provides our loan processing software. As was noted during the outreach meeting, informal and preliminary reports from software vendors suggest that the costs for processing software services may increase by as much as 20% to pay for the added costs of implementing the new rules. LaserPro has not provided us with an estimate of their anticipated price increase, but there has been no suggestion that they will absorb these costs and not pass them on to their customers.

- Revision of policy and procedure: 4 hours

  I will make changes and additions to bank procedures and policy; Jeff will review my changes. Then the revised policy will be emailed to the Board of Directors for review, discussion, and adoption at the next Board meeting.

- Software review and set-up: 2 hours

  Although we will rely on LaserPro's compliance guarantee that the new disclosures comply with the amended rules, Jeff and the loan administration staff will spend at least 2 hours installing and setting up the loan documentation and processing software.

- Employee training: 16 hours

  This figure includes seminars attended or training materials reviewed by me and or Jeff as well training about the new rules we provide to the lending staff.

- Monitoring/testing: 2-3 hours

  This testing is in addition to our usual compliance auditing; it is to ensure that our employees understand the new forms and procedures and to identify necessary "tweaks" are made.

Total employee time expended on implementation: 43 hours.

Each year we calculate the bank's costs to generate a mortgage loan in order to evaluate our processing fees. Obviously, time spent on RESPA-TILA implementation – hours lost to income-producing activities among a staff of only 35 full time employees – will be factored into that evaluation and will have to be passed on to our customers in the form of increased processing fees. Without knowing the amount of LaserPro's fee increase, we estimate that our loan processing fee will need to be increased by at least $25.00.

2. **Estimates of burden imposed by restrictions on charging higher settlements than initially disclosed**

To comply with the 2008 RESPA rule's tolerances, Jeff and I worked extensively with our settlement attorneys to make sure that they provided us with accurate settlement charges and understood the consequences of exceeding them. We recognized that due to the limited number of mortgages we originate, tolerance errors could quickly erode the income we earned from mortgage originations. I estimate that Jeff and I spent at least five hours reviewing and discussing these issues with our settlement attorney, but as a result of this effort, we have not had to re-issue a GFE except in those instances in which one of the exceptions to the rule applies. A decision to extend the zero tolerance rule to any company selected from a list of service providers selected by the lender would require similar expenditures of time for each, and I would not support it.

3. Concerns about changes to the definition of an "Application"

As discussed at length during the meeting, the definition of an "application" is extremely important as it triggers the application of RESPA- TILA rules and potential liabilities. Bay-Vanguard, like all other community banks, serves as a financial counselor to the communities we serve. In my experience, our customers do not shop for a mortgage loan; they come to Bay-Vanguard because they have a relationship with us and trust us to help them through the mortgage lending process fairly and responsively. Care must be taken to ensure that rules on what constitutes "receipt of an application" do not limit our ability to provide advice and information to a prospective customer.

For example, in an initial meeting with a customer, our loan officers are likely to provide information on three or four different mortgage products, calculating possible principal and interest payments and estimating the total interest payments over the life of the loan and discussing the pros and cons of each mortgage option. The technical expertise that it now takes to prepare a Good Faith Estimate (GFE) – and the potential liability that attaches to the initial mortgage disclosures – means that, once staff time and systems costs are calculated, each GFE costs between $200 and $300 to produce. If we must complete a GFE for each loan option discussed with a customer, our lenders would be discouraged from having these discussions and consumers would be deprived of valuable early information about their options.

I hope that the rules promulgated by the Bureau ensure that lenders may communicate freely with consumers making early inquiries about their mortgage financing options. As discussed at the meeting, I urge the Bureau to allow lenders the freedom to provide to consumers an unofficial worksheet (clearly marked as such) that advises the consumers about general mortgage or refinance options and provides examples of principal and interest calculations that may be used for general comparisons and allow them to make the long-term determinations that lead to more formal loan application decisions. I would be happy to share more insights on how such a worksheet could be structured and used so as to avoid deceiving consumers to believing that they are committed to a particular lender or course of action.

4. Concerns about the proposed timing of the settlement disclosure

As stated at the meeting, requiring three business days to elapse between the date the Settlement Disclosure is provided and the closing could have negative consequences for the consumer and the lender. In my experience, many of the settlement charges are subject to change within the three days before closing and the events giving rise to these changes are beyond our control – for example, the appraisal may not be completed until just before closing and may require settlement charge adjustments, or issues that arise during the walk-through of a property may affect the settlement. Like the vast majority of SERs that addressed this issue, I strongly oppose a three day time period and urge the Bureau to require no longer than a 24-hour delay between issuance of the Settlement Disclosure and closing.

5. Concerns with record keeping and data collection requirements

I note that there was some confusion in the hearing about what was meant by "standard, machine readable, electronic formats." By "machine readable," I now understand that the Bureau is referring to keeping records in documents that are encoded in a standard format that will allow stored information to be recognized and retrieved automatically by a user's browser. Bay-Vanguard, like others I have asked, does not have this technology. Our completed but un-executed loan documents are stored electronically by LaserPro, and executed paper copies are maintained in paper files. If the Bureau requires "machine readable" formats for record keeping and collection, the costs associated with this rulemaking will clearly multiply.

Conclusion

At the conclusion of the outreach meeting, I appreciated having the opportunity to provide suggestions to the Bureau on matters that would ease compliance for small entities. I repeat my suggestions here and state my support for some mentioned by others. First, I urge the Bureau to provide a long implementation period – at least 12 to 18 months – between announcement of the final rule and the compliance date. Second, even after the compliance date, I urge the Bureau and the prudential regulators to refrain from assigning penalties for errors that occur during the first 6-months, enabling the industry to identify errors and system issues without fear of liability. Finally, at the end of this 6-month period, I urge the Bureau to re-convene the SERs for a meeting to discuss their experiences and to identify any unintended consequences that negatively affect them.

Thank you again for the opportunity to provide small entity input on this important regulatory change. Please feel free to contact me at cmroz@bayvanguard.com or 410-477-5000 ext. 24 if you have any additional questions.

Respectfully submitted,

Carolyn Mroz
President & Chief Executive Officer
Bay-Vanguard FSB

Cc. Jennifer Smith, SBA Office of Advocacy

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Appendix
Comments of other Small Institutions

1. From a compliance officer shared by four institutions, each under $75 million in assets:

    - "One other thing I would like to point out (and would like this to remain as anonymous as possible) is the effect that the constant reg changes is having on older loan officers (and the fact that I would guess the average LO at smaller community bank is older than at bigger banks). The LOs just have a hard time keeping up and keeping requirements straight. Community bankers are losing a lot of good LOs who just "don't see the fun in work anymore". I am also seeing a real problem in banks ability to attract high quality LOs. **The cost of losing an experienced LO with deep ties to the community is impossible to estimate."** (emphasis added)

    - Responding to questions about the anticipated impact of requiring the lender to deliver the integrated settlement disclosure, "[I]t is already nearly impossible for the lender to handle intake and compliance responsibilities (**only one of the banks has a loan processor who doubles as a secretary and a teller**)." (emphasis added)

    - On the need for clear rules, "I do not like faqs that circumvent the reg making process, but without them you end up with each examiner making up their own answers and sometimes, you end up with HUDs answer conflicting with your examiners interpretation, and who is a small bank going to aim to please? Whatever the whims of the local examiner are. **Banks just cannot be subject to ever changing expectations.** How can we send a memo out one day and then the next say ignore that last memo and follow different rules. It makes compliance look foolish and does not help with our already strained relationship with LOs." (emphasis added)

2. From a loan officer and vice president, of a commercial, mortgage, & consumer lending department of a bank with $162 in assets:

    - On the cost to implement the 2010 required changes to the GFE and HUD-1 Settlement Statement:

        - Vendor and Software costs:

            "Our vendor ate the costs of upgrading to new 2010 changes. However, the vendor operates two doc prep systems and has warned that more changes would likely cause them to drop one system (the one we use) and migrate everyone to the newest system, which of course is estimated at 50% more cost to our bank with lower ratings on accuracy and efficiency."

6

- Fees paid to attend training seminars
  "Estimated at $15,000, including travel, for the 2010 changes."

- Estimates of compliance or loan officer hours spent trying to understand the required regulatory changes
  "Estimated at 800 total hours spent by compliance officer and department head in studying and learning the changes and 150 hours in developing new procedures."

- Estimates of loan administration staff training time/costs
  "Estimated at 40 hours per loan officer and 20 hours per loan processor – 240 total."

- Do you anticipate the costs to implement RESPA-TILA integration to be comparable to those incurred in 2010?
  - "We anticipate costs for hours spent will be approximately 10% higher with similar total hours spent adapting to the changes."
  - "Changes in 2010 did not include any free training to small banks, and we do not anticipate they will offer any future free training. However, if our vendor drops the current doc prep system we use and forces us to purchase a new system at much higher costs (est. 50% more); we hope some program training would be included. However, in the past this training was limited only to how to use their system, not for compliance issues."
  - "We currently do not have a document imaging system. Given the system that is being proposed where one could index specific document fields, we could be talking many thousands of dollars in equipment and software systems in addition to the certain need to hire additional staff. This cost would either drive banks out of the business or dramatically increase the cost to consumers."
- Responding to questions about the anticipated impact of requiring the lender to deliver the integrated settlement disclosure,
  - "This is how we currently operate for the vast majority of our mortgage loans. Our lenders prepare all settlement documents and conduct the closing. In fact, we have gained favor among the attorneys who nearly refuse to prepare the settlement documents. We would not need to hire additional staff or significantly change our procedures. However, **due to the complexity of the settlement documents, we have seen the attorneys increase their costs charged to consumers by about 30% per transaction. Their rationale is that it takes them more time to review/approve the settlement documents and explain or reassure the documents accuracy to their clients."**(emphasis added)

3. From the compliance officer of a $74 million dollar bank:

"Our bank did not have a dedicated role of a Compliance Officer until late 2012...That is a direct cost of implementing RESPA."

Appendix B

List of Materials Shared with SERs

Materials Circulated in Advance of Panel Outreach Meeting:

- Outline of Proposals under Consideration and Alternatives Considered
- Discussion Issues for Small Entity Representatives
- Fact Sheet: Small Business Review Panel Process

Panel Outreach Meeting Materials:

- PowerPoint slides
- Copies of Loan Estimate and Settlement Disclosure prototypes tested in Austin, Texas, in February 2012

<u>Appendix C-1</u>

Outline of Proposals Under Consideration and Alternatives Considered

[See attached]

February 21, 2012

SMALL BUSINESS REVIEW PANEL FOR TILA-RESPA INTEGRATION RULEMAKING

OUTLINE OF PROPOSALS UNDER CONSIDERATION AND ALTERNATIVES CONSIDERED

I. INTRODUCTION

- For more than thirty-five years, two Federal laws (the Truth in Lending Act or "TILA," and the Real Estate Settlement Procedures Act or "RESPA") have required lenders and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs.[1] This duplication has long been recognized as inefficient and confusing for consumers and industry. As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, approved July 21, 2010) ("Dodd-Frank Act"),[2] the Consumer Financial Protection Bureau ("CFPB") is proposing to resolve this problem by combining the disclosures. The Dodd-Frank Act establishes two goals for the consolidation: to improve consumer understanding of mortgage loan transactions; and to facilitate industry compliance with TILA and RESPA.

- The CFPB has prepared this summary of the proposals under consideration to assist the Small Business Review Panel convened under the Small Business Regulatory Enforcement Fairness Act (or "SBREFA") and the small entities that advise that panel. The summary serves to facilitate the SBREFA panel process and, accordingly, focuses in part on the benefits and costs of the proposals under consideration for small entities. It is important to note, however, that the proposals under consideration are expected to have substantial benefits for consumers. Some examples of potential consumer benefits are provided in this summary for context, but these examples are not exhaustive and are intended to be illustrative only.

  - The CFPB has been working on redesigning the disclosure forms to make them simpler and more comprehensible, and the design of prototype forms under consideration has been refined to incorporate extensive consumer and industry feedback gathered through online tools and one-on-one testing across the country. By conveying information on key loan terms clearly, the redesigned disclosure forms may improve the ability of consumers to shop for and compare mortgage terms across loan offers and improve their

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[1] TILA (Pub. L. 90-321, approved May 29, 1968; 82 Stat. 146) is codified at 15 U.S.C. 1601 *et seq.* (http://143.231.180.80/view.xhtml?path=/title15/chapter41).

RESPA (Pub. L. 93-533, approved December 22, 1974; 88 Stat. 1724) is codified at 12 U.S.C. 2601-2617 (http://143.231.180.80/view.xhtml?path=/title12/chapter27).

[2] Dodd-Frank Act, secs. 1032(f), 1098, and 1100A (http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf). Also attached as **Attachment A**.

understanding of mortgage loan transactions.

- The proposals under consideration would also seek to improve borrowers' ability to shop by more clearly delineating between estimates regulated by TILA and RESPA and non-binding preapplication estimates.

- Further, the proposals under consideration may reduce the magnitude and frequency of changes in costs between application and closing and may decrease the likelihood that consumers will face unexpected changes in costs due to "bait and switch" tactics.

- Consistent with SBREFA, this summary provides a preliminary, qualitative assessment of the potential benefits and costs to the types of small businesses that would be subject to the proposals under consideration—namely, mortgage lenders (such as community banks and credit unions), mortgage brokers, and settlement agents. Drawing in part on information gained through the SBREFA panel process, the CFPB will publish with the proposed rule more extensive analysis of the benefits and costs to consumers and firms and of the impacts on small entities specifically.

- The integration of TILA and RESPA mortgage disclosure forms follows on the 2008 revisions by the Department of Housing and Urban Development ("HUD") to the RESPA rules and disclosure forms ("2008 RESPA rule"), which took effect in 2010. Some of the objectives of that rule and the CFPB's proposals under consideration are broadly similar. However, the details of the 2008 RESPA rule and the CFPB's proposals under consideration differ substantially and occur in very different contexts. Thus, although HUD conducted an extensive analysis to forecast the effects of the 2008 rule, it is difficult to extrapolate the effects of the CFPB's proposals under consideration based on that earlier forecast.[3]

    - For example, though the 2008 RESPA rule substantially modified the GFE and HUD-1 forms to be more similar to one another, the revisions were less extensive than the integration of the TILA and RESPA forms mandated by the Dodd-Frank Act. At the same time, the 2008 RESPA rule did not reduce the number of disclosure forms provided, which the proposals under consideration would do.

    - The 2008 RESPA rule also imposed for the first time limitations on increases in the settlement costs estimated in the GFE. In contrast, the proposals under consideration would tighten those limitations somewhat under limited circumstances.

    - HUD also necessarily made strong assumptions in forecasting the 2008 RESPA rule's effects and noted that, in some instances, the effects were unknown.[4] Several

[3] The estimated impacts of the 2008 RESPA rule are discussed in detail in HUD's RESPA Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis, FR-5180-F-02 (the "HUD Impact Analysis") (http://www.hud.gov/offices/hsg/ramh/res/impactanalysis.pdf).

[4] For example, referring to the time cost of employees learning new loan origination software, HUD stated: "The actual amount of time required to familiarize oneself with the new software is unknown." HUD Impact Analysis, p. 6-39. HUD

questions that the CFPB is posing to the small entity representatives (SERs)[5] are intended to gauge the actual costs of the changes small entities made following the 2008 RESPA rule. The CFPB will consider any specific information that the SERs are able to provide in estimating the potential costs to small entities of implementing the proposals under consideration.

- Finally, the earlier HUD forecast could not account for changes in the industry that have occurred since 2008, including changes that occurred in the course of implementing the 2008 RESPA rule itself. For example, to the extent that the 2008 RESPA rule prompted more lenders to move to electronic recordkeeping or automated compliance systems, their implementation costs for the proposals now under consideration by the CFPB could be significantly different than for implementation of the earlier rule. Moreover, lenders' experiences with the current tolerance framework may affect the amount of legal advice they seek regarding further revisions to tolerances. Several questions that the CFPB is posing to the SERs are intended to gauge changes that have occurred since the 2008 RESPA rule and their impact on implementation of the proposals under consideration.

