Prepared Testimony of

The National Association of Mortgage Brokers

on

"TILA-RESPA Integrated Disclosure: Examining the Costs and Benefits of Changes to the Real Estate Settlement Process"

Before the

Committee on Financial Services

Subcommittee on Housing and Finance

Thursday, May 14, 2015

The National Association of Mortgage Brokers appreciates this opportunity to address the costs and benefits of the new RESPA-TILA disclosure requirements. We thank the Committee for holding this important hearing.

NAMB is the only national trade association devoted to representing the mortgage broker industry. NAMB speaks on behalf of more than 50,000 mortgage professionals in all 50 states and the District of Columbia. Our members are independent, small business men and women who adhere to a strict code of ethics and best lending practices when assisting consumers through the loan process. We typically maintain business relationships with various lenders to provide consumers with multiple financing options. These partnerships allow our members to offer consumers the most competitive mortgage products available.

I. Changes to Process Hurt Consumers

Limit Consumer Shopping

NAMB commends the Consumer Financial Protection Bureau ("CFPB") for creating new integrated forms that are more logical and will greatly improve consumers' ability to understand loan information and pricing. However, the strict requirements and exposure to legal liability that lenders are subject to under the new rules will very likely lead to a variety of unintended consequences that are contrary to the objectives of the Dodd-Frank Act and the stated mission of the CFPB.

NAMB believes that the new disclosure rules will actually make it harder for consumers to shop for a mortgage loan. With near-zero tolerances demanded by the CFPB and severe legal liability for lenders violating those tolerances, many lenders in the wholesale mortgage channel (those that use mortgage brokers and small lenders for origination) are requiring that they themselves, as opposed to the loan originator, issue the Loan Estimate. We are concerned that this will severely limit or close-off entirely consumers' ability to obtain several Loan Estimates and compare pricing and quality of settlements across various lenders.

Fewer Participants in the Market

Like our sister trade groups, NAMB is very concerned about (1) the steady rise in regulatory compliance costs, which has surged beyond $7,000 per loan; (2) loan originating entities' fear of legal and administrative enforcement action by the CFPB; and (3) a lack of clear and reliable regulatory guidance. Because of these new realities, mortgage broker companies, small lenders and community banks are increasingly being driven out of the primary mortgage origination market. With less competition, we are seeing the affordability and availability of mortgage credit being adversely affected across the board, but we are seeing a particularly disparate impact on low- and moderate-income borrowers.

NAMB believes this erosion of mortgage broker competition in the marketplace stems largely from a simple definitional error in the Dodd-Frank Act, which is greatly increasing the cost to consumers seeking loan amounts under $150,000 and making it virtually impossible for mortgage broker entities to serve those borrowers. Below we outline in detail the harm this is causing consumers, the technical correction that we believe will solve this problem, and the impact of the non-depository broker business model.

Pricing Logistics

One critical change that was made under the TILA/RESPA Integrated Disclosure Rule is what is included the "zero tolerance" bucket. This bucket includes appraisal and credit report charges. With appraisal management companies ("AMCs"), there are many geographic areas where the AMC puts the appraisal out to bid. This is necessary since there is a shortage of qualified appraisers in some parts of the country. Appraisers regularly turn down assignments for one reason or the other so there are frequently changes in the cost of appraisals in these areas. This situation is going to pose a significant risk to lenders operating in those areas of the country. We hope that the CFPB will reexamine this clearly unintended consequence of the Rule.

Additionally, when loan originators work with lower income borrowers there can be many changes to the credit profile during the mortgage process, and updates to credit reports often add considerable expense. The rigidity of the TILA/RESPA Rule risks harming lower income and minority borrowers significantly and disproportionately because these pricing changes for appraisal and credit reports do not qualify as changed circumstances that would permit reissuance of the Loan Estimate. At this point we are deeply concerned that the CFPB has not dealt with this issue adequately.

II. Dodd Frank Act - Creditor Payments to Broker Firms - Explanation of the Problem

One key area that NAMB believes needs to be examined for harm to the consumer is where the Dodd-Frank Act's QM points and fee cap disproportionately harms small business mortgage brokers and low- and moderate-income borrowers. We commend the CFPB for recognizing and acknowledging the basis of this issue in the new Integrated Disclosure Forms, where compensation to mortgage broker companies and mortgage originator employees was properly removed from the new forms. This is because the payments from the creditor to the mortgage broker company are already reflected in the mortgage rate selected by the consumer.

