Committee on Small Business
"Know Before You Regulate: The Impact of CFPB Regulations on Small Business"
August 1, 2012
Questions for the Record

1**. On July 9, 2012, the CFPB posted the "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" proposed rule (the TILA-RESPA Rule) on its website. However, the TILA-RESPA Rule still has not been published in the Federal Register, as required under 5 U.S.C. § 553(b). The TILA-RESPA Rule became available to view on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 but is not scheduled to be published in the Federal Register until August 23, 2012.**

a. On what date did CFPB transmit the TILA-RESPA Rule to the Office of Federal Register for publication?

The Bureau transmitted the TILA-RESPA Proposed Rule to the Office of the Federal Register (OFR) on Monday, July 9th, 2012.

b. The version of the TILA-RESPA Rule posted on CFPB's website on July 9, 2012 is 1,099 pages. The version of the TILA-RESPA Rule posted on the Office of the Federal Register's Electronic Public Inspection Desk webpage on August 6, 2012 is 1,096 pages. What changes have been made to the documents that account for the three page discrepancy?

The three-page discrepancy is the result of formatting changes made following the OFR's review of the document. Several typographical errors were also corrected, but these edits did not affect the length of the document.

c. Did the CFPB ask for the publication of the TILA-RESPA Rule to be delayed until August 23, 2012? If yes, why did the CFPB ask for publication to be delayed for an extended period of time?

No. In a letter dated July 12, 2012, the Bureau requested immediate filing for public inspection and publication as soon as possible. (See Attachment A.) As is customary for Federal Register submissions, the OFR staff conducted a formatting review of the proposed rule and submitted their changes to the Bureau on August 2, 2012. The Bureau reviewed the changes, requested several typographical edits, and renewed the request that OFR immediately file the document for public inspection and publish it as soon as possible. The OFR placed the document on public inspection on August 6 and scheduled the document for publication on August 23.

On September 6, a Bureau notice extending the comment period for comments on the definition of the finance charge in the TILA-RESPA proposed rule to November 6, 2012 was published in the *Federal Register*.

2. In your written testimony you stated that CFPB's procedures for the Small Business Advocacy Review (SBAR) panels have "already evolved over the course of the first three panels ... based on lessons learned from each rulemaking."

a. How have CFPB's procedures evolved?

Prior to convening its first panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Bureau consulted with the agencies that have participated in prior panels: the Small Business Administration's Office of Advocacy (SBA), the Office of Management and Budget (OMB), the Environmental Protection Agency (EPA), and the Occupational Safety and Health Administration (OSHA). Through these consultations, we received valuable information about different approaches to conducting SBREFA panels.

The Bureau's first SBREFA panel was convened to assist the Bureau in the preparation of the TILA-RESPA Proposed Rule. For that panel, we decided that the meeting with the small entity representatives (SERs) should last for a full day to allow sufficient time for discussion of all the relevant issues, that the meeting should be conducted in private to facilitate open discussion, and that each SER should be permitted to bring a guest to the meeting to assist them. The feedback from the SERs on the meeting itself was very positive, but some SERs recommended that in the future more time be provided in advance of the meeting to review the materials and more time be provided after the meeting to submit written feedback. Accordingly, for the subsequent SBREFA panels on mortgage servicing loan originator compensation, we provided as much time before and after the meeting as possible in light of the Bureau's deadline to issue final rules to implement these Dodd-Frank Act provisions, which would otherwise take effect on January 21, 2013.

b. What lessons have you learned from the first three SBAR panels?

We believe that the open discussion, between the SERs themselves and with the representatives of the Bureau, SBA, and OMB, gave the SERs a better understanding of the proposed regulations, while providing the Bureau with a greater appreciation of the costs and benefits of the proposals under consideration. We also learned that including SERs who represented diverse subsets of consumers, businesses, and parts of the country enabled an open exchange of different, and sometimes conflicting, perspectives. Such robust discussion yielded comprehensive and insightful feedback.