The CFPB thus has considered the HUD Impact Analysis and used it to help inform the CFPB's own preliminary analysis and the questions for the SERs. However, for the reasons discussed above, the CFPB does not believe the HUD Impact Analysis necessarily forecasts the potential costs and benefits to SERs from the proposals now under consideration.

II. STATEMENT OF OBJECTIVES AND LEGAL BASIS

- The Dodd-Frank Act requires the CFPB to propose rules and forms combining certain TILA and RESPA disclosures for loans subject to either law or to both laws by July 21, 2012. The CFPB plans to meet this mandate by proposing amendments to Regulation X, which implements RESPA, and Regulation Z, which implements TILA.[6]
    - In connection with any closed-end credit transaction secured by a consumer's dwelling and subject to RESPA, TILA and Regulation Z require creditors to provide good faith estimates of loan terms (such as the annual percentage rate or "APR") within three business days after receiving the consumer's mortgage application (the "early TIL"). If

similarly stated that the amount of legal services required and cost of training employees on the new GFE was unknown. *Id.* at pp. 6-40 and 6-41.

[5] Questions designed to assist SERs in participating in the SBREFA panel process are set out in a separate document entitled "Discussion Issues for Small Entity Representatives."

[6] Regulation X is codified in 12 CFR part 1024 (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=527bcc8f016e5c387a75a560fd8841e9&rgn=div5&view=text&node=12:8.0.2.14.17&idno=12).

Regulation Z is codified in 12 CFR part 1026 (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=b77ba4a55e2cc08bf5cc69ad5413a536&rgn=div5&view=text&node=12:8.0.2.14.18&idno=12).

the APR on the early TIL becomes inaccurate, TILA requires the creditor to provide a corrected disclosure at least three business days before closing (the "final TIL"). In certain circumstances, TILA imposes civil liability for violations of these disclosure requirements and provides for administrative enforcement by appropriate agencies, including the CFPB.

- In connection with any federally related mortgage loan,[7] RESPA and Regulation X require that lenders provide a good faith estimate of the amount or range of charges for certain settlement services the borrower is likely to incur in connection with the settlement (such as fees for an appraisal or a title search) and related loan information within three days after receiving the consumer's application (the "Good Faith Estimate" or "GFE"). RESPA also requires that "the person conducting the settlement" (typically the settlement or closing agent) provide the consumer with a completed, itemized statement of settlement charges at or before consummation of the loan (the "HUD-1 settlement statement"). RESPA does not impose civil liability for violations of these disclosure requirements, but administrative enforcement by appropriate agencies is available.

- The CFPB is planning to combine the disclosures that consumers receive shortly after application (the early TIL and the GFE) and the disclosures that consumers receive at or before closing (the final TIL and the HUD-1 settlement statement). The proposals under consideration by the CFPB would apply only to closed-end credit transactions (*i.e.*, home equity lines would not be covered) and would not apply to reverse mortgages.

- The Dodd-Frank Act also made several amendments to the disclosure requirements in TILA and RESPA. In particular, the Dodd-Frank Act amended TILA to require the creditor to disclose in the early and final TIL the aggregate amount of settlement charges provided in connection with the loan, which was previously disclosed only by the settlement agent in the RESPA-required HUD-1 settlement statement.

III. <u>OUTLINE OF PROPOSALS UNDER CONSIDERATION</u>

A. Integrated TILA and RESPA Disclosures

- Through extensive one-on-one testing and online feedback from consumers and industry, the CFPB is developing simpler, integrated disclosure forms that may help consumers to better understand mortgage transactions and to select the loan that best fits their needs.

    - The "Loan Estimate" would be provided within three business days after application and replace the early TIL and GFE. This disclosure would summarize the key loan terms and estimated loan and settlement costs for consumers and can be used by consumers to

[7] RESPA defines "federally related mortgage loan" broadly to encompass virtually any purchase money or refinance loan that is secured by a first or subordinate lien on residential real property designed principally for the occupancy of from one to four families.

compare different loans. See **Attachments B-1** and **B-2** for alternative prototypes.[8]

- The "Settlement Disclosure" would be provided to consumers prior to the closing of the loan transaction and replace the final TIL and HUD-1. In addition to summarizing the final loan terms and costs, this disclosure would provide consumers with a detailed accounting of the transaction. See **Attachments C-1** and **C-2** for alternative prototypes.[9]

- The CFPB has conducted one-on-one testing of the forms in 8 cities across the country with more than 75 consumers and more than 15 industry participants.[10] In addition, the CFPB's Know Before You Owe website has received over 27,000 remarks on the prototype disclosures.[11] After each round of testing and online input, the CFPB has used the feedback to refine and improve the forms.

- TILA authorizes the CFPB to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the CFPB to require the use of standard forms (*e.g.*, the prescribed GFE and HUD-1 settlement statement forms). Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders but provide consistency for both consumers and lenders. In light of these considerations, the CFPB is considering whether to propose a rule that requires use of standard forms under RESPA for the Loan Estimate and Settlement Disclosure for mortgage loan transactions that are subject to RESPA. Transactions that are subject only to TILA would not be required to use the model forms, consistent with the provisions of that statute.

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[8] **Attachment B-1** was tested in Philadelphia, Pennsylvania, in January 2012, and **Attachment B-2** was tested in Chicago, Illinois, in August 2011. Both forms were tested with consumers and lenders. Among other differences, **Attachment B-1** itemizes the closing costs on page 2, while **Attachment B-2** groups certain categories of closing costs together, similar to how closing costs are disclosed on the current GFE form. The CFPB has not prepared a prototype for every possible set of loan terms but plans to provide extensive samples with the proposed and final rules.

[9] These prototypes were tested with consumers, lenders, and settlement agents in Philadelphia, Pennsylvania, in January 2012. These have been designed, in part, to help consumers compare the final costs and terms with the costs and terms in the Loan Estimate. In particular, the Loan Estimate and Settlement Disclosure prototypes have the same first page and organize closing costs in the same categories. Among the differences between the two Settlement Disclosure prototypes, pages 2 and 3 of **Attachment C-1** contain line numbers in the "Summaries of Transactions" and "Closing Cost Details" sections (similar to the current HUD-1 settlement statement), while the same sections on pages 2 and 3 of **Attachment C-2** do not have line numbers. Also, the "What Changed?" charts on page 2 of **Attachment C-1** and page 3 of **Attachment C-2**, highlighting the differences between the estimated and final amounts on the Loan Estimate and the Settlement Disclosure, contain varying levels of detail. Finally, note that these two prototypes reflect the current rules in Regulation X regarding increases in closing costs between initial and final disclosures, rather than the proposals under consideration for this rulemaking, which are discussed below in Section III.C.

[10] Testing has been conducted in Baltimore, Maryland; Los Angeles, California; Chicago, Illinois; Enfield, Connecticut; Albuquerque, New Mexico; Des Moines, Iowa; Birmingham, Alabama; and Philadelphia, Pennsylvania.

[11] Examples of consumer and industry responses to the prototypes of the disclosures can be seen in the CFPB blog, including at: www.consumerfinance.gov/know-before-you-owe-go; www.consumerfinance.gov/13000-lessons-learned; and www.consumerfinance.gov/know-before-you-owe-its-closing-time.

Potential Impacts on Small Entities

Benefits

- The CFPB believes that reducing the number of TILA and RESPA disclosures, integrating the disclosure forms, and clarifying conflicting or ambiguous regulatory requirements will likely reduce burdens on an ongoing basis on all parties involved with the residential mortgage process, including small entities.

- Replacing the current four required disclosure forms (*i.e.*, the early TIL, the GFE, the final TIL and the HUD-1 settlement statement) with two integrated forms (*i.e.*, the Loan Estimate and the Settlement Disclosure) may reduce the burden of coordinating and producing disclosures.

- The integrated forms require a single method of determining similar disclosed amounts that are calculated differently today under TILA and RESPA, which may further reduce the burden of producing the disclosures.[12]

- As discussed above, the integrated disclosure forms are being developed through extensive one-on-one testing and online feedback from consumers and industry. The incorporation of this feedback into the forms design will yield simpler, more comprehensible, and more effective forms, which, in turn, may reduce the time spent by lenders answering borrowers' questions. Moreover, the uniform calculations (noted above) may reduce time lenders spend reconciling estimates and explaining them to borrowers.

- Each of these considerations—uniform calculations, reduced number of disclosure forms, and reduced time answering borrower questions—may reduce the time and therefore the cost of producing and conveying the disclosures. The questions for the SERs address the costs (including time) of preparing the current TILA and RESPA forms and the factors that may affect the costs (including time) of preparing the new forms.

Costs

This section discusses potential one-time and ongoing costs for small entities associated with the transition to and use of the integrated mortgage disclosure forms.

- Implementing the new forms would presumably require new or updated software and compliance systems, as well as associated costs for training employees. These would be one-time costs. However, it is possible that routine systems updates would at least partially mitigate these one-time costs since the costs would, in part, already be budgeted. Therefore, to help the CFPB understand the costs attributable to the new forms, the SERs are being asked whether (a) they would expect to have otherwise incurred these one-time costs due to software or systems changes

[12] For example, RESPA requires that the disclosed monthly payment include monthly amounts other than principal and interest, while TILA strictly requires that the disclosed monthly payment only include principal and interest.

that would occur even if the proposals under consideration were not put in place or (b) these costs would be mitigated by using vendors that offer free updates and training to small entities.

- The proposals under consideration are not, by themselves, anticipated to require subsequent updates of software and compliance systems beyond the initial update. To the extent any subsequent upgrades or training are required, however, they would presumably be in lieu of upgrades and training that would already have occurred to comply with the current rules. A question for the SERs is how the proposals under consideration may change these ongoing costs.

- Entities may also incur one-time costs in obtaining legal advice regarding the integrated forms, which will vary by jurisdiction.

  - In the HUD Impact Analysis, HUD noted that the amount and cost of legal advice that entities might incur as a result of the 2008 RESPA rule was unknown.[13] HUD assumed legal advice cost $200 per hour on average and that lenders sought ten hours of legal advice on average.[14] The CFPB's questions to SERs attempt to gauge the costs of legal advice that small entities actually incurred as a result of the 2008 RESPA rule and whether the costs of the legal advice stemming from the integrated disclosure forms under consideration would be higher, lower, or about the same as the realized costs of the 2008 RESPA rule.

- The Dodd-Frank Act mandated a number of new disclosure items, such as a negative amortization statement and a total interest percentage ("TIP") disclosure, but these new disclosures are not expected to have a significant ongoing cost. Most of these disclosures are based on information that should be readily ascertainable by the entity providing the disclosure.

  - Disclosure of the lender's cost of funds might be more difficult to calculate, particularly since the source of funds may not be known when the disclosure is provided. Therefore, the proposal under consideration would instead require the lender to disclose a publicly available cost of funds index.

B. Provision of the Loan Estimate

- Under TILA and RESPA, a lender or mortgage broker is not required to provide the good faith estimates of loan terms and settlement costs in the early TIL and GFE until it has received an "application."

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[13] HUD Impact Analysis, p. 6-40.

[14] This estimated cost calculation would be proportional to the assumed average cost of legal services and the assumed average hours of legal advice that lenders sought. The references to HUD's estimates of average legal-services cost of $200 per hour and average need for ten hours of legal advice are intended to roughly illustrate the potential order of magnitude of such costs and should not interpreted as an indication of the CFPB's concurrence with those estimates. Legal fees would vary based on a variety of factors, such as the market rate for legal services in the small entity's jurisdiction, whether counsel is sought on a one-time basis or is on retainer, and whether the small entity is able to have legal questions answered in-house or by utilizing associational membership resources.

- Under the current regulations, the receipt of the following information by the lender or mortgage broker constitutes receipt of an "application": (1) borrower's name; (2) monthly income; (3) social security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender.[15]

- Concerns have been raised that the early TIL and GFE are often provided too late in the process of shopping for a mortgage loan to help consumers decide which loan is best for them.

1. Definition of "Application"

- One source of these concerns is that the seventh item in the regulatory definition of "application" (*i.e.*, any other information deemed necessary by the lender) could allow lenders and mortgage brokers to delay providing the early TIL and GFE until relatively late in the loan process by delaying collection of information deemed "necessary." For example, the current rules would allow a lender to delay providing a GFE while it gathered more information about the property or the consumer's assets and liabilities. Any delay in receiving the GFE may limit a borrower's ability to effectively shop, particularly if the borrower must close on the loan by a particular date.

- The current rules encourage lenders and mortgage brokers to provide the good faith estimates early in the loan process by prohibiting lenders from collecting any fees from a consumer (other than a credit report fee) until the estimates are provided.[16] In order to further encourage early provision of these estimates, the CFPB is considering a proposal that would remove the seventh item ("any other information deemed necessary by the lender") from the definition of "application." The CFPB will seek input and information on whether this change would result in less accurate estimates.

Potential Impacts on Small Entities

- Eliminating lenders' and brokers' ability to wait to provide a good faith estimate until after they receive "any other information deemed necessary" could increase the burden on lenders and brokers. In particular, a lender or broker that receives the required six items under the revised definition but prefers to seek additional information before issuing disclosures would have only three days to do so before issuing a Loan Estimate (in contrast to the current regulations, which allow the lender or broker to gather such additional information before the three-day window comes into play).

Alternatives Considered

- The CFPB has also considered removing additional items from the regulatory definition of "application," so as to limit the definition to only the information required to obtain a credit

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[15] Regulation X (implementing RESPA) defines "application" in 12 CFR 1024.2. Regulation Z (implementing TILA) adopts the Regulation X definition, in 12 CFR part 1026, Supplement I (Comment 19(a)(1)(i)-3).

[16] 12 CFR 1024.7(a)(4) and (b)(4) (Regulation X) and 12 CFR 1026.19(a)(1)(ii) (Regulation Z).

report and to estimate the loan-to-value ratio. However, lenders may need those additional items to provide accurate estimates.

2. Preapplication Estimates

- Another source of concern is that many lenders and mortgage brokers provide consumers preliminary estimates of loan terms and settlement costs that are not explicitly regulated by TILA or RESPA before providing consumers with the estimates governed by those statutes (the early TIL and GFE).[17] Consumers can benefit from gathering these preliminary estimates during the shopping process. But consumers may select a loan mistakenly believing that the preliminary estimates have the same legal significance as the TILA and RESPA disclosures. As a result, consumers might curtail shopping because a preliminary estimate offers attractive loan terms, and they may be surprised by changes in the actual loan terms offered if they believed the preliminary estimate was binding.

- Accordingly, the CFPB is considering proposing to require that any preapplication, consumer-specific written estimate of loan terms or settlement charges contain a prominent disclaimer indicating that the document is not the Loan Estimate required by TILA and RESPA. This requirement would not apply to general advertisements.

Potential Impacts on Small Entities

- If small entities provide preapplication, consumer-specific loan estimates, the cost associated with adding the disclaimer language is expected to be de minimis, because the CFPB plans to provide a brief, standard statement for use by lenders and brokers, which should not require significant redesign of existing estimate materials or require additional pages.

C. Restrictions on Charging Higher Settlement Costs than Initially Disclosed

- HUD's 2008 RESPA rule limits the circumstances in which a lender can charge the consumer more at closing than the lender estimated in the GFE provided to the consumer three business days after application.[18]

  - The lender's charges for its own services, referred to here as "lender charges," generally cannot exceed the lender's estimates. This limitation is sometimes referred to as a "zero tolerance."

  - Charges for settlement services provided by third parties such as appraisals and title work, referred to here as "third-party charges," generally cannot exceed the amounts estimated in

[17] The prevalence of lenders issuing worksheets is indicated by HUD addressing the practice in its Frequently Asked Questions regarding compliance with the 2008 RESPA rule. *See* http://portal.hud.gov/hudportal/documents/huddoc?id=resparulefaqs422010.pdf (p. 12, FAQs #35-36).

[18] 73 Fed. Reg. 68,204 (Nov. 17, 2008), codified at 24 CFR 3500.7(e) (now 12 CFR 1024.7(e)).

the GFE by more than 10% in total. This limitation is sometimes referred to as a "10% tolerance."