NAMB believes that there is a definitional error in the Dodd-Frank Act affecting the calculation of points and fees for Qualified Mortgages. We are confident that it could not have been the intent of Congress to include payments from creditors to mortgage broker entities in the calculation of points and fees, because such payments are already included in the rate established and offered by the creditor. Nevertheless, under current CFPB regulations, mortgage broker companies are forced to double-count their business and operational costs within the 3% cap on points and fees for Qualified Mortgages while every other originating entity is not.

Mortgage broker companies are generally small businesses. With an increase in labor costs stemming from recent Department of Labor regulations, and with the steady increase in the cost of employee healthcare, small businesses are seeing their operational expenses skyrocket. The CFPB's interpretation of the Dodd-Frank Act as requiring only mortgage broker companies to double-count their business and operational expenses and still remain within the 3% cap for Qualified Mortgages places broker entities at a significant pricing disadvantage as compared with every other market participant.

Recently, the CFPB specifically addressed this problem of double-counting in another area. In its final rule on Ability-to-Repay and Qualified Mortgage Standards Under the Truth in

Lending Act, published in the Federal Register June 12, 2013, the CFPB took corrective action and excluded from the calculation of points and fees payments from mortgage broker companies to their employee loan officers.

> “Because payments by mortgage brokers to their employees already have been captured in the points and fees calculation, excluding such payments will facilitate compliance with the points and fees regulatory regime by eliminating the need for further investigation into the mortgage brokers’ employee compensation practices, and by making sure that all creditors apply the provision consistently. [Emphasis added] It will also effectuate the purposes of TILA by preventing the points and fees calculation from being artificially inflated, thereby helping to keep mortgage loans available and affordable by ensuring that they are subject to the appropriate regulatory framework with respect to qualified mortgages and the high-cost mortgage threshold.” 78 FR 35429, 35451.

This was extremely helpful, and we believe a correct interpretation of the Dodd-Frank Act. However, despite identifying the same problem of double-counting with creditor payments to mortgage broker companies, and despite acknowledging that mortgage broker companies are at a disadvantage vis-a-vis their competitors, the CFPB remains unable, in their estimation, to take similarly necessary corrective action with regard to creditor payments to mortgage broker companies. The reason for this, cited by the CFPB, is because of language in the Dodd-Frank Act attempting to define which mortgage entities’ fees should be included in the points and fee calculation for purposes of determining a Qualified Mortgage. In relevant part, Section 1431(c)(A) of the Dodd-Frank Act (current Section 103(bb)(4)(B) of TILA) provides:

> "(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;"

Experts within and outside of the CFPB believe this definitional language, which is preventing the CFPB from excluding creditor payments to mortgage broker companies from the calculation of points and fees, is actually a drafting error in the Dodd-Frank Act.

Any amount that is already reflected in the rate of a loan should not be included in the calculation of points and fees. The CFPB utilized it's Congressionally-granted power to exclude from the Qualified Mortgage definition of points and fees any payments from a creditor to the creditor's employees. In its release published in the Federal Register June 12, 2013, (78 FR 35429), the CFPB additionally pointed-out that a similar result should occur for payments from lenders to mortgage broker companies and their loan originator employees since such fees are already reflected in the mortgage rate and are being counted twice.

> “The final rule excludes from points and fees loan originator compensation paid by a consumer to a mortgage broker when that payment has already been counted toward the

points and fees thresholds as part of the finance charge under § 1026.32(b)(1)(i). The final rule also excludes from points and fees compensation paid by a mortgage broker to an employee of the mortgage broker because that compensation is already included in points and fees as loan originator compensation paid by the consumer or the creditor to the mortgage broker."

This principle is further supported and extended by the CFPB in the Final Rule on Integrated Mortgage Disclosures. In this Rule, the CFPB declared that the disclosure of mortgage broker compensation is not a beneficial aspect of the transaction and only confuses the consumer as to the consumer's real costs for the transaction. As such, beginning August 1, 2015 a mortgage broker will no longer be required to disclose any compensation it receives from the creditor on the Loan Estimate and Closing Disclosure Forms.

The option for a consumer to select a market rate above par alleviates the need for the consumer to pay a mortgage broker company any fee out of consumer's personal funds. The above par rate enables the creditor to compensate the mortgage broker company directly. This being the case, a payment from a creditor to a mortgage broker company should not be counted in the 3% cap on points and fees for Qualified Mortgages because this payment is already accounted for within the interest rate chosen by the consumer.

In order for a fair and competitive marketplace to be reestablished, payments from a creditor to a mortgage broker company must be excluded from the Qualified Mortgage points and fees calculation.