3. What is the CFPB's process for determining whether a SBAR panel needs to be conducted for a proposed rule?

The Regulatory Flexibility Act (RFA), as amended by section 1100G of the Dodd-Frank Act, specifies when a SBREFA panel needs to be conducted for a proposed rule. The Bureau is not required to convene a panel for proposed rules that are subject to the RFA but that the Director certifies will not have a significant economic impact on a substantial number of small entities, such as the High-Cost Mortgage and Homeownership Counseling Amendments proposed rule

(HOEPA Proposed Rule).[1] When such certifications have been appropriate, the Bureau has explained the decision transparently by publishing detailed analyses of economic impact in the notice of proposed rule, and solicited public feedback on the Bureau's determination. For example, in the HOEPA Proposed Rule the Bureau conducted the economic impact analysis by developing an overview of the market for high-cost mortgages, determining the number and classes of affected entities, and then analyzing the impact of the various proposed provisions on the affected entities.[2] In addition, the RFA does not require a SBREFA panel in the case of rulemakings in which a notice of proposed rulemaking is not required by the Administrative Procedure Act. Finally, the Bureau is not required to convene a SBREFA panel when the rule was originally proposed by the Federal Reserve Board such as the Qualified Mortgage rule.[3]

4. What is the CFPB's process for identifying and selecting small entity representatives (SERs) for a SBAR panel?

By statute, the SBREFA panel focuses on the small entities that are directly subject to and must comply with the rule. The Bureau, in consultation with the SBA, selects the SERs who will meet with and provide advice and recommendations to the panel. Potential representatives for the TILA-RESPA, mortgage servicing, and loan originator compensation panels were identified through a variety of methods. We received suggestions from the SBA, trade associations and other industry groups, consumer organizations, and non-profit organizations. We also learned of interested SERs through our own outreach efforts.

5. Why has the CFPB chosen not to make public the names of the SERs upon their selection?

To protect the privacy of the SERs and to promote open discussion with the panel, the Bureau chose not to release the names of participating SERs to the general public before the panel completed its work. However, the Bureau included the name and company of each participating SER in the panel reports. Also, nothing prevented a SER from making her or his name public, as some chose to do.

6. What is CFPB's process for preparing materials to provide to the SERs participating in the SBAR panel process?

The Bureau's goal is to provide participating SERs with materials that will facilitate meaningful feedback and dialogue about the proposals under consideration. Once the Bureau has conducted sufficient outreach, research, and analysis of the issues to formulate preliminary proposals, Bureau staff have prepared an outline of the proposed rule under consideration, possible rulemaking alternatives, and the potential economic impacts on small businesses. These materials have been provided to the SERs in advance of the meeting, along with a list of issues or discussion items on which the Bureau is interested in receiving more input from small businesses during the meeting.

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[1] 77 FR 49089 (Aug. 15, 2012).

[2] *Id.* at 49140-5. A similar analysis was conducted for the Appraisals Proposed Rule, 77 FR 50390, at 50400-2 (Aug. 21, 2012).

[3] *See* 76 FR 27390 (May 11, 2011).

7. In response to Representative Allen West's question regarding whether CFPB had provided the SERs selected for the TILA-RESPA SBAR Panel enough notice in advance of the March 6, 2012 meeting and enough time to adequately respond to the questions CFPB raised, you stated that "in retrospect, you know, we would have preferred to have had more time to prepare the panels. And we will in the future have more time to prepare the panels." The SERs and their trade association representatives have stated that two weeks' notice was insufficient.

a. How much notice (e.g., a month, six weeks, two months) will CFPB give to SERs in advance of the panel outreach meeting so that SERs have adequate time to make work and travel arrangements and review the regulatory proposal?

The Bureau values the informed and thoughtful feedback provided by the SERs, and recognizes the amount of preparation that is necessary to provide such feedback. In an effort to develop the best possible process, the Bureau will provide advance notice to SERs tailored to the complexity of and circumstances surrounding each particular rulemaking. It may be appropriate to adjust the time period in response to specific circumstances, such as a statutory deadline, a request from Congress, or an urgent need to address a market issue. In all cases, the Bureau is committed to providing SERs with sufficient advance notice to make necessary work arrangements.

b. SERs have also commented that they were unable to provide detailed information and feedback in the time frame that CFPB mandated, one week after the March 6, 2012 meeting. How much time will CFPB give SERs to provide written feedback?