  - The rule lists certain limited exceptions in which higher charges are permitted. For example, higher charges are permitted when the borrower requests a change, when the GFE expires, or when a valid change in circumstance occurs (such as when new information about the borrower or transaction is discovered). However, the lender must provide the consumer with a new GFE disclosing the higher cost.

- The 2008 RESPA rule addresses an important problem: it reduces the chance that consumers will be surprised shortly before closing by lender and third-party charges that are significantly higher than initially disclosed. The rule makes lenders provide consumers with more reliable upfront cost estimates by limiting the circumstances in which the actual costs can be higher than the estimates and requiring that consumers be notified when something causes costs to increase. Moreover, lenders must retain documentation of these "changed circumstances." HUD intended the rule to make it easier for consumers to shop on the estimates and harder for an unscrupulous lender to provide low initial estimates and then reveal that the actual charges are higher right before closing, when the consumer may feel there is no option but to go through with the transaction.

- Some think the 2008 RESPA rule is too lax, others think that it is too restrictive, and many think that it is difficult to understand. The CFPB is considering proposals that would balance the objective of improving the reliability of the estimates lenders give consumers shortly after application, with the objective of preserving lenders' flexibility to respond to unanticipated changes that occur during the loan process. Improving the reliability of the estimates may benefit consumers by improving their ability to compare loan terms and reducing the likelihood that they could face unexpected changes in costs due to "bait and switch" tactics.[19]

  - As noted above, the 2008 RESPA rule prevents a lender from charging more for its own services than the lender estimated in the GFE unless the lender can show that one of the exceptions applies (zero tolerance). However, charges for services such as appraisals and title work can exceed the estimates in the GFE by up to 10% at closing without any such justification (10% tolerance). The CFPB believes that, in the cases described below, it

[19] There are longstanding concerns about the reliability of estimates given in the GFE. *See, e.g.*, Board of Governors of the Federal Reserve System and HUD Joint Report to Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (July 1998), p. 20 ("Consumers report many instances in which the costs disclosed on the GFE were significantly lower than those actually charged at closing [and] . . . cases in which some fees charged at closing were completely left off the GFE. To the extent these discrepancies exist, they make the GFE unreliable as a shopping tool; consumers cannot effectively compare settlement service costs if they cannot rely on the costs that are initially disclosed.") (http://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf). Moreover, the HUD Impact Analysis noted HUD's intent that the rule would balance "the flexibility originators need to properly underwrite, while *limiting bait-and-switch methods* whereby the originator uses the GFE to draw in a borrower and, after a significant application fee is paid or burdensome documentation demands are made, claims that a material change has resulted in a more expensive loan offering," p. 3-80 (emphasis added).

may be appropriate to hold lenders to a higher standard when estimating the cost of these services.

  - Specifically, the proposals under consideration by the CFPB would apply the zero tolerance to a larger range of charges. As a result, a lender would be required to retain documentation sufficient to show its supervisory agency that one of the exceptions applies whenever a cost for a service provided by a company that is owned by or affiliated with the lender proves to be higher than estimated in the GFE. Lenders should be better able to estimate the cost of services provided by a company they own or with which they are affiliated because of their knowledge of the company's business. In addition, applying a stricter standard to these services would address concerns that lenders could profit directly or indirectly from an unjustified 10% cost increase.

  - Furthermore, the proposals under consideration would apply the zero tolerance and require the lender to show that an exception applies whenever a cost for a service provided by a company selected by the lender proves to be higher than estimated in the GFE. A company would be considered selected by the lender if consumers are required to choose only from a list of service providers prepared by the lender (*i.e.*, if consumers are not permitted to shop for their own provider). Lenders should be better able to estimate the cost of these services because of their experience with the providers they choose. In addition, it may be appropriate to hold lenders to a higher standard when they do not allow consumers to shop for their own provider.

  - In contrast, for services provided by other companies, the proposals under consideration would leave in place the current rule allowing the actual cost to be up to 10% higher in the Settlement Disclosure.

- The proposals under consideration by the CFPB also would seek to reduce unnecessary compliance burden by resolving ambiguities in the rule. For example:

  - Many lenders say they believe that the current rule requires them to reissue a GFE every time they discover that the actual amount of a third-party charge exceeds the estimate in the GFE, even if the increase is less than 10%. As a result, lenders may be reissuing GFEs unnecessarily. This practice is not only burdensome for lenders but may harm consumers if the third-party charges can increase an additional 10% each time the GFE is reissued. The proposals under consideration would ensure that the rule does not require lenders to reissue the Loan Estimate unless and until the costs subject to the 10% limitation increase based on valid changes in circumstance by more than 10% in total. Furthermore, the proposals under consideration would protect consumers by ensuring that the 10% leeway provided to lenders applies only when the lender has reissued the Loan Estimate based on a valid change in circumstance.

  - The 2008 RESPA rule permits lenders to use the average cost of a service in order to ease compliance burden. However, lenders have reported to the CFPB that the rule imposes accounting requirements that make this method too burdensome to use. The proposal would revise the rule to provide more guidance and to facilitate use of average cost pricing.

  - Industry reports that inconsistency between RESPA and TILA terminology creates significant compliance burden because lenders must design systems and practices that comply with the requirements of both laws. For example, TILA establishes disclosure requirements for "creditors," while RESPA establishes requirements for "lenders." The proposals under consideration would reconcile these inconsistencies.

  - HUD issued hundreds of Frequently Asked Questions to provide guidance regarding compliance with the 2008 RESPA rule. The proposals under consideration would further streamline and clarify the 2008 RESPA rule by incorporating that guidance into the regulation or official commentary to Regulation Z, as necessary and appropriate, and by making it clearer and easier to use.

- Finally, the proposals under consideration would seek to improve the CFPB's ability to monitor the effectiveness of the 2008 RESPA rule, and the proposed amendments under consideration, by imposing new data retention requirements, which are described in more detail in Section III.E below.

<u>Potential Impacts on Small Entities</u>

Benefits

- Limiting increases in settlement costs for affiliated service providers and third party service providers for which consumers cannot shop may make it more difficult for unscrupulous actors to engage in "bait and switch" tactics, in which consumers are given low initial estimates and then charged higher prices at closing. This could benefit honest firms by reducing unfair competition.

- The proposals under consideration may ease compliance burden and mitigate the need for ongoing personnel training, legal consultation and similar expenses by eliminating ambiguities in the current rules.

Costs

- Because of ongoing relationships, lenders are in a better position to know the typical charges of affiliated firms and firms they engage repeatedly and require consumers to use. In some cases, however, the actual costs of providing settlement services might be higher than the lender anticipated.

  - Under Regulation X, the lender may reissue the GFE if any of the limited exceptions permitting higher charges at closing applies (*e.g.*, the borrower requests a change, the GFE expires, or a valid change in circumstance occurs, such as when new information about the borrower or transaction is discovered). Since the proposal under consideration would subject additional categories of settlement costs to the zero tolerance, it is possible that at least some lenders would reissue GFEs more frequently than they do now based on increased assertions of an applicable exception to the regulation, which would increase burden (*e.g.*, printer and paper costs, storage costs, staff time).[20] As argued in the HUD Impact Analysis, any increase likely would be minimal in most cases, but the specific impact would vary depending on whether a lender currently uses fully automated systems.[21] Based on its preliminary research, the CFPB believes that available compliance software likely offers the functionality to track the timing and reasons for changed circumstances.

  - If the higher than expected costs of affiliates or of providers selected by the lender would not arise from a valid change as defined by regulation (*e.g.*, when new information about the borrower or transaction is discovered or when the borrower requests a change), the lender might have to absorb these costs. If this would occur frequently enough to materially raise lenders' operating costs, lenders would likely pass some or all of these increases on to consumers through other charges such as higher origination fees. Higher origination fees or other charges might place these lenders at a competitive disadvantage and, accordingly, strengthen the competitive position of lenders with costs that are lower and more reliable.

<u>Alternatives Considered</u>

- The CFPB has also considered the following alternatives:

  - Significantly narrowing the exceptions permitting increases in settlement charges in order to restrict the ability of a lender to charge more for its own services or for third-party settlement services than the lender initially estimated. However, the CFPB was concerned that this approach could prevent lenders from increasing settlement charges to reflect justifiable increases in costs.

  - Preserving the 2008 RESPA rule as-is. However, as discussed above, the CFPB believes that the rule can likely be improved by requiring lenders to provide consumers with more accurate estimates of settlement charges and reducing compliance burden for industry.

D. Provision of the Settlement Disclosure

- TILA and RESPA establish different timing requirements for disclosing final loan terms and costs to consumers and require different parties to provide the TILA and RESPA disclosure forms:

[20] Regulation X requires that loan originators document the reasons for provided revised GFEs, and retain such documentation for no less than three years after settlement.

[21] HUD Impact Analysis, p. 6-46.

	TILA	RESPA
3 Days After Application	Creditor must deliver or mail APR and other terms (early TIL) to consumer	Lender or broker must deliver or mail the GFE to consumer
3 Days Before Closing	If actual APR exceeds APR as disclosed in early TIL beyond the tolerance, consumer must receive a revised disclosure from the *creditor*	
1 Day Before Closing		Borrower can request inspection of a settlement statement that is based on information known to *settlement agent* at that time
At or Before Closing	*Creditor* must provide final APR and other terms (final TIL) to consumer	*Settlement agent* provides the completed settlement statement to consumer

- In order to meet the Dodd-Frank Act's mandate to integrate the disclosures required by TILA and RESPA, the proposals under consideration must reconcile these statutory differences.

1. *Timing of Settlement Disclosure*

- The CFPB is considering issuing a proposal to require delivery of the integrated Settlement Disclosure three business days before closing in all circumstances.

    - As a general matter, consumers would receive their final loan terms and settlement charges three days before closing. However, in order to prevent unnecessary closing delays, limited changes would be permitted after provision of the Settlement Disclosure to reflect common adjustments, such as changes to recording fees.

    - Reissuance of the Settlement Disclosure and an additional three-day waiting period would be required only if during the three days after issuance of the Settlement Disclosure: (a) the APR in the Settlement Disclosure increases by more than 1/8 of 1 percent (which is the current threshold for redisclosure under TILA); (b) an adjustable-rate feature, prepayment penalty, negative amortization feature, interest-only feature, balloon payment, or demand feature is added to the loan; or (c) the amount needed to close shown in the Settlement Disclosure increases beyond a specific tolerance (amount to be determined).

Potential Impacts on Small Entities

- Requiring that three business days elapse between the time the Settlement Disclosure is provided and the closing could result in closing delays if, for example, the consumer is under a contractual obligation to close by a particular date, which may have negative consequences for the lender and the settlement provider (*e.g.*, lost revenue if transactions fall through and legal exposure).[22]

- The burden of the three-day requirement could fall disproportionately on small entities if they have less ability to ensure timely delivery of final charges. The SERs are being asked a series of questions regarding the specific impacts of this requirement.

Alternatives Considered

- The CFPB has also considered requiring provision of the Settlement Disclosure three business days before closing *only* when, after the Loan Estimate is given, the APR in the Loan Estimate increases by more than 1/8 of 1 percent or an adjustable-rate feature is added to the loan. In all other circumstances, the Settlement Disclosure would have been provided at or before closing. However, the CFPB is concerned that this approach would allow significant increases in the cash needed to close without sufficient notice to the consumer.[23]

- In addition, the CFPB has considered expanding the current rules allowing consumers to waive the three-day waiting period in cases of bona fide personal financial emergency. However, the CFPB is concerned that such an expansion would enable lenders to pressure consumers into waiving the waiting period because consumers may be unwilling or unable to challenge a cost increase that occurs shortly before closing.

2. Responsibility for Providing the Settlement Disclosure

- The CFPB is considering proposing two alternative approaches for assigning responsibility for providing the integrated Settlement Disclosure to the consumer. The questions to SERs seek information on the costs associated with the alternative approaches.

    - **Alternative #1**: The lender would be solely responsible for delivering the Settlement Disclosure to the consumer.

    - **Alternative #2**: The lender would be responsible for preparing the TILA-required information on the Settlement Disclosure, and the settlement agent would be responsible for preparing the RESPA-required information. However, the lender and settlement agent would be jointly responsible for providing the consumer with an integrated Settlement Disclosure three days before closing.

[22] As discussed above, limited changes would be permitted at closing to reflect common adjustments (*e.g.*, determination of recording fees) and last-minute negotiations between buyers and sellers.

[23] For example, assume a 30-year fixed rate $220,500 mortgage loan with $3,500 in finance charges. The APR disclosed on the Loan Estimate is 4.511%. For the APR to increase by more than 1/8 of 1% and thus trigger redisclosure, the finance charges would have to increase by $3,145, to a total of $6,645.

Potential Impacts on Small Entities of Alternative #1 (Delivery by Lender)

- This alternative would place greater liability risk and logistical burden on lenders. Lenders may need to hire additional staff and may incur legal costs in seeking advice regarding the liability of disclosing RESPA content on the Settlement Disclosure.
    - However, the Dodd-Frank Act amended TILA to require lenders to disclose in the early and final TILA disclosures the aggregate settlement costs provided in connection with the loan.[24] Thus, the incremental effect of this alternative is mitigated by the fact that, because of the statute, some of the burden would shift to lenders under either alternative.
- Shifting responsibility for delivering the Settlement Disclosure from settlement agents to lenders would likely alter settlement agents' role, but the exact impact is difficult to predict. Lenders and settlement agents already coordinate completion and provision of the current HUD-1 settlement statement. If lenders were responsible for providing the Settlement Disclosure, these relationships may need to be renegotiated or formalized, which could require personnel time and result in legal fees for outside counsel.
    - Lenders may be more likely to enter into affiliate relationships with service providers. The effect of these relationships on competing small-entity service providers is unknown. Further, if affiliate relationships were to become more common, smaller lenders may be placed at a competitive disadvantage.

Potential Impacts on Small Entities of Alternative #2 (Shared Responsibility for Delivery)

- It is difficult to assess the net impact of this alternative approach relative to the current set of rules because lenders and settlement agents already are legally and practically responsible for different components of the final disclosures.

Additional Alternatives Considered

- The CFPB has also considered making the settlement agent solely responsible for providing the Settlement Disclosure to the consumer. However, the CFPB understands that settlement agents may not have access to much of the information regarding loan terms that must be disclosed in the Settlement Disclosure.

E. Retention of Compliance Records

- Currently, creditors must retain evidence of compliance with Regulation Z for two years after the date on which a disclosure (such as the early or final TIL) was required to be given. In addition, lenders must retain copies of a completed HUD-1 settlement statement and related documents for five years after settlement and must retain documentation of any reason for reissuing the GFE for no less than 3 years after settlement.

[24] Section 1419 of the Dodd-Frank Act, adding section 128(a)(17) to TILA.

- Comprehensive data on the extent to which settlement costs and interest rates change between the initial and final disclosures will improve the CFPB's ability to monitor compliance with applicable requirements and to better protect consumers against potentially illegitimate increases in settlement costs and interest rates. Accordingly, the CFPB is considering proposing new data retention requirements for the Loan Estimate and the Settlement Disclosure. Specifically, lenders would be required to maintain standardized, machine-readable, electronic versions of the Loan Estimates and Settlement Disclosures they deliver to a consumer and the reasons for any changes to the information provided in those disclosures. A proposed retention period is to be determined.

- To reduce the burden on small entities, the CFPB is considering proposing to exempt them from new electronic data retention requirements. A question to the SERs addresses the types and amounts of costs that small entities might expect to incur from such a retention requirement.

<u>Potential Impacts on Small Entities</u>

Benefits

- Electronic records retention could reduce lenders' storage overhead costs, particularly if they do not utilize fully automated electronic systems currently. It also may allow them to adopt more efficient or systematic procedures for compliance or other purposes.

Costs

- The proposal that lenders retain standardized, machine-readable, electronic versions of the disclosures could result in potentially significant one-time costs to reconfigure or develop existing systems and software as well as ongoing software and systems costs.

- As noted above, the CFPB is considering exempting small entities from the new data retention requirements. Small entities' compliance costs would depend in part on the extent to which small entities already rely on electronic document processing and retention. Smaller entities may be more likely to not use fully automated electronic systems, and, thus, to face a greater burden from this requirement.[25] Small entities' compliance costs may be mitigated if, as a result of any new requirement, vendors developed new software and systems targeting these entities. The CFPB wishes to collect additional information about the costs small entities would incur to comply with such requirements.