III. Lack of Competition Hurts Consumers

Empirical studies have shown that mortgage brokers offer better terms, on average, than depository lenders and other creditors.[1] Specifically, these studies show that in areas with a higher concentration of mortgage brokers consumer choice is greater and consumers generally receive lower interest rates from brokers in that area.[2] Conversely, where there are fewer mortgage brokers competing in a given market and thus less competition, consumers typically pay higher interest rates.[3]

---

[1] Amany El Anshasy, Gregory Elliehausen & Yoshiaki Shimazaki, *The Pricing of Subprime Mortgages by Mortgage Brokers and Lenders* 12 (July 2005) (unpublished manuscript), *available at* http://www.chicagofed.org/digital_assets/others/events/2005/promises_and_ pitfalls/paper_pricing.pdf (finding that "broker-originated mortgages are less costly to the borrower than lender-originated mortgages after holding other loan terms and borrower characteristics constant")

[2] *See* M. Cary Collins & Keith D. Harvey, *Mortgage Brokers and Mortgage Rate Spreads: Their Pricing Influence Depends on Neighborhood Type*, 19 J. HOUSING RES. 153, 168 (2010) ("Our results support our hypothesis that the mortgage broker is a better informed agent and show that in general as mortgage broker density increases, both the likelihood of a rate spread occurring and the size of a rate spread declines, while the loan approval rate increases."

[3] See id at 167–68.

As an example of this, a recent examination of closed loans in Duval County Florida found that the average net consumer closing costs for a creditor transaction was $6,222, while the net cost to consumers in broker transactions, after credits were applied, was $3,479. This is a greater than $3000 per loan cost savings for consumers obtaining loans from mortgage brokers. We believe that further examination and analysis of this pricing disparity between creditor and mortgage broker transactions will reveal similar results across the country.

NAMB is deeply concerned that without a correction to the definitional error in the Dodd-Frank Act there will be fewer and fewer mortgage broker companies in many areas, and a significant disparate impact will be felt by low- and moderate-income consumers who have no option but to obtain loans from large national banks. This is an unfortunate reality that is already affecting many consumers across the country and should not be allowed to get any worse. We respectfully urge this Subcommittee and Congress to take corrective action as soon as possible.

IV. Mortgage Company Fixed Compensation

Since 2011, all compensation paid by creditors to mortgage broker companies is fixed, without any possibility for variation from transaction to transaction, as a result of the Loan Originator Compensation Rules issued by the Federal Reserve Board and the CFPB. This is a strong additional layer of consumer protection for borrowers utilizing a mortgage broker company and another reason why creditor compensation to a broker company should not be double-counted in the definition of points and fees.

Under these parameters, not only are loan originators working for mortgage broker companies prohibited from steering consumers toward a particular loan or lender, there is no incentive for them to do so. Making the small, but significant correction to the definition of points and fees in the Dodd-Frank Act that NAMB is encouraging will not put consumers at any risk. Rather, this simple change in definition will work to protect consumers from harm by preserving and enhancing competition, and saving consumers money at the closing table.

V. Policy Recommendations Conclusion

We thank the Committee for this opportunity to submit testimony for the record. NAMB commends the CFPB for the new Integrated Disclosure Forms, which we believe will help the consumer better understand their mortgage costs and fees. However, NAMB is are very concerned about the practical limitations on consumers' ability to use the new forms to actually shop for the best mortgage for their situation. In addition, we believe compensation paid from a creditor to a mortgage broker company, which is taken into account when the creditor sets the interest rate, should not be included in the 3% points and fees calculation for Qualified Mortgages.

As a safeguard against both the known and unknown unintended consequences that may adversely affect consumers as a result of the TILA/RESPA Integrated Disclosures Rule, NAMB supports a moratorium on enforcement of the Rule until January 1, 2016. NAMB shares a perspective with those calling for a "hold harmless" period that will help ensure stability in the nation's housing market during the transition from the current disclosure regime to the new era of Integrated Disclosures. A brief moratorium on enforcement will also permit the CFPB to further analyze the issues NAMB and others have highlighted and prepare additional guidance for mortgage market participants. These actions will go a long way to reduce industry concerns over litigation risks and increased costs for consumers.

We look forward working with the Committee to resolve the unintended consequence of the Dodd-Frank Act and the implementation of the TILA/RESPA Integrated Disclosure Forms, and help alleviate any further harm to consumers while preserving and restoring competition to the marketplace.