The RFA does not require written SERs feedback as part of the SBREFA panel process. However, the Bureau welcomes such feedback. Much like the Bureau's procedure for providing advance notice, the Bureau intends to tailor the amount of time provided for written feedback to the particular rulemaking. In some cases, SERs may need more time to prepare written feedback if unforeseen issues are raised during the meeting. In other cases, a lengthy time period may be unnecessary. Notably, the Bureau extended the written feedback deadline for the loan originator compensation SBREFA panel because some SERs requested additional time.

c. Will the CFPB prepare more detailed guidance for its rulewriters on how to comply with the Regulatory Flexibility Act (RFA) and conduct robust SBAR panels, and will the CFPB make that guidance document public as the EPA has done?

The Bureau has produced detailed and robust SBREFA panel materials and RFA analyses. The Bureau has created a public "Fact Sheet" on the SBREFA panel process that is provided to SERs and has been posted on the Bureau's website. As part of its commitment to transparency, the Bureau has made copies of substantive materials distributed to the small business representatives available to the public, including other small businesses, on its website at about the same time they are sent to the small business representatives.

8. The CFPB completed the SBAR Panel Final Report (Panel Report) for the TILA-RESPA Rule on April 23, 2012. However, CFPB did not make the Panel Report public

until it posted the proposed rule on its website on July 9, 2012. The CFPB has stated that one of its primary missions is to make the financial products and services that consumers use more transparent.

a. Why did the CFPB decide not to release the Panel Report for the TILA-RESPA Rule when it was completed?

The statute requires the Panel report be made public as part of the rulemaking record, but does not specify when the report should be released to the public. The CFPB released the TILA-RESPA report with the proposed rule in July so that the public can consider them together.

b. In the spirit of transparency, will the CFPB make panel reports public when they are completed?

The Bureau highly values transparency. Publicly releasing the panel report with the Proposed Rule promotes transparency. However, as panel reports must be interpreted in the context of the corresponding proposed rule, the Bureau must also consider whether releasing the panel report before the proposed rule would cause unnecessary confusion.

9. According to the TILA-RESPA Rule, the CFPB interviewed 92 consumers and 22 industry participants between May 2011 and March 2012 to determine if they understood the form and liked the design. The SERs recommended that you test the forms on actual, real-world real estate mortgage closings before finalizing the rule.

a. Will the CFPB test the forms on actual real estate mortgage closings?
b. If not, why not?

The Bureau is investigating the possibility of additional testing. On March 28, 2012, the Bureau published a notice for comment under the Paperwork Reduction Act in connection with potential quantitative testing of the proposed forms, specifically inviting comment on whether the information collected will have practical utility, the accuracy of the Bureau's burden hour estimates, and ways to enhance the quality of the information collected and to minimize the burden on respondents.[4] Although the Bureau received no comments in response to this notice, the Bureau continues to study whether additional testing procedures may help further improve the proposed TILA-RESPA forms. The Bureau solicited comment in the TILA-RESPA Proposed Rule regarding the impact of the proposed disclosures on actual real estate closings. The Bureau will consider this feedback in determining whether additional testing is appropriate, including testing using actual loan files or in actual closings.

10. The initial regulatory flexibility analysis did not include economic analysis or cost estimates for several parts of the regulatory proposal.

a. How many Ph.D. level regulatory economists does the CFPB have on staff?

[4] 77 FR 18793 (Mar. 28, 2012).

b. How many regulatory economists does the CFPB have analyzing the costs and benefits of CFPB regulations?

There are currently twelve Ph.D. level economists on staff, roughly half of whom are analyzing the costs and benefits of Bureau regulations.

c. Please describe the process that CFPB uses to estimate the costs and impacts of proposed rules, in particular small business impacts.

The Bureau begins the process of estimating the costs and impacts of proposed rules on small business by determining what types of small businesses, as defined by the Regulatory Flexibility Act, may be affected by the rule. As you know, whether or not a business is a ''small business'' for purposes of the RFA is determined by application of SBA regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards.[5] The Bureau then determines the number of entities subject to these categories. For example, for the TILA-RESPA Proposed Rule, the Bureau determined the number of entities subject to the NAICS categories by reference to several data sources, such as the December 2010 National Credit Union Administration Call Report data and the Nationwide Mortgage Licensing System Call Report data for Q2 and Q3 of 2011.[6] The Bureau then develops cost estimates based on information collected from a variety of sources, including feedback provided to the Bureau, information learned during the SBREFA panels, and data collection efforts. For example, for the TILA-RESPA Proposed Rule, the Bureau relied on data publicly available from the Bureau of Labor Statistics to determine the average compensation for a loan officer, while relying on information submitted by settlement agents to determine how much time businesses could save by implementing the TILA-RESPA standard forms.[7] The Servicing Proposed Rule and Loan Originator Compensation Proposed Rule followed the same procedures.[8]

d. Is the CFPB conducting its own research and attempting to estimate costs before conducting SBAR panels?