[25] At the time of the 2008 RESPA rule, HUD noted that originators could retain documentation in a case binder, suggesting that paper documentation was common at that time. It is unknown whether, as a result of the 2008 RESPA rule or other developments, lenders' use of electronic record-keeping has increased.

F. Additional Proposals Under Consideration

1. Definition of Finance Charge

- The standard disclosure of the cost of credit under TILA is the APR, which is the finance charge expressed as a yearly rate. The finance charge is mostly interest, and also includes certain one-time charges. TILA defines the finance charge broadly to include "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit" and "does not include charges of a type payable in a comparable cash transaction."

- Despite this broad definition, TILA and Regulation Z exclude many types of charges from the finance charge, especially for mortgage transactions. Concerns have been raised that these exclusions undermine the potential usefulness of the APR as a simple tool to compare the total cost of one loan to another, a basic purpose of TILA. In addition, these exclusions may encourage lenders to shift the cost of credit to excluded fees, which could be inefficient and also may increase regulatory burden and litigation risk.

- The CFPB is considering proposing to remove many of these exclusions, as the Board of Governors of the Federal Reserve System (FRB) proposed in 2009.[26] The table on the next page illustrates the FRB proposal:

[26] *See* 74 Fed. Reg. 43,232 (Aug. 26, 2009) (http://edocket.access.gpo.gov/2009/pdf/E9-18119.pdf).

Specific Exclusions from Finance Charge			
	TILA	**Current Reg Z**	**2009 Proposal**
Security interest related charges	Specifically excluded	Specifically excluded	Not excluded[27]
Fees for title search or title exam	Specifically excluded	Specifically excluded	Not excluded
Document preparation fees	Specifically excluded	Specifically excluded	Not excluded
Escrows for taxes and insurance	Specifically excluded	Specifically excluded	Not excluded
Notary fees	Specifically excluded	Specifically excluded	Not excluded
Appraisal/inspection fees	Specifically excluded	Specifically excluded	Not excluded
Credit report fees	Specifically excluded	Specifically excluded	Not excluded
Property insurance premiums	Specifically excluded if certain conditions are met	Specifically excluded if certain conditions are met	Specifically excluded if certain conditions are met
Closing agent charges	Specifically excluded, if certain conditions met	Specifically excluded, if certain conditions met	Not excluded
Voluntary credit insurance premiums	Specifically excluded, if certain conditions met	Specifically excluded, if certain conditions met	Not excluded
Voluntary debt cancellation or suspension fees	No specific exclusion	Specifically excluded, if certain conditions met	Not excluded
Charges for paying items that overdraw an account	No specific exclusion	Specifically excluded	Not excluded
Late fees/similar default or delinquency charges	No specific exclusion	Specifically excluded	Specifically excluded
Fees for participation in a credit plan	No specific exclusion	Specifically excluded	Not excluded
Application fee	No specific exclusion	Specifically excluded	Not excluded
Forfeited interest	No specific exclusion	Specifically excluded	Not excluded

[27] TILA and Regulation Z define finance charge broadly to include any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to the extension of credit, but specifically exclude many charges. The FRB's 2009 proposal would have removed the exclusions for certain charges, thereby including them in the finance charge.

Potential Impacts on Small Entities

Benefits

- The revised definition of finance charge would likely reduce compliance burdens, regulatory uncertainty, and litigation risks for creditors who must provide accurate TILA disclosures.

Costs

- Implementing the new calculations would presumably require new or updated software and compliance systems, as well as associated costs for training employees. A question for the SERs is whether these costs would be mitigated by routine software and systems upgrades and the extent to which vendors would be likely to offer them, *e.g.*, free updates and training.

- Entities might incur one-time costs in obtaining legal advice regarding the changes to the calculations. A question to SERs asks about the expected cost of such legal advice.

- This proposal would likely result in increased APRs for many loans. As a result, more loans may cross federal and state high cost/high price loan thresholds, which in turn can trigger additional underwriting and other requirements.

2. *Implementation Timing for New Disclosures Mandated by Dodd-Frank Act*

- Title XIV of the Dodd-Frank Act amends TILA and RESPA to add new disclosures that must be provided in the Loan Estimate or Settlement Disclosure (*e.g.*, disclosure of escrow payment amounts and aggregate settlement charges). In addition, Title XIV adds other new mortgage disclosure requirements (*e.g.*, warnings regarding negative amortization and state anti-deficiency laws). Although the Dodd-Frank Act does not specifically include these new disclosures in the Loan Estimate and Settlement Disclosure, the CFPB believes these forms should include the new disclosures.

- Title XIV provides the regulations required by Title XIV or by amendments to enumerated consumer laws must be final by January 21, 2013. Those final rules would take effect not later than 12 months after the date of issuance. Any section of Title XIV for which final rules have not been issued by January 21, 2013 will take effect on that date by operation of law. Title XIV requires final regulations implementing these new mortgage disclosures to be issued by January 21, 2013, and provides that those final regulations must take effect not later than 12 months after that date (*i.e.*, not later than January 21, 2014). If final regulations are not issued by January 21, 2013, the Title XIV disclosures will take effect and become binding immediately.

- The CFPB believes that finalizing rules implementing the Title XIV disclosures simultaneously with the final TILA-RESPA rule would improve the overall effectiveness of the integrated TILA-RESPA disclosures. In addition, developing final rules simultaneously would reduce the burden on lenders since lenders would need to implement only one set of revised disclosure rules, rather than potentially needing to implement revised disclosure rules at least twice in a short period. However, it may not be possible to issue a final TILA-RESPA rule by January 21, 2013.

- Accordingly, the CFPB is considering a proposal to use its authority under TILA, RESPA, and the Dodd-Frank Act to exempt lenders from compliance with the Title XIV disclosure requirements temporarily until the TILA-RESPA disclosure rule takes effect.

IV. OTHER FEDERAL RULES

- As intended by the Dodd-Frank Act, the proposals under consideration would consolidate the overlapping and, in some cases, duplicative mortgage disclosure regulations under TILA and RESPA into a single set of requirements and resolve any conflicts between the two. The CFPB is not aware of any other federal regulations that duplicate, overlap, or conflict with the proposals under consideration.

V. POTENTIAL IMPACT ON COST OF CREDIT TO SMALL ENTITIES

- Section 603(d) of the Regulatory Flexibility Act requires the CFPB to consult with small entities regarding the potential impact of the proposals under consideration on the cost of credit for small entities and related matters.[28]

- At this time, there is no evidence that the proposals under consideration would result in an increase in the cost of credit for small entities. The proposals under consideration only would apply to mortgage loans obtained by consumers primarily for personal, family, or household purposes. They would not apply to loans obtained primarily for business purposes.

- The CFPB, however, will seek the advice and recommendations of the SERs during the SBREFA outreach session regarding this issue.

[28] *See* 5 U.S.C. 603(d).

Attachment A to Appendix C-1

Dodd-Frank Wall Street Reform and Consumer Protection Act
(Pub. L. 111-203, approved July 21, 2010)

Excerpts on Requirements for Integrated TILA-RESPA Mortgage Disclosures

SEC. 1032. DISCLOSURES.

*** * * * ***

(f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and sections 4 and 5 of the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

SEC. 1098. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

*** * * * ***

(2) in section 4 (12 U.S.C. 2603)—
(A) in subsection (a), by striking the first sentence and inserting the following: "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

SEC. 1100A. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

***   *   *   *   ***

(5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: "The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.";

Attachment B-1 to Appendix C-1

Loan Estimate – Alternative Prototype #1

[See attached]

HONEYLOCUST BANK
4321 Random Boulevard • Somecity, PA 54321

Save this Loan Estimate to compare with your final Settlement Disclosure.

Loan Estimate

DATE ISSUED	12/1/2011
APPLICANTS	James White and Jane Johnson 123 Anywhere Street, Apt 678 Anytown, PA 12345
PROPERTY	456 Avenue A, Anytown, PA 12345
LOAN ID #	1330172608

LOAN TERM	30 years
PURPOSE	Purchase
PRODUCT	Fixed Rate
LOAN TYPE	☒ Conventional ☐ FHA ☐ VA ☐ ________
RATE LOCK	☐ NO ☒ YES, until 1/30/2012 at 3:00 p.m. EST. *Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on* ***12/15/2011*** *at 3:00 p.m. EST.*

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount	$104,975	**NO**
Interest Rate	4.375%	**NO**
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$524.13	**NO**
		Does the loan have these features?
Prepayment Penalty		**NO**
Balloon Payment		**NO**

Projected Payments

Payment Calculation	Years 1-5	Years 6-30
Principal & Interest	$524.13	$524.13
Mortgage Insurance	+ 32	—
Estimated Escrow *Amount Can Increase Over Time*	+ 301	+ 301
Estimated Total Monthly Payment	$857	$825

Information about Escrow for Taxes, Insurance & Assessments *Amount Can Increase Over Time*	$301 a month	☒ **Escrow.** Your escrow payment covers the taxes, insurance & assessments listed in Section F on page 2. You must pay for other property costs separately. ☐ **No Escrow.** You must pay all of your taxes, insurance & assessments separately from your loan payments.

Closing Costs

Estimated Cash to Close	$25,101	Closing Costs include $5,170 in estimated Settlement Fees. See details on page 2.

Visit **www.consumerfinance.gov/futureurl** for general information and tools.

Calculating Settlement Fees

A. Origination Charges	$2,769
.875 Points (% of Loan Amount)	$919
Underwriting Fee	$675
Processing Fee	$300
Verification Fee	$200
Rate Lock Fee	$525
Desk Review Fee	$150

B. Services You Cannot Shop For	$865
Flood Determination Fee	$35
Tax Status Research Fee	$50
Appraisal Fee	$275
Credit Report Fee	$30
Lender's Attorney	$300
Closing Protection Letter	$75
Appraisal Management Company Fee	$100

C. Services You Can Shop For	$1,536
Pest Inspection Fee	$125
Survey Fee	$150
PA Combined Title Services Fee	$979
Settlement Agent Fee	$250
Courier Fee	$32

Total Settlement Fees	$5,170
A + B + C	$5,170
Lender Credits	– $0

Limits on Increases: *Generally, charges in A and Transfer Taxes in D cannot increase, and the total of the charges in B, C, and Recording Fees in D cannot increase by more than 10%. We will notify you if a change causes an increase above these limits.*

Calculating Settlement Costs

D. Taxes and Other Government Fees	$2,840
Transfer Taxes	$2,470
Recording Fees	$370
Other Taxes and Government Fees	$0

E. Prepaids	$464
Property Taxes (0 months)	$0
Homeowner's Insurance Premium (12 months)	$375
Mortgage Insurance Premium (0 months)	$0
Prepaid Interest ($12.76 per day for 7 days @ 4.375%)	$89

F. Initial Escrow Payment at Closing			$902
Property Taxes	$269.44	per month for 3 mo.	$808
Homeowner's Insurance	$31.25	per month for 3 mo.	$94
Mortgage Insurance	$0	per month for 0 mo.	$0
Flood Insurance	$0	per month for 0 mo.	$0
HOA/Condo/Co-op	$0	per month for 0 mo.	$0

G. Other Costs	$200
Real Estate Broker Administration Fee	$200

Total Settlement Costs (D + E + F + G)	$4,406

Calculating Cash to Close

Total Settlement Fees (A + B + C – Lender Credits)	$5,170
Total Settlement Costs (D + E + F + G)	$4,406
Down Payment/Funds from Borrower	$18,525
Deposit	– $3,000
Cash to Borrower	– $0
Seller Credits	– $0
Other Credits and Adjustments	– $0
Closing Costs to be Financed	– $0
Estimated Cash to Close	**$25,101**

Additional Information About This Loan

LENDER	Honeylocust Bank	**MORTGAGE BROKER**	
NMLS ID	111111	**NMLS ID**	
LOAN OFFICER	John Smith	**LOAN OFFICER**	
NMLS ID	487493	**NMLS ID**	
EMAIL	jsmith@honeylocustbank.com	**EMAIL**	
PHONE	111-222-3333	**PHONE**	

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years	$38,538	Total you will have paid in principal, interest, mortgage insurance, and fees.
	$9,465	Principal you will have paid off.
Annual Percentage Rate (APR)	4.76%	This is not your interest rate. This rate expresses your costs over the loan term.
Total Interest Percentage (TIP)	79.75%	This rate is the total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisals	We will promptly give you a copy of any written property appraisals or valuations that you pay for, even if the loan does not close.
Assumption	If you sell or transfer this property to another person, we ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☒ will not allow this person to assume this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.
Refinance	Refinancing this loan will depend on your future financial situation and market conditions. We cannot guarantee that you will be able to refinance this loan.
Servicing	☐ We intend to service your loan. You will make your payments to us. ☒ We intend to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You don't have to accept this loan, even if you have signed or received this form.

Applicant Signature Date

Applicant Signature Date

Attachment B-2 to Appendix C-1

Loan Estimate – Alternative Prototype #2

[See attached]

AZALEA SAVINGS BANK
4321 Random Boulevard • Somecity, IL 54321

DATE ISSUED 08/01/2011 **LOAN ID #** 1330172608

Your interest rate, points, and lender credits can change unless you lock the rate. All other estimated closing costs expire on **08/15/2011** at 3:00 p.m. CST.

Loan Estimate

APPLICANTS James White
Jane Johnson
PROPERTY 456 Avenue A
Anytown, IL 12345

LOAN TERM 7 years
PRODUCT Fixed Rate Balloon
PURPOSE Purchase
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ ____________

Loan Terms		Can this increase after closing?
Loan Amount	$171,000	**NO**
Interest Rate	4.375%	**NO**
Monthly Loan Payment Principal and Interest Mortgage Insurance	$940.72 $853.79 + $86.93	**NO**
		Does this loan have these features?
Prepayment Penalty		**NO**
Balloon Payment		**YES** • You will have to pay **$149,349** at the end of year 7.

Projected Payments — Expect to make these payments.

AT CLOSING	YEARS 1 – 7	FINAL PAYMENT
$17,781 **Cash Needed to Close** Includes estimated closing costs. See page 2 for details.	$941 monthly loan payment	$149,349 balloon payment

Estimated Taxes and Insurance
$309 a month

☒ Escrow. Your total monthly payment will include taxes, insurance, and assessments. Expect to pay a total of **$1,250** a month to start.
☐ No escrow. You must pay your taxes, insurance, and assessments separately from your loan payment.

Comparisons	Use this information to compare this loan with others.	
Estimated Closing Costs	$6,151	See page 2 for details.
Annual Percentage Rate (APR)	5.35%	This is not your interest rate. This rate expresses your costs over 30 years.
In 5 Years	$62,594	Total you will have paid in any principal, interest, mortgage insurance, and fees.
	$15,418	Principal you will have paid off.

cfpb Consumer Financial Protection Bureau

For additional information and tools, visit **www.consumerfinance.gov/futureurl**

CREDITOR	Azalea Savings Bank	**NMLS ID**		**LOAN ID #** 1330172608
LOAN OFFICER	Joe Smith	**NMLS ID**	76543210	**PAGE** 2
PHONE	555-123-4444	**EMAIL**	joesmith@azaleasavingsbank.com	

Estimated Closing Costs

A	Origination Charges	Origination Services	$330
		_1_ Points paid for interest rate	$1,710
B	Services You Cannot Shop For	☒ Appraisal ☐ Lender's Attorney ☒ Credit report ☒ Other	$508
C	Services You Can Shop For	Title Services and Lender's Title Insurance	$1,456
		Borrower's Attorney	$400
		Survey	$95
		Inspections	$112
D	Taxes and Other Government Fees	Transfer Taxes	$1,425
		Recording Fees	$115
		Government Taxes and Other Fees	$0
E	Lender Credits		$0
	Estimated Closing Costs (A + B + C + D - E)		**$6,151**

Cash Needed to Close

F	Future Costs Paid at Closing	Insurance and property-related bills due at closing: ☐ Property Taxes ☐ Mortgage Insurance ☒ Homeowner's Insurance ☐ HOA/Condo/Co-op ☐	$525
		Payment into escrow for future insurance and property-related bills: ☒ Property Taxes ☒ Mortgage Insurance ☒ Homeowner's Insurance ☐ HOA/Condo/Co-op ☐	$793
		Prepaid Interest (15 days @ 4.375%, $20.78 per day)	$312
G	Adjustments	Down Payment (minus $9,000 deposit)	$10,000
		Seller Credits	– $0
		Closing Costs to be Financed	– $0
	Cash Needed to Close (Estimated Closing Costs + F + G)		**$17,781**

You have no obligation to choose this loan. Shop around to find the best loan for you.

Attachment C-1 to Appendix C-1

Settlement Disclosure – Alternative Prototype #1

[See attached]

Settlement Disclosure

This form is a statement of final loan terms and closing costs. Compare this document to your Loan Estimate.

SETTLEMENT INFORMATION

DATE 1/24/2012
AGENT ABC Settlement
FILE # 01234
PROPERTY 456 Avenue A
Anytown, PA 12345
SALE PRICE $123,500

TRANSACTION INFORMATION

BORROWER James White and Jane Johnson
123 Anywhere Street, Apt 678
Anytown, PA 12345
SELLER John Wilson
123 Somewhere Drive
Anytown, PA 12345
LENDER Butternut Bank

LOAN INFORMATION

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT Fixed Rate
LOAN TYPE ☒ Conventional ☐ FHA
☐ VA ☐ ___________
MIC # 56789
LOAN ID # 1330172608

Loan Terms		Can this amount increase after closing?
Loan Amount	$109,805.63	**NO**
Interest Rate	4.375%	**NO**
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$548.25	**NO**
		Does the loan have these features?
Prepayment Penalty		**NO**
Balloon Payment		**NO**

Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$548.25	$548.25
Mortgage Insurance	+ 55.82	—
Estimated Escrow *Amount Can Increase Over Time*	+ 422.94	+ 422.94
Estimated Total Monthly Payment	$1,027.01	$971.19

Estimated Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	$551.25 a month	☐ **Escrow.** Your escrow payment covers your taxes, insurance & assessments on the property. ☒ **Partial Escrow.** Your escrow payment only covers the property costs in Section F on page 3. Some of your costs are not in escrow. ☐ **No Escrow.** You must pay all of your taxes, insurance & assessments separately from your loan payments.

Closing Costs

Cash to Close	$27,625.00	Closing Costs include $5,519.53 in Settlement Fees. See details on page 3.

What Changed?

CALCULATING CASH TO CLOSE	Estimate	Final
Settlement Fees	$5,170.00	**$5,519.53**
A. Origination Charges	$2,769.00	**$2,810.90**
B. Services You Cannot/Did Not Shop For	$865.00	**$2,583.63**
C. Services You Can/Did Shop For	$1,536.00	**$125.00**
Settlement Costs	$4,406.37	**$8,093.51**
D. Taxes & Other Government Fees	$2,840.00	$2,840.00
E. Prepaids	$464.30	**$1,935.38**
F. Initial Escrow Payments at Closing	$902.07	**$846.82**
G. Other Costs	$200.00	**$2,471.31**
Down Payment/Funds from Borrower	$18,525.00	$18,525.00
Deposit	– $3,000.00	– $3,000.00
Cash to Borrower	$0	$0
Seller Credits	$0	$0
Other Credits and Adjustments	$0	**$3,317.59**
Closing Costs to be Financed	$0	**– $4,830.63**
Cash to Close	**$25,101.37**	**$27,625.00**

INTEREST RATE CHANGES	Estimate	Final
Interest rate	4.375%	4.375%
Can interest rate change after closing?	NO	NO
Did adjustable rate terms change?	N/A	

INCREASES OVER LIMITS	Estimate	Final	Over Limit?
Costs That Could Not Increase			
A. Origination Charges	$2,769.00	$2,810.90	**YES** $41.90
D. Transfer Taxes	$2,470.00	$2,470.00	NO
Costs That Could Not Increase by More Than 10% in Total			
B. Services You Did Not Shop For	$2,276.00	$2,583.63	**YES** $43.03
D. Recording Fees	$370.00	$370.00	
TOTAL	$2,646.00	$2,953.63	

Summaries of Transactions

BORROWER'S TRANSACTION	
Due from Borrower at Closing	**$140,430.63**
01 Closing Costs Paid at Closing by Borrower (H)	$8,782.41
02 Closing Costs Financed in Loan Amount (H)	$4,830.63
03 Sale price of property	$123,500.00
04 Sale price of any personal property included in sale	
05	
06	
07 Other Credits & Adjustments	
08 Items Prepaid by Seller that are Due from Borrower	
09 City/town taxes 1/24/12 to 12/31/12	$3,030.09
10 County taxes to	
11 Assessments to	
12 HOA dues 1/24/12 to 3/31/12 (quarterly)	$287.50
13	
14	
Paid Already or on Behalf of Borrower at Closing	**$112,805.63**
01 Deposit	$3,000.00
02 Principal amount of borrower's new loan	$109,805.63
03 Existing loan(s) assumed or taken subject to	
04	
05	
06 Other Credits & Adjustments	
07	
08	
09	
10 Adjustments for Items Unpaid by Seller	
11 City/town taxes to	
12 County taxes to	
13 Assessments to	
14	
15	
16	
Cash to Close ☒ From ☐ To Borrower	**$27,625.00**
Total Due from Borrower at Closing	$140,430.63
Total Paid Already or on Behalf of Borrower at Closing	– $112,805.63

SELLER'S TRANSACTION	
Due to Seller at Closing	**$126,817.59**
01 Sale price of property	$123,500.00
02 Sale price of any personal property included in sale	
03	
04	
05	
06	
07	
08 Items Prepaid by Seller that are Due from Borrower	
09 City/town taxes 1/24/12 to 12/31/12	$3,030.09
10 County taxes to	
11 Assessments to	
12 HOA dues 1/24/12 to 3/31/12 (quarterly)	$287.50
13	
14	
Due from Seller at Closing	**$87,807.87**
01 Excess deposit	
02 Closing costs paid at closing by seller (H)	$8,645.00
03 Existing loan(s) assumed or taken subject to	
04 Payoff of first mortgage loan	$79,162.87
05 Payoff of second mortgage loan	
06	
07	
08	
09	
10 Adjustments for Items Unpaid by Seller	
11 City/town taxes to	
12 County taxes to	
13 Assessments to	
14	
15	
16	
Cash ☐ From ☒ To Seller	**$39,009.72**
Total Due to Seller at Closing	$126,817.59
Total Due from Seller at Closing	– $87,807.87

Closing Cost Details

	Borrower-Paid			Seller-Paid		Paid by Others
	Paid at Closing	Paid Before Closing	Financed in Loan Amt.	Paid at Closing	Paid Before Closing	
SETTLEMENT FEES						
A. Origination Charges		**$2,810.90**				
01 .875 Point(s)	$960.90					
02 Underwriting Fee			$800.00			
03 Processing Fee			$300.00			
04 Verification Fee			$75.00			
05 Rate Lock Fee			$525.00			
06 Desk Review Fee			$150.00			
B. Services Borrower Did Not Shop For		**$2,583.63**				
01 Credit Report Fee to Credit Co.			$30.00			
02 Appraisal Fee to Local Appraisal Co.	$335.00					
03 Document Preparation Fee to Collateral Research Inc.			$55.00			
04 Tax Status Research Fee to Collateral Research Inc.			$25.00			
05 Flood Determination Fee to Collateral Research Inc.			$35.00			
06 Tax Monitoring Fee to Monitoring Services Inc.			$15.00			
07 Flood Monitoring Fee to Monitoring Services Inc.			$10.00			
08 Lender's Attorney to BF Law Group			$325.00			
09 Title – Closing Protection Letter to Regional Title Co.	$75.00					
10 Appraisal Mgmt. Co. Fee to AMC Co.			$100.00			
11 Title – PA Inclusive Title Fee to Regional Title Co.			$1,076.63			
12 Lender Coverage $109,805.63 / Owner Coverage $123,500						
13 Title – Settlement Agent Fee to Regional Title Co.			$310.00			
14 Title – Courier Fee to Quick Delivery Co.			$32.00			
15 Survey Fee to ABC Surveys Co.			$160.00			
C. Services Borrower Did Shop For		**$125.00**				
01 Pest Inspection Fee to Home Pest Co.			$125.00			
02						
03						
Settlement Fees (A + B + C)	$1,370.90	$0	$4,148.63			
Lender Credits						
TOTAL BORROWER-PAID SETTLEMENT FEES		**$5,519.53**				
SETTLEMENT COSTS						
D. Taxes and Other Government Fees		**$2,840.00**				
01 Commonwealth of PA Transfer Tax	$617.50			$617.50		
02 City of Philadelphia Transfer Tax	$1,852.50			$1,852.50		
03 Recording Fees Deed: $200.00 Mortgage: $170.00	$370.00					
04						
E. Prepaids		**$1,935.38**				
01 Mortgage Insurance Premium (__mo.)						
02 Homeowner's Insurance Premium (12 mo.) to XYZ Ins. Co.			$682.00			
03 Flood Insurance Premium (12 mo.) to Flood Safe Co.	$1,160.00					
04 Property Taxes (__mo.)						
05 Prepaid Interest $13.34 per day from 1/24/12 to 1/31/12	$93.38					
06						
F. Initial Escrow Payment at Closing		**$846.82**				
01 Mortgage Insurance per month for mo.						
02 Homeowner's Insurance $56.83 per month for 3 mo.	$170.49					
03 Property Taxes $269.44 per month for 3 mo.	$808.32					
04 Flood Insurance $96.67 per month for 3 mo.	$290.01					
05 HOA/Condo/Co-op per month for mo.						
06 Aggregate Adjustment	– $422.00					
G. Other Costs		**$2,471.31**				
01 $3,087.50 to Reliable Realty Co./ $3,087.50 to Realty Pros LLC				$6,175.00		
02 Real Estate Broker Administration Fee to Reliable Realty Co.	$200.00					
03 Structural Inspection Fee to Home Engineering Corp.	$325.00					
04 Inspection Fee to Inspector Home Co.	$245.00					
05 HOA Processing Fee to 456 HOA	$500.00					
06 Home Warranty to Warrant Row Co.	$211.31					
07 Mobile Signing Agent to Quick Signing Co.	$150.00					
08 Borrower Attorney to Law Phil LLP	$840.00					
Settlement Costs (D + E + F + G)	$7,411.51	$0	$682.00			
TOTAL BORROWER-PAID SETTLEMENT COSTS		**$8,093.51**				
H. TOTAL CLOSING COSTS (Settlement Fees + Settlement Costs)	$8,782.41	$0	$4,830.63	$8,645.00		
TOTAL BORROWER-PAID CLOSING COSTS		**$13,613.04**				

Loan Disclosures

Assumption
If you sell or transfer this property to another person
- ☐ We will allow, under certain conditions, this person to assume this loan on the original terms.
- ☒ We will not allow assumption of this loan.

Demand Feature
- ☐ Your loan has a demand feature, which permits the lender to demand early repayment of the loan. If this loan has a demand feature, you should review your note for details.
- ☒ Your loan does not have a demand feature.

Late Payment
If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
- ☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☐ have the option of making monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
- ☒ do not have a negative amortization feature.

Partial Payment Policy
- ☐ We will accept payments that are less than the full amount due (partial payments). We will apply partial payments:

____

____

____

- ☒ We will not accept partial payments.

Security Interest
You are granting us a security interest in 456 Avenue A, Anytown, PA 12345. You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account Information
For now, your loan
- ☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed in Section F on page 3 for you. If we fail to make a payment, we may be liable for penalties and interest. Without an escrow account, you would pay these costs directly, possibly in one or two large payments a year.

Year 1 Property Costs		
Estimated Property Costs Escrowed	$5,075.28	The total costs over year 1 of items listed in Section F on page 3.
Initial Escrow Payment	$846.82	The payment in Section F on page 3 is a cushion for the escrow account.
Monthly Escrow Payment	$422.94	The amount included in your total monthly payment.
Estimated Property Costs Not Escrowed	$1,539.72	Property costs that are not escrowed: HOA dues You may have other property costs not listed here.

- ☐ will not have an escrow because ___ you declined an account ___ we do not offer escrow accounts. You must directly pay your property costs, such as property taxes and homeowner's insurance.

Estimated Costs		
Year 1, Estimated Property Costs		Without an escrow account, you would pay these costs directly, possibly in one or two large payments a year.
Fee for No Escrow Account		

Contact us to ask whether your loan can have an escrow account.

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly unless you create a new escrow account. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, we may
- add the amounts to your loan balance,
- add an escrow account to your loan, or
- require you to pay for property insurance that we buy on your behalf, which likely would be more expensive and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. The amount you have paid after you have made all 360 payments as scheduled.	$354,038.18
Finance Charge. The dollar amount the loan will cost you.	$94,978.46
Amount Financed. The amount of credit provided to you or on your behalf.	$106,801.32
Annual Percentage Rate (APR). This is not your interest rate. This rate expresses your costs over the loan term.	4.92%
Total Interest Percentage (TIP). This rate is the total amount of interest that you will pay over the loan term as a percentage of your loan amount.	79.75%
Average Cost of Funds (ACF). This represents the average cost of borrowing funds to make mortgage loans for financial institutions that report to the Federal Home Loan Bank of San Francisco.	1.20%

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov.**

Other Disclosures

Appraisal Copy
If you paid for a written appraisal or valuation of the property, we are required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact John Smith at Butternut Bank at 111-222-3333.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- other ways you can default on the loan,
- situations in which we can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation and market conditions. We cannot guarantee that you will be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker	Real Estate Broker	Settlement Agent
Name	Butternut Bank		Reliable Realty Co.	Realty Pros	ABC Settlement
Address	4321 Liberty Blvd. Somecity, PA 54321		1776 Franklin St. Ste 405 Anytown, PA 12345	3456 Benjamin Blvd. Anytown, PA 12345	5432 Liberty Blvd. Ste 405 Somecity, PA 54321
NMLS ID	111111				
Contact	John Smith		Jon Anderson	Steve Walsh	Nancy Jones
Loan Officer NMLS ID	487493				
Email	jsmith@ butternutbank.com		janderson@ RRealty.com	swalsh@ realtypros.com	njones@ ABCsettlement.com
Phone	111-222-3333		444-555-6666	555-666-7777	666-777-8888

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to complete this transaction, even if you have signed or received this form.

Applicant Signature　　　Date　　　Applicant Signature　　　Date

<u>Attachment C-2 to Appendix C-1</u>

Settlement Disclosure – Alternative Prototype #2

[See attached]

Settlement Disclosure

This form is a statement of final loan terms and closing costs. Compare this document to your Loan Estimate.

SETTLEMENT INFORMATION

DATE 1/24/2012
AGENT ABC Settlement
FILE # 01234
PROPERTY 456 Avenue A
Anytown, PA 12345
SALE PRICE $123,500

TRANSACTION INFORMATION

BORROWER James White and Jane Johnson
123 Anywhere Street, Apt 678
Anytown, PA 12345
SELLER John Wilson
123 Somewhere Drive
Anytown, PA 12345
LENDER Hemlock Bank

LOAN INFORMATION

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT Fixed Rate
LOAN TYPE ☒ Conventional ☐ FHA
☐ VA ☐ ____________
MIC # 56789
LOAN ID # 1330172608

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount	$109,805.63	**NO**
Interest Rate	4.375%	**NO**
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$548.25	**NO**
		Does the loan have these features?
Prepayment Penalty		**NO**
Balloon Payment		**NO**

Projected Payments

Payment Calculation	**Years 1-7**	**Years 8-30**
Principal & Interest	$548.25	$548.25
Mortgage Insurance	+ 55.82	—
Estimated Escrow *Amount Can Increase Over Time*	+ 422.94	+ 422.94
Estimated Total Monthly Payment	$1,027.01	$971.19

Information about Escrow for Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	$422.94 a month	☒ **Escrow.** Your escrow payment covers the taxes, insurance & assessments listed in Section F on page 2. You must pay for other property costs separately. ☐ **No Escrow.** You must pay all of your taxes, insurance & assessments separately from your loan payments.