Yes, the Bureau researches and analyzes costs before preparing the SBREFA materials and conducting the panels. For example, for the TILA-RESPA Proposed Rule, the Bureau conducted extensive outreach before conducting the SBREFA panels, which was used to inform our decisions and collect information related to costs. We spoke with small businesses, and trade associations representing small businesses many times during the year prior to convening the panels. This research was used in estimating the costs and benefits of potential regulatory approaches.

11. Under Section 1100G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which amended the RFA, the CFPB is required to include in each

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[5] 5 U.S.C. 601(3). The current SBA size standards are found on SBA's Web site at http://www.sba.gov/content/table-small-business-size-standards.
[6] *See* 77 FR 51115, 51285-6 (Aug. 23, 2012).
[7] *Id* at 51288-9.
[8] *See* 2012 Truth in Lending Act Mortgage Servicing Proposal at 125-6, and Truth in Lending Act; Loan Originator Compensation Proposal at 269-71.

initial regulatory flexibility analysis "any projected increase in the cost of credit for small entities," and advice and recommendations of representatives of small businesses relating to that issue. We are concerned that CFPB's analysis of cost of credit is lacking in the mortgage disclosure rulemaking.

a. Can you describe how CFPB is analyzing the impacts to the costs of credit?

The CFPB's regulatory authority is focused on financial products meant for consumers. We therefore expect that most of the CFPB's rulemakings will have no effect on small business credit. There may be a few limited exceptions.

For proposed rules subject to this RFA requirement, the Bureau has and will continue to consult with small businesses on the potential impact of the proposals under consideration on the cost of credit. This consultation may take place either as part of the SERs meeting or during separate consultation meetings convened by the Bureau that focus on small business credit issues. In addition, the Bureau collects, and will continue to collect, market-wide data related to the cost of credit. With respect to the TILA-RESPA Proposed Rule in particular, the Bureau determined that the proposal would have little to no effect on the cost of credit, and therefore would have little to no effect on the cost of credit for small businesses.[9] The lender SERs reported making few mortgage loans that are used primarily for personal, family, or household purposes (and therefore are covered by TILA and RESPA) but that are used, secondarily, to finance a small business. In addition, the few loans they described making would appear to fall within the TILA and RESPA exceptions for loans made primarily for business purposes, and therefore would not be subject to the Proposed Rule.[10] The Bureau made a similar determination for the Mortgage Servicing Proposed Rule and for the Loan Originator Compensation Proposed Rule.[11] We will carefully review any comments we receive regarding potential impacts on the cost of credit for small businesses and will address these in the final rulemaking documents.

b. Does CFPB have economists working on this type of analysis?

Yes, the Bureau has hired and continues to hire Ph.D. economists, financial analysts, and industry experts to assist our consideration of potential impacts of Bureau regulations on the cost of credit for small entities.

c. Is CFPB only relying on small entities to try to explain these impacts?

In addition to the information received during the SBREFA panels, the Bureau is conducting its own research, and has sought input from industry experts and trade associations. The Bureau has also solicited public information about costs and impact, including impact on small businesses, in its proposals.

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[9] *Id.* at 51297.
[10] *Id. See also* TILA section 104(1); RESPA section 7(a)(1).
[11] *See* 2012 Truth in Lending Act Mortgage Servicing Proposal at 244, *and* Truth in Lending Act; Loan Originator Compensation Proposal at 291.

d. Will CFPB analyze the impact on the cost of credit for small entities for every rule and make that analysis public?