Closing Costs

Cash to Close	$27,625.00	Closing Costs include $5,519.53 in Settlement Fees. See details on page 2.

Closing Cost Details	Borrower-Paid: Paid at Closing	Borrower-Paid: Paid Before Closing	Borrower-Paid: Financed in Loan Amt.	Seller-Paid: Paid at Closing	Seller-Paid: Paid Before Closing	Paid by Others
SETTLEMENT FEES						
A. Origination Charges		**$2,810.90**				
.875 Point(s)	$960.90					
Underwriting Fee			$800.00			
Processing Fee			$300.00			
Verification Fee			$75.00			
Rate Lock Fee			$525.00			
Desk Review Fee			$150.00			
B. Services Borrower Did Not Shop For		**$2,583.63**				
Credit Report Fee to Credit Co.			$30.00			
Appraisal Fee to Local Appraisal Co.	$335.00					
Document Preparation Fee to Collateral Research Inc.			$55.00			
Tax Status Research Fee to Collateral Research Inc.			$25.00			
Flood Determination Fee to Collateral Research Inc.			$35.00			
Tax Monitoring Fee to Monitoring Services Inc.			$15.00			
Flood Monitoring Fee to Monitoring Services Inc.			$10.00			
Lender's Attorney to BF Law Group			$325.00			
Title – Closing Protection Letter to Regional Title Co.	$75.00					
Appraisal Mgmt. Co. Fee to AMC Co.			$100.00			
Title – PA Inclusive Title Fee to Regional Title Co.			$1,076.63			
Lender Coverage $109,805.63 / Owner Coverage $123,500						
Title – Settlement Agent Fee to Regional Title Co.			$310.00			
Title – Courier Fee to Quick Delivery Co.			$32.00			
Survey Fee to ABC Surveys Co.			$160.00			
C. Services Borrower Did Shop For		**$125.00**				
Pest Inspection Fee to Home Pest Co.			$125.00			
Settlement Fees (A + B + C)	$1,370.90	$0	$4,148.63			
Lender Credits						
TOTAL BORROWER-PAID SETTLEMENT FEES		**$5,519.53**				
SETTLEMENT COSTS						
D. Taxes and Other Government Fees		**$2,840.00**				
Commonwealth of PA Transfer Tax	$617.50			$617.50		
City of Philadelphia Transfer Tax	$1,852.50			$1,852.50		
Recording Fees Deed: $200.00 Mortgage: $170.00	$370.00					
E. Prepaids		**$1,935.38**				
Mortgage Insurance Premium (__mo.)						
Homeowner's Insurance Premium (12 mo.) to XYZ Ins. Co.			$682.00			
Flood Insurance Premium (12 mo.) to Flood Safe Co.	$1,160.00					
Property Taxes (__mo.)						
Prepaid Interest $13.34 per day from 1/24/12 to 1/31/12	$93.38					
F. Initial Escrow Payment at Closing		**$846.82**				
Mortgage Insurance per month for mo.						
Homeowner's Insurance $56.83 per month for 3 mo.	$170.49					
Property Taxes $269.44 per month for 3 mo.	$808.32					
Flood Insurance $96.67 per month for 3 mo.	$290.01					
HOA/Condo/Co-op per month for mo.						
Aggregate Adjustment	– $422.00					
G. Other Costs		**$2,471.31**				
$3,087.50 to Reliable Realty Co./ $3,087.50 to Realty Pros LLC				$6,175.00		
Real Estate Broker Administration Fee to Reliable Realty Co.	$200.00					
Structural Inspection Fee to Home Engineering Corp.	$325.00					
Inspection Fee to Inspector Home Co.	$245.00					
HOA Processing Fee to 456 HOA	$500.00					
Home Warranty to Warrant Row Co.	$211.31					
Mobile Signing Agent to Quick Signing Co.	$150.00					
Borrower Attorney to Law Phil LLP	$840.00					
Settlement Costs (D + E + F + G)	$7,411.51	$0	$682.00			
TOTAL BORROWER-PAID SETTLEMENT COSTS		**$8,093.51**				
H. TOTAL CLOSING COSTS (Settlement Fees + Settlement Costs)	$8,782.41	$0	$4,830.63	$8,645.00		
TOTAL BORROWER-PAID CLOSING COSTS		**$13,613.04**				

What Changed?

CALCULATING CASH TO CLOSE	Estimate	Final
Settlement Fees	$5,170.00	**$5,519.53**
Settlement Costs	$4,406.37	**$8,093.51**
Down Payment/Funds from Borrower	$18,525.00	$18,525.00
Deposit	– $3,000.00	– $3,000.00
Cash to Borrower	$0	$0
Seller Credits	$0	$0
Other Credits and Adjustments	$0	**$3,317.59**
Closing Costs to be Financed	$0	**– $4,830.63**
Cash to Close	**$25,101.37**	**$27,625.00**

INCREASES OVER LIMITS	Estimate	Final	Over Limit?
Costs That Could Not Increase			
A. Origination Charges	$2,769.00	$2,810.90	**YES** $41.90
D. Transfer Taxes	$2,470.00	$2,470.00	NO
Costs That Could Not Increase by More Than 10% in Total			
B. Services You Did Not Shop For	$2,276.00	$2,583.63	**YES** $43.03
D. Recording Fees	$370.00	$370.00	
TOTAL	$2,646.00	$2,953.63	

INTEREST RATE CHANGES	Estimate	Final
Interest rate	4.375%	4.375%
Can interest rate change after closing?	NO	NO
Did adjustable rate terms change?	N/A	

Summaries of Transactions

BORROWER'S TRANSACTION

I. Due from Borrower at Closing		**$140,430.63**
Closing Costs Paid at Closing by Borrower (H)		$8,782.41
Closing Costs Financed in Loan Amount (H)		$4,830.63
Sale price of property		$123,500.00
Sale price of any personal property included in sale		
Other Credits & Adjustments		
Items Prepaid by Seller that are Due from Borrower		
City/town taxes	1/24/12 to 12/31/12	$3,030.09
County taxes	to	
Assessments	to	
HOA dues	1/24/12 to 3/31/12 (quarterly)	$287.50
J. Paid Already or on Behalf of Borrower at Closing		**$112,805.63**
Deposit		$3,000.00
Principal amount of borrower's new loan		$109,805.63
Existing loan(s) assumed or taken subject to		
Other Credits & Adjustments		
Adjustments for Items Unpaid by Seller		
City/town taxes	to	
County taxes	to	
Assessments	to	

CALCULATION	
Total Due from Borrower at Closing (I)	$140,430.63
Total Paid Already or on Behalf of Borrower at Closing (J)	– $112,805.63
Cash to Close ☒ From ☐ To Borrower	**$27,625.00**

SELLER'S TRANSACTION

K. Due to Seller at Closing		**$126,817.59**
Sale price of property		$123,500.00
Sale price of any personal property included in sale		
Items Prepaid by Seller that are Due from Borrower		
City/town taxes	1/24/12 to 12/31/12	$3,030.09
County taxes	to	
Assessments	to	
HOA dues	1/24/12 to 3/31/12 (quarterly)	$287.50
L. Due from Seller at Closing		**$87,807.87**
Excess deposit		
Closing costs paid at closing by seller (H)		$8,645.00
Existing loan(s) assumed or taken subject to		
Payoff of first mortgage loan		$79,162.87
Payoff of second mortgage loan		
Adjustments for Items Unpaid by Seller		
City/town taxes	to	
County taxes	to	
Assessments	to	

CALCULATION	
Total Due to Seller at Closing (K)	$126,817.59
Total Due from Seller at Closing (L)	– $87,807.87
Cash ☐ From ☒ To Seller	**$39,009.72**

Loan Disclosures

Assumption
If you sell or transfer this property to another person

☐ We will allow, under certain conditions, this person to assume this loan on the original terms.

☒ We will not allow assumption of this loan.

Demand Feature

☐ Your loan has a demand feature, which permits the lender to demand early repayment of the loan. If this loan has a demand feature, you should review your note for details.

☒ Your loan does not have a demand feature.

Late Payment
If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you

☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

☐ have the option of making monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.

☒ do not have a negative amortization feature.

Partial Payment Policy

☐ We will accept payments that are less than the full amount due (partial payments). We will apply partial payments:

____

____

____

☒ We will not accept partial payments.

Security Interest
You are granting us a security interest in 456 Avenue A, Anytown, PA 12345. You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account Information
For now, your loan

☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs in Section F on page 2, such as property taxes and homeowner's insurance. We estimate that these costs will total **$5,075.28** for the first year of your loan. Without an escrow account, you would directly pay these potentially large costs in semi-annual or annual payments. You may have other property costs that are not being paid into the escrow account, which you must directly pay yourself. At closing, you will make an initial deposit of **$846.82** into your escrow account. After that, your regular mortgage payments will include an additional **$422.94** that will go into your escrow account. We will take money from your account to pay these property costs as needed. If we fail to make payments, we may be liable for penalties and interest.

☐ will not have an escrow account. You do not have an escrow account because ___ you declined an account ___ we do not offer escrow accounts. The fee for not having an escrow account is **$**\_\_\_\_\_\_. In addition to your mortgage loan payment, you must directly pay your property costs, such as property taxes and homeowner's insurance. We estimate that these costs will total **$**______ for the first year of your loan. You must pay these costs in potentially large semiannual or annual payments. If you would like an escrow account, you may contact us at ______________.

In the future,
If you have an escrow account, or if one is added later, the amount of your escrow payment may change. In addition, you may be permitted to cancel your escrow account, but if you do so, you will be responsible for directly paying these property costs unless you create a new escrow account.

If your property taxes are not paid, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. In addition, if you fail to pay any of your property costs, we may

- add the amounts to your loan balance,
- add an escrow account to your loan, or
- require you to pay for insurance on the property that we buy on your behalf, which likely would be more expensive and provide fewer benefits than what you could obtain on your own.

Loan Calculations

Total of Payments. The amount you have paid after you have made all 360 payments as scheduled.	$354,038.18
Finance Charge. The dollar amount the loan will cost you.	$94,978.46
Amount Financed. The amount of credit provided to you or on your behalf.	$106,801.32
Annual Percentage Rate (APR). This is not your interest rate. This rate expresses your costs over the loan term.	4.92%
Total Interest Percentage (TIP). This rate is the total amount of interest that you will pay over the loan term as a percentage of your loan amount.	79.75%
Lender Cost of Funds (LCF). The cost of the funds used to make this loan. This is not a direct cost to you.	1.20%

Questions? If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov.**

Other Disclosures

Appraisal Copy
If you paid for a written appraisal or valuation of the property, we are required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact John Smith at Hemlock Bank at 111-222-3333.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- other ways you can default on the loan,
- situations in which we can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation and market conditions. We cannot guarantee that you will be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker	Real Estate Broker	Settlement Agent
Name	Hemlock Bank		Reliable Realty Co.	Realty Pros	ABC Settlement
Address	4321 Liberty Blvd. Somecity, PA 54321		1776 Franklin St. Ste 405 Anytown, PA 12345	3456 Benjamin Blvd. Anytown, PA 12345	5432 Liberty Blvd. Ste 405 Somecity, PA 54321
NMLS ID	111111				
Contact	John Smith		Jon Anderson	Steve Walsh	Nancy Jones
Loan Officer NMLS ID	487493				
Email	jsmith@ hemlockbank.com		janderson@ RRealty.com	swalsh@ realtypros.com	njones@ ABCsettlement.com
Phone	111-222-3333		444-555-6666	555-666-7777	666-777-8888

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to complete this transaction, even if you have signed or received this form.

Applicant Signature Date

Applicant Signature Date

Appendix C-2

Prototype Loan Estimate – February 2012 Testing

[See attached]

TUPELO BANK

4321 Random Boulevard • Somecity, TX 54321

Save this Loan Estimate to compare with your Settlement Disclosure.

Loan Estimate

DATE ISSUED 1/3/2012
APPLICANTS James White and Jane Johnson
123 Anywhere Street, Apt 678
Anytown, TX 12345
PROPERTY 456 Avenue A, Anytown, TX 12345
SALE PRICE $240,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT 5 Year Interest Only, 5/3 Adjustable Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ _____________
LOAN ID # 1330172608
RATE LOCK ☐ NO ☒ YES, until 2/29/2012 at 3:00 p.m. CST.
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on ***1/18/2012*** *at 3:00 p.m. CST.*

Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount	$211,000	**NO**
Interest Rate	4.375%	**YES** • Adjusts **every three years** starting in year 6 • Can go **as high as 8%** in year 9 • See **AIR table on page 2** for details
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$769.27	**YES** • Adjusts **every three years** starting in year 6 • Can go **as high as $1,622** in year 9 • Includes **interest only** and **no principal** until year 6 • See **AP table on page 2** for details
		Does the loan have these features?
Prepayment Penalty		**NO**
Balloon Payment		**NO**

Projected Payments

Payment Calculation	Years 1-5	Years 6-8	Years 9-11	Years 12-30
Principal & Interest	$769.27	$1,233 min $1,542 max	$1,233 min $1,622 max	$1,233 min $1,622 max
Mortgage Insurance	+ 107	+ 107	+ 107	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 533	+ 533	+ 533	+ 533
Estimated Total Monthly Payment	$1,409	$1,873 – $2,182	$1,873 – $2,262	$1,766 – $2,155

Escrow Information for Taxes, Insurance & Assessments *Amount Can Increase Over Time*	$533 a month	☒ **Escrow.** Your escrow payment covers the taxes, insurance & assessments listed in Section G on page 2. You must pay for other property costs separately. ☐ **No Escrow.** You must pay all of your taxes, insurance & assessments separately from your loan payments.

Closing Costs

Estimated Cash to Close	$32,120	Closing Costs include $5,963 in estimated Settlement Fees. See details on page 2.

Visit **www.consumerfinance.gov/learnmore** for general information and tools.

Closing Cost Details

Settlement Fees

A. Origination Charges	$2,850
% of Loan Amount (Points)	$0
Desk Review Fee	$150
Loan Origination Fee	$1,000
Processing Fee	$300
Rate Lock Fee	$525
Underwriting Fee	$675
Verification Fee	$200

B. Services You Cannot Shop For	$820
Appraisal Fee	$305
Credit Report Fee	$30
Flood Determination Fee	$35
Lender's Attorney	$400
Tax Status Research Fee	$50

C. Services You Can Shop For	$2,293
Pest Inspection Fee	$125
Survey Fee	$150
Title – Courier Fee	$32
Title – Lender's Title Policy	$100
Title – Owner's Title Policy	$1,436
Title – Settlement Agent Fee	$300
Title – Title Search	$150

D. TOTAL SETTLEMENT FEES	$5,963
Settlement Fees (A + B + C)	$5,963
Lender Credits	– $0

Settlement Costs

E. Taxes and Other Government Fees	$152
Recording Fees and Other Taxes	$152
Transfer Taxes	$0

F. Prepaids	$1,205
Homeowner's Insurance Premium (12 months)	$1,000
Mortgage Insurance Premium (0 months)	$0
Prepaid Interest ($25.64 per day for 8 days @ 4.375%)	$205
Property Taxes (0 months)	$0

G. Initial Escrow Payment at Closing				
Flood Insurance	$0	per month for	0 mo.	$0
HOA/Condo/Co-op	$0	per month for	0 mo.	$0
Homeowner's Insurance	$83.33	per month for	3 mo.	$250
Mortgage Insurance	$0	per month for	0 mo.	$0
Property Taxes	$450.00	per month for	3 mo.	$1,350

G. total: $1,600

H. Other Costs	$200
Real Estate Broker Administration Fee	$200

I. TOTAL SETTLEMENT COSTS (E + F + G + H)	$3,157

J. TOTAL CLOSING COSTS (D + I)	$9,120

Calculating Cash to Close

Total Closing Costs (J)	$9,120
Closing Costs Financed (Included in Loan Amount)	$0
Down Payment/Funds from Borrower	$29,000
Deposit	– $5,000
Cash to Borrower	$0
Seller Credits	– $1,000
Other Adjustments and Credits	$0
Estimated Cash to Close	**$32,120**

Adjustable Payment (AP) Table

Interest Only Payments?	YES for your first 60 payments
Optional Payments?	NO
Step Payments?	NO
Monthly Principal and Interest Payments	
First Change/Amount	$1,233 – $1,542 at 61st payment
Subsequent Changes	Every three years
Maximum Payment	$1,622 starting at 108th payment

Adjustable Interest Rate (AIR) Table

Index + Margin	LIBOR + 4%
Initial Interest Rate	4.375%
Minimum/Maximum Interest Rate	5%/8%
Change Frequency	
First Change	Beginning of 61st month
Subsequent Changes	Every 36th month after first change
Limits on Interest Rate Changes	
First Change	3%
Subsequent Changes	3%

Additional Information About This Loan

LENDER	Tupelo Bank
NMLS ID	111111
LOAN OFFICER	Jimmie Gilmore
NMLS ID	487493
EMAIL	jgilmore@tupelobank.com
PHONE	111-222-3333

MORTGAGE BROKER	Friendly Mortgage Broker Inc.
NMLS ID	222222
LOAN OFFICER	Stevie Vaughan
NMLS ID	394784
EMAIL	svaughan@frndlymtgbrkr.com
PHONE	333-444-5555

Comparisons	**Use these measures to compare this loan with other loans.**	
In 5 Years	$58,539	Total you will have paid in principal, interest, mortgage insurance, and fees.
	$0	Principal you will have paid off.
Annual Percentage Rate (APR)	5.30%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	99.01%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal — We will promptly give you a copy of any written property appraisals or valuations that you pay for, even if the loan does not close. Any appraisal we order for this loan is for our use only, even if we charge you the cost. You can choose to pay for your own appraisal of the property.

Assumption — If you sell or transfer this property to another person, we
- ☐ will allow, under certain conditions, this person to assume this loan on the original terms.
- ☒ will not allow this person to assume this loan on the original terms.

Homeowner's Insurance — This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment — If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

Refinance — Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing — We intend
- ☐ to service your loan. You will make your payments to us.
- ☒ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Applicant Signature Date

Appendix C-3

Prototype Settlement Disclosure – February 2012 Testing

[See attached]

Settlement Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

SETTLEMENT INFORMATION

DATE 2/21/2012
AGENT ABC Settlement
FILE # 01234
PROPERTY 456 Avenue A
Anytown, TX 12345
SALE PRICE $240,000

TRANSACTION INFORMATION

BORROWER James White and Jane Johnson
123 Anywhere Street, Apt 678
Anytown, TX 12345
SELLER John Wilson
123 Somewhere Drive
Anytown, TX 12345
LENDER Basswood Bank

LOAN INFORMATION

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT 5 Year Interest Only, 5/3 Adjustable Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ ____________
LOAN ID # 1330172608
MIC # 56789

Loan Terms

		Can this amount increase after closing?
Loan Amount	$216,500	**NO**
Interest Rate	4.375%	**YES** • Adjusts **every three years** starting in year 6 • Can go **as high as 8%** in year 9 • See **AIR table on page 4** for details
Monthly Principal & Interest *See Projected Payments Below for Your Total Monthly Payment*	$789.32	**YES** • Adjusts **every three years** starting in year 6 • Can go **as high as $1,664** in year 9 • Includes **interest only** and **no principal** until year 6 • See **AP table on page 4** for details
		Does the loan have these features?
Prepayment Penalty		**NO**
Balloon Payment		**NO**

Projected Payments

Payment Calculation	**Years 1-5**	**Years 6-8**	**Years 9-11**	**Years 12-30**
Principal & Interest	$789.32	$1,266 min $1,582 max	$1,266 min $1,664 max	$1,266 min $1,664 max
Mortgage Insurance	+ 164.18	+ 164.18	+ 164.18	+ —
Estimated Escrow *Amount Can Increase Over Time*	+ 699.50	+ 699.50	+ 699.50	+ 699.50
Estimated Total Monthly Payment	$1,653.00	$2,130 – $2,446	$2,130 – $2,528	$1,966 – $2,364
Escrow Information for Taxes, Insurance & Assessments *Amount Can Increase Over Time* *See Details on Page 4*	$842.09 a month	☒ **Escrow.** Your escrow payment covers the taxes, insurance & assessments listed in Section G on page 2. You must pay for other property costs separately. ☐ **No Escrow.** You must pay all of your taxes, insurance & assessments separately from your loan payments.		

Closing Costs

Cash to Close	$29,826.23	Closing Costs include $6,409.00 in Settlement Fees. See details on page 2.

Closing Cost Details

Settlement Fees		Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges		**$2,850.00**				
01 % of Loan Amount (Points)						
02 Broker Fee	to Friendly Mortgage Broker, Inc. by Lender					$4,330.00
03 Desk Review Fee		$150.00				
04 Loan Origination Fee		$1,000.00				
05 Processing Fee		$300.00				
06 Rate Lock Fee			$525.00			
07 Underwriting Fee		$800.00				
08 Verification Fee		$75.00				
B. Services Borrower Did Not Shop For		**$900.00**				
01 Appraisal Fee	to Local Appraisal Co.		$305.00			
02 Credit Report Fee	to Credit Co.	$30.00				
03 Document Preparation Fee	to Collateral Research Inc.	$55.00				
04 Flood Determination Fee	to Collateral Research Inc.	$35.00				
05 Flood Monitoring Fee	to Monitoring Services Inc.	$10.00				
06 Lender's Attorney	to The Firm LLP	$425.00				
07 Tax Monitoring Fee	to Monitoring Services Inc.	$15.00				
08 Tax Status Research Fee	to Collateral Research Inc.	$25.00				
09						
10						
C. Services Borrower Did Shop For		**$2,659.00**				
01 Pest Inspection Fee	to Home Pest Co.	$125.00				
02 Survey Fee	to ABC Surveys Co.	$160.00				
03 Texas Title Guaranty Fee	to Texas Title Ins. Guar. Assn. by Lender	$1.00				$1.00
04 Title – Courier Fee	to Quick Delivery Co.	$32.00				
05 Title – Lender's Policy	to Regional Title Co.	$100.00				
06 Title – Owner's Policy	to Regional Title Co.	$1,591.00				
07 Title – Settlement Agent Fee	to ABC Settlement Co.	$425.00				
08 Title – Title Search	to Regional Title Co.	$225.00				
Settlement Fees Subtotal (A + B + C)		$5,579.00	$830.00			
Lender Credits						
D. TOTAL SETTLEMENT FEES (Borrower-Paid)		**$6,409.00**				

Settlement Costs		Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
E. Taxes and Other Government Fees		**$152.00**				
01 Recording Fees	Deed: $120.00 Mortgage: $32.00	$152.00				
02						
F. Prepaids		**$2,543.48**				
01 Homeowner's Insurance Premium (12 mo.) to XYZ Ins. Co.		$1,460.00				
02 Mortgage Insurance Premium (mo.)						
03 Prepaid Interest $26.31 per day from 2/21/12 to 2/29/12		$210.48				
04 Property Taxes (mo.)						
05 Windstorm Insurance Premium (12 mo.) to YYZ Ins. Co.		$873.00				
G. Initial Escrow Payment at Closing		**$2,793.50**				
01 HOA/Condo/Co-op	per month for mo.					
02 Homeowner's Insurance $121.67	per month for 3 mo.	$365.01				
03 Mortgage Insurance	per month for mo.					
04 Property Taxes $505.08	per month for 3 mo.	$1,515.24				
05 Property Tax Escrow Adjustment		$695.00				
06 Windstorm Insurance $72.75	per month for 3 mo.	$218.25				
07						
08 Aggregate Adjustment						
H. Other Costs		**$1,635.31**				
01 $6,000.00 to Reliable Realty Co. / $6,000.00 to Realty Pros LLC				$12,000.00		
02 HOA Processing Fee	to HOA Corp.	$700.00				
03 Home Warranty	to XYZ Warranty Inc.	$260.31				
04 Inspection Fee	to Inspector Home Co.				$300.00	
05 Mobile Signing Agent	to Quick Signing Co.	$150.00				
06 Real Estate Broker Admin. Fee	to Reliable Realty Co.	$200.00				
07 Structural Inspection Fee	to Home Engineering Corp.	$325.00				
08						
Settlement Costs Subtotal (E + F + G + H)		$7,124.29	$0			
I. TOTAL SETTLEMENT COSTS (Borrower-Paid)		**$7,124.29**				
Closing Costs Subtotal (Settlement Fees + Settlement Costs)		$12,703.29	$830.00	$12,000.00	$300.00	$4,331.00
J. TOTAL CLOSING COSTS (Borrower-Paid)		**$13,533.29**				

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Estimate	Final	Did this Change?	
Total Closing Costs (J)	$9,120	$13,533.29	**YES**	• See Total Settlement Fees (D) and Total Settlement Costs (I)
Closing Costs Subtotal Paid Before Closing	$0	– $830.00	**YES**	• You paid these Closing Costs before closing
Closing Costs Financed	$0	– $5,500.00	**YES**	• You included these closing costs in your loan amount, which increased your loan amount
Down Payment/Funds from Borrower	$29,000.00	$29,000.00	**NO**	
Deposit	– $5,000.00	– $5,000.00	**NO**	
Cash to Borrower	$0	$0	**NO**	
Seller Credits	– $1,000	– $1,000	**NO**	
Other Adjustments and Credits	$0	– $377.06	**YES**	• See details in Sections K and L
Cash to Close	**$32,120.00**	**$29,826.23**		

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing				**$253,170.79**
01	Sale Price of Property			$240,000.00
02	Sale Price of Any Personal Property Included in Sale			
03	Subtotal Closing Costs Paid at Closing by Borrower			$12,703.29
04				
05				
06				
07				
08				
Adjustments for Items Paid by Seller in Advance				
09	City/Town Taxes		to	
10	County Taxes		to	
11	Assessments		to	
12	HOA Dues	2/21/12	to 5/31/12	$467.50
13				
14				
15				
16				
L. Paid Already or on Behalf of Borrower at Closing				**$223,344.56**
01	Deposit			$5,000.00
02	Borrower's Loan Amount			$216,500.00
03	Existing Loan(s) Assumed or Taken Subject to			
04				
05				
06				
07				
08	Seller Credit			$1,000.00
09				
Other Credits				
10				
11				
12				
Adjustments for Items Unpaid by Seller				
13	City/Town Taxes	1/1/12	to 2/21/12	$844.56
14	County Taxes		to	
15	Assessments		to	
16				
17				
18				
CALCULATION				
Total Due from Borrower at Closing (K)				$253,170.79
Total Paid Already or on Behalf of Borrower at Closing (L)				– $223,344.56
Cash to Close ☒ From ☐ To Borrower				**$29,826.23**

SELLER'S TRANSACTION

M. Due to Seller at Closing				**$240,467.50**
01	Sale Price of Property			$240,000.00
02	Sale Price of Any Personal Property Included in Sale			
03				
04				
05				
06				
07				
08				
Adjustments for Items Paid by Seller in Advance				
09	City/Town Taxes		to	
10	County Taxes		to	
11	Assessments		to	
12	HOA Dues	2/21/12	to 5/31/12	$467.50
13				
14				
15				
16				
N. Due from Seller at Closing				**$93,007.43**
01	Excess Deposit			
02	Subtotal Closing Costs Paid at Closing by Seller			$12,000.00
03	Existing Loan(s) Assumed or Taken Subject to			
04	Payoff of First Mortgage Loan			$79,162.87
05	Payoff of Second Mortgage Loan			
06				
07				
08	Seller Credit			$1,000.00
09				
10				
11				
12				
13				
Adjustments for Items Unpaid by Seller				
14	City/Town Taxes	1/1/12	to 2/21/12	$844.56
15	County Taxes		to	
16	Assessments		to	
17				
18				
19				
CALCULATION				
Total Due to Seller at Closing (M)				$240,467.50
Total Due from Seller at Closing (N)				– $93,007.43
Cash ☐ From ☒ To Seller				**$147,460.07**

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender

☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan.

Demand Feature
Your loan

☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you

☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ have the option of making monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payment Policy
Your lender will

☐ accept payments that are less than the full amount due (partial payments). Partial payments will be applied:

☒ not accept partial payments.

If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in 456 Avenue A, Anytown, TX 12345.

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account Information
For now, your loan

☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed in Section G on page 2 for you. Your lender may be liable for penalties and interest for failing to make a payment. Without an escrow account, you would pay these costs directly, possibly in one or two large payments a year.

Year 1 Property Costs		
Initial Escrow Payment	$2,793.50	The payment in Section G on page 2 is a cushion for the escrow account.
Monthly Escrow Payment	$699.50	The amount included in your total monthly payment.
Escrowed Property Costs	$8,394.00	Estimated total amount over year 1 for the costs listed in Section G on page 2.
Non-Escrowed Property Costs	$1,711.08	Estimated total amount over year 1 for the non-escrowed property costs listed below. You may have other property costs. HOA dues

☐ will not have an escrow because ☐ you declined an account ☐ your lender does not offer escrow accounts. You must directly pay your property costs, such as property taxes and homeowner's insurance.

Estimated Costs		
Year 1, Estimated Property Costs		Without an escrow account, you would pay these costs directly, possibly in one or two large payments a year.
Fee for No Escrow Account		

Contact your lender to ask whether your loan can have an escrow account.

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly unless you create a new escrow account. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may

- add the amounts to your loan balance,
- add an escrow account to your loan, or
- require you to pay for property insurance that the lender buys on your behalf, which likely would be more expensive and provide fewer benefits than what you could buy on your own.

Adjustable Payment (AP) Table

Interest Only Payments?	YES for your first 60 payments
Optional Payments?	NO
Step Payments?	NO
Monthly Principal and Interest Payments	
First Change/Amount	$1,266 – $1,582 starting at 61st payment
Subsequent Changes	Every three years
Maximum Payment	$1,664 starting at 108th payment

Adjustable Interest Rate (AIR) Table

Index + Margin	LIBOR + 4%
Initial Interest Rate	4.375%
Minimum/Maximum Interest Rate	5%/8%
Change Frequency	
First Change	Beginning of 61st month
Subsequent Changes	Every 36th month after first change
Limits on Interest Rate Changes	
First Change	3%
Subsequent Changes	3%

Loan Calculations

Total of Payments. The amount you will have paid after you have made all 360 payments as scheduled.	$704,172.58
Finance Charge. The dollar amount the loan will cost you.	$239,364.26
Amount Financed. The loan amount available after paying your upfront finance charges.	$212,989.52
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	5.61%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	99.01%
Approximate Cost of Funds (ACF). The approximate cost of the funds used to make this loan. This is not a direct cost to you.	1.22%

? **Questions?** If you have questions about the loan terms and costs on this form, contact your lender. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/learnmore.**

Other Disclosures

Appraisal
If you paid for a written appraisal or valuation of the property, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- other ways you can default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☐ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and be liable for debt remaining after the foreclosure. You may want to consult a lawyer for more information.

☒ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Basswood Bank	Friendly Mortgage Broker Inc.	Reliable Realty Co.	Realty Pros	ABC Settlement
Address	4321 Lone Star Blvd. Somecity, TX 54321	1234 Armadillo Ave. Somecity, TX 54321	1776 Longhorn St. Ste 405 Anytown, TX 12345	3456 Mockingbird Ave. Anytown, TX 12345	5432 Bluebonnet Blvd. Ste 405 Somecity, TX 54321
NMLS ID	121212	222222			
Contact	Jimmie Gilmore	Stevie Vaughan	Kerry Livgren	Steve Walsh	Nancy Wilson
Loan Officer NMLS ID	493789	394784			
Email	jgilmore@ basswoodbank.com	svaughan@ frndlymtgbrkr.com	klivgren@ RRealty.com	swalsh@ realtypros.com	nwilson@ ABCsettlement.com
Phone	222-3333-4444	333-444-5555	444-555-6666	555-666-7777	666-777-8888

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to complete this transaction because you have signed or received this form.