The Bureau will continue to fully comply with Dodd-Frank section 1100G's requirements that the Bureau consider the impact certain rules will have on the cost of credit for small businesses, and to evaluate specific alternatives to minimize any increases in the cost of credit while accomplishing applicable statutory objectives. The Bureau will continue to include a description of these efforts in the Initial Regulatory Flexibility Analysis, as required by the statute.[12]

12. Currently, CFPB is working on several rulemakings that are inter-related, including the Qualified Mortgage (QM) Rule, Qualified Residential Mortgage Rule, and the TILA-RESPA Rule that will impact the residential mortgage industry.

a. Is the CFPB considering how these rules are going to work together?

The Bureau is carefully considering how these rules will work together. As required by the Dodd-Frank Act, the Bureau is currently working on rulemakings related to HOEPA, mortgage servicing, loan originator compensation, appraisals, qualified mortgages, and escrow accounts. In the proposals issued this summer, the Bureau stated that it regards these rulemakings as components of a larger undertaking.[13] Accordingly, the Bureau is coordinating carefully the development of these final rules. Each rulemaking will adopt new regulatory provisions to implement Dodd-Frank Act mandates. In addition, each rule may include other provisions the Bureau considers necessary or appropriate to ensure that the overall undertaking is accomplished efficiently and that it ultimately yields a regulatory scheme for mortgage credit that achieves the statutory purposes set forth by Congress, while avoiding unnecessary burdens on industry.

b. What steps are you taking to analyze and mitigate the cumulative impact of these rules on the affected small businesses?

We have solicited comment regarding the potential impact of these proposed rules on small businesses. We have also asked for commenters to provide us with data illustrating the impact on small businesses. We have taken the further step of attempting to obtain additional data on our own during the comment period. This multi-pronged approach should provide us with sufficient information to analyze the impact on small businesses and adopt regulatory approaches that will serve the needs of both consumers and small businesses.

13. Will the CFPB conduct SBAR panels for rules that are transferred from other agencies, such as the QM Rule, if the proposed rule is expected to have a significant economic impact on a substantial number of small businesses? If not, how will the CFPB ensure that it meets its analytical requirements under the RFA?

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[12] 5 U.S.C. 603(d)(1).

[13] 77 FR 49089, 49093 (Aug. 15, 2012); 77 FR 51115, 51125 (Aug. 23, 2012).

The RFA requires that a panel be convened only for rules proposed by the Bureau, the EPA, and OSHA. In the case of the qualified mortgage rulemaking, a SBREFA panel is not required because the proposed rule was issued by the Federal Reserve Board. However, the Bureau consistently has sought the input of small financial services providers in rulemakings that affect them. For example, on June 5, 2012, the Bureau reopened the comment period to the qualified mortgage proposal to seek additional public comment on new data and information that the Bureau had received.[14] A number of small businesses and the SBA submitted comment letters during the reopened comment period. Furthermore, in connection with the qualified mortgage proposal, the Bureau has met with a variety of stakeholders, including small businesses and trade associations for small businesses, to hear their feedback and comments on the proposal, including any potential economic impacts on small businesses.

14. On page 577 of the TILA-RESPA Rule the CFPB states that it "believes that the ongoing costs of compliance with the proposed disclosure would likely be equal to or less than current ongoing compliance costs."

a. What led you to this conclusion?

The Bureau believes that ongoing compliance costs associated with the integrated disclosures will likely be equal to or less than the compliance costs associated with current disclosure requirements. For example, the Bureau believes that the integrated disclosures will reduce the number of disclosures that covered persons need to prepare and provide and the number of disclosure-provision systems and processes that covered persons need to maintain. In addition, most small entities that participated in the SBREFA panel process for the TILA-RESPA Proposed Rule stated that the integrated forms would be easier to explain to consumers than current forms, which would lead to time savings for creditors and settlement agents. Further, information submitted to the Bureau by several settlement agents indicates that requiring the use of standard forms and providing clearer regulatory guidance could save as much as 30 minutes per closing by standardizing practices across lenders and reducing confusion. These time savings could lead to decreased compliance costs.[15]

b. Wouldn't you need to test these forms in a real world setting to actually validate this statement?

As discussed above, the Bureau is currently evaluating whether such testing would be feasible and produce valuable information.