Applicant Signature Date

Applicant Signature Date

Appendix D

Panel Outreach Meeting PowerPoint Slides

[See attached]

TILA-RESPA Integrated Disclosure Rulemaking

SBREFA Panel Outreach

March 6, 2012

Note: This document was used in support of a live discussion. As such, it does not necessarily express the entirety of that discussion nor the relative emphasis of topics therein.

WELCOME AND INTRODUCTIONS

- CFPB Welcome and Opening Remarks
- SBA Opening Remarks
- Introduction of SBREFA Panel
- Introduction of SERs and Agency Staff

OUTREACH AGENDA / SCHEDULE

Item	Time (min)
Welcome and Introductions	8:00 – 8:30
General Overview: What is SBREFA? Your Role in the SBREFA Process Brief History of TILA-RESPA	8:30 – 8:45
Topic 1: Integrated Initial and Closing Disclosures	8:45 – 10:00
Topic 2: Definition of Loan Application	10:00 – 10:30
Morning Break	10:30 – 10:45
Topic 3: Changes in Settlement Costs/Redisclosures	10:45 – 12:00
Lunch Break	12:00 – 1:00
Topic 4: Providing Settlement Disclosures	1:00 – 2:00
Topic 5: Recordkeeping and Data Collection	2:00 – 2:30
Topic 6: Annual Percentage Rate	2:30 – 3:00
Afternoon Break	3:00 – 3:15
Topic 7: Impact on the Cost of Business Credit	3:15 – 3:45
Additional Feedback/Wrap-Up	3:45 – 5:00

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WHAT IS SBREFA?

- The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the CFPB to form a Small Business Review Panel to seek input directly from small financial service providers for any proposed rule that may have a significant economic impact on a substantial number of small providers.

- A Small Business Review Panel consists of the representatives from:
  - the CFPB,
  - the Chief Counsel for Advocacy of the Small Business Administration (SBA), and
  - the Office of Management and Budget's Office of Information and Regulatory Affairs (OMB).

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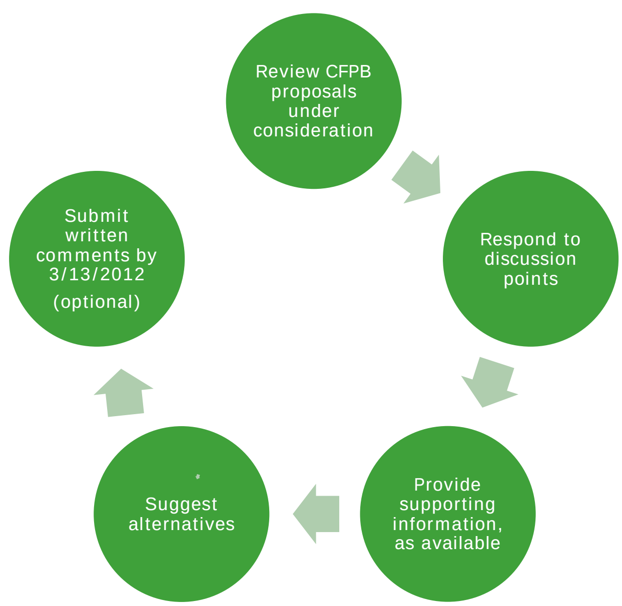
YOUR ROLE IN THE SBREFA PROCESS

You have been selected as a small entity representative (SER) for the TILA-RESPA integrated mortgage disclosures rulemaking.

- A SER is a representative of a small entity that will likely be subject to the requirements of a proposed rule under consideration by the CFPB.
- SERs' participation in the rulemaking process helps to ensure that the CFPB is made aware of the concerns and issues specific to small entities.
- The Panel (CFPB, SBA, & OMB) uses your input to prepare a report that includes the Panel's findings on alternatives to minimize the burden on small entities.
  - The report is made part of the rulemaking record and is considered by CFPB decisionmakers.

YOUR ROLE IN THE SBREFA PROCESS



HISTORY OF TILA-RESPA

- For more than 35 years, the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) have required lenders and settlement agents to give to consumers who take out a mortgage loan different but overlapping disclosure forms regarding the loan's terms and costs.

- This duplication has long been recognized as inefficient and confusing for consumers and industry.

- The Dodd-Frank Act requires the CFPB to solve this problem by combining the disclosures to:
  - improve consumer understanding of mortgage loan transactions, and
  - facilitate industry compliance with TILA and RESPA.

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OUTREACH AGENDA / SCHEDULE

Item	Time (min)
Welcome and Introductions	8:00 – 8:30
General Overview: What is SBREFA? Your Role in the SBREFA Process Brief History of TILA-RESPA	8:30 – 8:45
Topic 1: Integrated Initial and Closing Disclosures	8:45 – 10:00
Topic 2: Definition of Loan Application	10:00 – 10:30
Morning Break	10:30 – 10:45
Topic 3: Changes in Settlement Costs/Redisclosures	10:45 – 12:00
Lunch Break	12:00 – 1:00
Topic 4: Providing Settlement Disclosures	1:00 – 2:00
Topic 5: Recordkeeping and Data Collection	2:00 – 2:30
Topic 6: Annual Percentage Rate	2:30 – 3:00
Afternoon Break	3:00 – 3:15
Topic 7: Impact on the Cost of Business Credit	3:15 – 3:45
Additional Feedback/Wrap-Up	3:45 – 5:00

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Topic 1: Integrated Initial and Closing Disclosure

CFPB PROPOSAL UNDER CONSIDERATION

The Dodd-Frank Act requires the CFPB to integrate TILA mortgage disclosures with RESPA's Good Faith Estimate (GFE) and HUD-1 Settlement Statement.

- The **Loan Estimate** would be provided within 3 business days after application and would replace the early TIL and GFE.
  - Summarizes key loan terms and estimated costs.
  - Can be used by the consumer for comparison shopping.

- The **Settlement Disclosure** would be provided at least 3 business days before closing and would replace the final TIL and HUD-1.
  - Summarizes final loan terms and provides a detailed accounting of the transaction.

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Topic 1: Integrated Initial and Closing Disclosure

DISCUSSION POINTS

1. How do you currently generate the TILA and RESPA disclosures provided to consumers? What are the type and amount of costs associated with generating the forms?
2. If you had to revise your GFE and HUD-1 forms as a result of the RESPA rule changes that went into effect in 2010:
   a. What actions were required to revise or update your processes and systems?
   b. How much did these changes cost?
   c. How long did the changes take to implement?
   d. What would be your normal schedule for the next update of these processes and systems?
3. Do you expect that the number of staff hours expended and the cost of external services and products sought as a result of the proposals under consideration would be comparable, higher, or lower than the costs attributable to the changes in the 2010 RESPA rule?
4. Once the initial changes are made, do you expect the type and amount of your ongoing compliance costs to be the same, greater, or less than they were before the new forms?

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OUTREACH AGENDA / SCHEDULE

Item	Time (min)
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Topic 2: Definition of Loan Application

CFPB PROPOSAL UNDER CONSIDERATION

Under TILA and RESPA, a lender is not required to provide the early TILA disclosure and GFE until it has received an application. The CFPB is considering a proposal that would amend the current definition of loan application to constitute receipt of:

1) the borrower's name;
2) monthly income;
3) social security number to obtain a credit report;
4) property address;
5) property value estimate; and
6) loan amount.

The proposal, however, would eliminate the current seventh element of the definition, which reads "any other information deemed necessary by the [lender or mortgage broker]."

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Topic 2: Definition of Loan Application

DISCUSSION POINTS

1. Currently, before providing an early TIL or a GFE, do you request or collect any information about the borrower or property that falls under the catch-all category of "any other information deemed necessary"? If so, what type of information do you typically collect and for what purpose is it used?

2. Would you be able to issue an accurate Loan Estimate based only on the first six elements of the definition of loan application set forth above?

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Topic 3: Changes in Settlement Costs / Redisclosures

CFPB PROPOSAL UNDER CONSIDERATION

The CFPB is considering rule revisions to improve the reliability of the estimates lenders give consumers shortly after application, while largely preserving lenders' flexibility to respond to unanticipated changes during underwriting.

- Under the current RESPA rules, when a lender provides a consumer with an estimate of the cost of its own services, the actual cost cannot be higher than the estimate unless there is a valid change of circumstances. We are considering a proposal to apply the same limitation to estimates of services provided by the lender's affiliates or by companies the lender requires the consumer to use.

- In contrast, for services provided by a company over which the lender has less control, the proposed rule would leave in place the current 10% tolerance requirements.

The proposal under consideration would also reduce unnecessary compliance and confusion by addressing inconsistencies and ambiguities in the current requirements.

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Topic 3: Changes in Settlement Costs/Redisclosures

DISCUSSION POINTS

1. Currently, in what percentage of loan transactions do you revise and reissue GFEs to reflect changed circumstances or increases in the fee amounts?
   a. On average, for each mortgage transaction in 2011, how many times did you reissue a GFE as a result of changed circumstances or for other reasons?
   b. What are the most common reasons for issuing a revised GFE?
   c. On average, how much does it costs to reissue a revised GFE, including costs associated with documenting changed circumstances?

2. If the limitations on fee increases are expanded as described in the Outline of Proposals, what types of impacts would this have on your business?

3. In your experience, do you regularly incur costs to address inconsistent terminology between TILA and RESPA, ensure compliance with the 2008 RESPA rule, train employees on disclosure requirements, or obtain legal guidance regarding these disclosure requirements? If so, what do you estimate that you spent on these activities in a typical month in 2011?

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Topic 4: Providing Settlement Disclosures

CFPB PROPOSAL UNDER CONSIDERATION

Timing of Settlement Disclosure

- The completed Settlement Disclosure must be provided to the borrower no later than 3 business days before settlement. Limited adjustments to the Settlement Disclosure would be permitted (*e.g.*, changes in recording fees).

Who Provides the Settlement Disclosure

- The CFPB is considering two alternative approaches:
  - Alternative #1: Lender is solely responsible for providing the integrated Settlement Disclosure to the borrower.
  - Alternative #2: Lender is responsible for the TILA-required information in the Settlement Disclosure, and the settlement agent is responsible for the RESPA-required information. However, the lender and settlement agent would have shared responsibility for providing a single, completed Settlement Disclosure to the borrower.

Topic 4: Providing Settlement Disclosures

DISCUSSION POINTS

Timing of Settlement Disclosure: 3 Business Days Before Closing

1. What changes in your processes and systems, if any, would be required to comply with such a requirement?
   a. Would these changes result in additional costs?
   b. If so, please describe the type and amount of cost?

2. Are there any charges or fees that generally cannot be determined in time to provide the Settlement Disclosure 3 business days before closing? If so, please describe them, and identify the reasons why such information may not be known yet know by that time.

3. Would the proposal affect the ability to schedule settlements or close loans as planned?

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Topic 4: Providing Settlement Disclosures

DISCUSSION POINTS

Who Provides the Settlement Disclosure

Alternative #1: Lender provides the disclosures.

1. What changes to your current business processes and systems, if any, would be required for the lender to provide the completed Settlement Disclosure?
   a. What do you estimate the costs of these changes would be?
   b. Would the lender need to make additional changes to provide the completed Settlement Disclosure 3 business days before closing?
2. What impacts would such a requirement have on arrangements among lenders, settlement agents, and other third party providers?

Alternative #2: Lender provides TILA-required information and settlement agent provides RESPA-required information.

1. Describe any burdens you believe would arise from this "division of labor" approach.
2. What impacts would such a requirement have on arrangement among lenders, settlement agents, and other third party providers?

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Topic 5: Recordkeeping and Data Collection

CFPB PROPOSAL UNDER CONSIDERATION

The CFPB is considering requiring that copies of all Loan Estimates and Settlement Disclosures provided to the borrower be maintained in a standard, machine-readable, electronic format.

- The retention period for any new requirements is to be determined.
- To reduce the burden on small entities, the CFPB is considering exempting small entities from these requirements.

Topic 5: Recordkeeping and Data Collection

DISCUSSION POINTS

1. Do you currently retain copies of TILA or RESPA disclosures provided to loan applicants?
   a. If so, in what format do you maintain those records (*i.e.*, paper or electronic)?
   b. If electronic, please describe the format or system used to retain records.

2. If the electronic recordkeeping requirements were adopted in a final rule, what specific actions would you need to take initially to comply with the requirements?
   a. How much would the initial compliance actions cost?
   b. What do you expect would be the effect on your ongoing recordkeeping costs?

3. Which entity involved in the transaction do you believe is best positioned to electronically maintain records of the disclosures provided, and why:
   a. The lender
   b. The mortgage broker
   c. The settlement agent

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Topic 6: Annual Percentage Rate

CFPB PROPOSAL UNDER CONSIDERATION

The CFPB is considering including in the calculation of the Annual Percentage Rate (APR) some common loan charges that are currently excluded from the calculation.

- The standard disclosure of the cost of credit under TILA is the APR, which is the finance charge expressed as a yearly rate.
- TILA defines the finance charge broadly to include "any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit" and "does not include charges of a type payable in a comparable cash transaction."
- Despite this broad definition, the regulations exclude many types of charges from the finance charge, especially for mortgage transactions. Concerns have been raised that these exclusions undermine the potential usefulness of the APR as a simple tool to compare the total cost of one loan to another, a basic purpose of TILA.

Topic 6: Annual Percentage Rate

DISCUSSION POINTS

1. Would you implement this change yourself through in-house systems and procedures? Or do you use a vendor that would make the changes for you?

2. What do you expect the costs of this change would be (including software and compliance systems, legal fees, training, and other costs)?

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Topic 7: Impact on the Cost of Business Credit

CFPB PROPOSAL UNDER CONSIDERATION

The Regulatory Flexibility Act requires the CFPB to consult with small entities regarding any potential increase in the cost of credit for small entities that would result from the proposals under consideration, and on alternatives that minimize any such increase.

- At this time, the CFPB has no evidence that the proposals under consideration would result in an increase in the cost of credit for small entities.
  a. The proposals under consideration would apply only to closed-end mortgage loans that are primarily for *personal, family, or household purposes*.
  b. The proposals would not apply to loans obtained primarily for business purposes.
- However, the CFPB is seeking the advice and recommendations of the SERs regarding this issue.

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Topic 7: Impact on the Cost of Business Credit

DISCUSSION POINTS

1. Do you as a lender extend closed-end mortgage loans that are used primarily for personal, family, or household purposes but that are used, secondarily, to finance a small business?
   a. If so, what percentage of all of your closed-end consumer mortgage loans are such loans, i.e., loans used secondarily for business purposes by a small business. What is the average amount of the credit extended on such loans?
   b. For your customers who use mortgage credit secondarily to finance a small business, what percentage of the credit extended do these customers use for a business purpose?
   c. Would the proposals under consideration cause you to increase the rates or fees you charge for such credit? If yes, please describe the increase that you anticipate, your basis for anticipating that increase, and any feasible alternatives to the proposals under consideration you would recommend to minimize that increase.
   d. Do you believe these customers could instead obtain home-secured business loans (i.e., a home-secured loan used primarily for business purposes) from you or another lender?

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Topic 7: Impact on the Cost of Business Credit

DISCUSSION POINTS (Cont'd)

2. In the past year, have you, as a small entity, taken out a closed-end, home-secured loan that was primarily for personal, family, or household purposes that you also used secondarily to finance your small business?
   a. If so, in the past year, what percentage of your business costs did you fund through such credit?
   b. Do you believe that the proposals under consideration would cause you to pay higher rates or fees for such loans?
   c. If yes, please describe the increase that you anticipate, your basis for anticipating that increase, and any feasible alternatives to the proposals under consideration you would recommend to minimize that increase.
   d. As an alternative to this type of credit, could you obtain a home-secured business loan (i.e., a home-secured loan used primarily for business purposes)?

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ADDITIONAL FEEDBACK

DISCUSSION POINTS

1. Are there any feasible alternatives to the proposals under consideration that would minimize any significant economic impact on your business while accomplishing the CFPB's statutory mandate and objectives?

2. Are there any other federal rules that you believe may duplicate, overlap or conflict with the proposals under consideration?

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WRAP-UP

CLOSING REMARKS **DAN SOKOLOV, CFPB**

- Written comments are due no later than **March 13, 2012.**
- Please email comments to Rachel Ross.

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