15. In the TILA-RESPA rule, the CFPB estimates that the total one-time costs of revising software and systems and training employees to implement the changes to the disclosure forms is $100,100,000. However, on page 575 of the regulation, the CFPB states that, "the Bureau does not believe that adoption of the integrated Loan Estimate and Closing Disclosure would impose any direct costs on consumers.

[14] 77 FR 33120 (June 5, 2012).
[15] 77 FR 51115, 51271 (Aug. 23, 2012).

a. Who do you believe will pay this $100,100,000?

This figure is an estimate of the direct costs to creditors, mortgage brokers, and settlement agents. The Bureau estimates that the integrated disclosures would result in one-time costs to revise software and compliance systems of approximately $100,100,000, which amounts to less than three dollars per origination when amortized over five years and spread across the estimated 8,000,000 mortgage originations per year.[16]

b. Isn't it logical to assume that businesses may find it necessary to pass some costs onto consumers?

The Bureau does not believe that adoption of the integrated disclosures would impose any direct costs on consumers. However, as noted in the TILA-RESPA Proposed Rule, consumers may bear some of the costs of the new disclosures if covered persons pass through some or all of the costs that would be imposed on them. The Bureau estimates that any increased costs to consumers per origination would be small and that, after one-time costs are absorbed, the proposal would likely reduce the cost per origination.[17]

16. One part of the TILA-RESPA Rule may change which party, the lender or a settlement agent, is responsible for providing the Closing Disclosure form to a consumer. In analyzing the costs of the proposed rule on small business, the CFPB only analyzes the impact of the rule on lenders. No information is provided on the impact to settlement agents or mortgage brokers. Yet, settlement agents serving as SERs to the SBAR panel provided specific information to CFPB on the costs a settlement agent will incur upgrading software and training employees.

a. Why did the CFPB fail to assess the impact to settlement agents, which consists mainly of small businesses, and mortgage brokers?

The Bureau proposed two alternatives for provision of the integrated Closing Disclosure. Under the first alternative, the creditor would be solely responsible for providing the disclosure to the consumer. Under the second alternative, the creditor and the settlement agent would share this responsibility, although the creditor would retain ultimate responsibility. Mortgage brokers would not be responsible for provision of the integrated Closing Disclosure under either proposed alternative.

For purposes of the Bureau's Initial Regulatory Flexibility Analysis, the Bureau assumed that the creditor will bear the costs of revising software and compliance systems. However, the Bureau also stated its belief the costs would be similar if borne by settlement agents. The TILA-RESPA Proposed Rule requests comment on this approach to estimating costs, including whether settlement agents would incur costs that are substantially different from those incurred by creditors if they were responsible for providing the Closing Disclosure.

[16] *Id.* at 51272.
[17] *Id.*

b. Why didn't the CFPB use the data and cost estimates provided by the settlement agents to estimate the economic impact of the TILA-RESPA Rule on settlement agents?

The Bureau considered all available data, including data provided by settlement agents through the Small Business Review Panel process, in estimating the economic impact of the Proposed Rule. As discussed above and in the TILA-RESPA Proposed Rule, the Bureau believes that if settlement agents, rather than creditors, bore the one-time costs associated with complying with the Closing Disclosure requirements, the costs would likely be similar to the costs to creditors. Furthermore, the cost estimates provided by settlement agents informed certain recommendations of the SBREFA panel, which the Bureau then relied on in developing the proposal. For example, with respect to the costs associated with modifying the line number format, the Panel recommended that the Bureau solicit comment on whether an alternative design or numbering format would impose a lower amount of software-related costs on settlement agents.[18] The Bureau did so in the Proposed Rule.[19]

17. Industry has stressed to the CFPB that they will need a significant amount of time to implement any final TILA-RESPA Rule. Small businesses have told CFPB that they will need 12 to 18 months to upgrade software and systems and train their employees.

a. Will CFPB provide a compliance period of 12 to 18 months to allow small businesses to come into compliance with the new regulation?

Because the TILA-RESPA final rule will provide important benefits to consumers, the Bureau wishes to make the rule effective as soon as possible. However, the Bureau understands that the final rule will require small businesses to make extensive revisions to their software and to retrain their staff. We have solicited comment, both generally and in relation to specific proposed regulatory provisions, regarding the impact of such a rule on small businesses. We have also asked for commenters to provide us with data illustrating the small business impact. We have taken the further step of attempting to obtain additional data on our own during the comment period. This multi-pronged approach should allow us to collect a significant amount of data, analyze the impact on small businesses, and explore approaches finely tuned to address the needs of small businesses.

The Bureau is aware of the software-related challenges experienced by small businesses in the past. We are committed to minimizing the disruption and delays related to training and system upgrades. The Bureau has not only solicited comment on the appropriate implementation period, but has solicited comment on whether small businesses need a different implementation period than the rest of industry. We also took the additional step of consulting directly with small business software providers. We frequently discussed disclosure issues with software providers during the development of the TILA-RESPA forms, communicated with them regarding potential regulatory issues, and will continue coordinating with them to facilitate the

[18] *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Integration of TILA and RESPA Mortgage Disclosure Requirements*, at 28-29 (Apr. 23, 2012), available at *http://files.consumerfinance.gov/f/201207_cfpb_report_tila-respa-sbrefa-feedback.pdf.*
[19] 77 FR 51115, 51240 (Aug. 23, 2012).

implementation process. We are confident that small businesses will have the time and support to come into compliance with the new regulations.

18. The design of the new Closing Disclosure eliminates the current line numbering that exists on settlement statements. According to the SBAR Panel Final Report, several SERs wrote that "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." The CFPB stated in the TILA-RESPA Rule that it was soliciting comment on whether an alternative design or numbering format will lower the costs of the software upgrades.

a. What was the reasoning behind the decision to remove the line numbers?

Both consumer and industry participants at the Bureau's testing stated that line numbers would be useful to facilitate conversations between consumers, creditors, and other participants in the credit and underlying real estate transactions. However, consumer participants at the Bureau's testing appeared overwhelmed by the three and four-digit line numbers on the prototypes similar to the current RESPA settlement statement, and performed worse with prototypes containing that numbering system. The Bureau is particularly mindful of the potential risk of information overload for consumers, given the amount of numbers and complexity involved in the credit transaction and the underlying real estate transaction. The Bureau tested prototypes with a two-digit line numbering system, which performed better with both consumer and industry participants, with some industry participants preferring it over the system of the current RESPA settlement statement. Accordingly, the proposed disclosure format contains a two-digit line numbering system that is different than the current RESPA settlement statement.

b. Did the CFPB contact any software providers to learn about potential programming issues that might be caused by removing the line numbering that currently exists and the costs involved with the redesigning of the forms?

The Bureau contacted software providers during the preparation of the proposed rule and is aware of the potential programming issues that might be caused by changing the current line numbering. However, given the results of the Bureau's testing, the Bureau thought it appropriate to acquire more specific information on this topic to enhance the Bureau's ability to make an informed decision. Thus, the proposal requested comment on the impact of the line number changes given the rest of the changes in the integrated closing disclosure contemplated by this proposal.

c. If not, why didn't the CFPB try to learn about programming issues from software providers?

Not applicable. Please see above.

19. The TILA-RESPA Rule imposes new data retention requirements for the Loan Estimate and the Closing Disclosure by requiring creditors to maintain evidence of compliance in machine readable, electronic format. The CFPB is proposing that Loan

Estimates be retained electronically for 3 years and Closing Disclosures be retained for 5 years. This is electronic data retention requirement is not required under TILA, the RESPA, or the Dodd- Frank Act. The CFPB acknowledges that "requiring standardized, electronic records may be a significant burden for small creditors that do not currently have such electronic systems or use vendor software." Small businesses are concerned that this provision will be unduly burdensome.

a. Why is CFPB proposing this requirement if it is not required under any of the related statutes?

The Bureau believes that the proposed data retention requirement will ensure that records associated with the integrated disclosures are readily available for examination, which is necessary to both prevent circumvention of and facilitate compliance with TILA. This proposed regulation may also facilitate compliance with TILA by easing the burden of examinations and ensuring that all entities subject to TILA keep records in a standard format.[20] Furthermore, a prescribed electronic format may reduce costs across the entire mortgage loan origination industry due to the efficiency gains associated with a standardized data format. Based on industry feedback, a standardized electronic format that reduces industry burden may, in the long run, reduce costs to consumers as well.[21]

b. Why did CFPB fail to estimate compliance costs for this requirement?

As noted above, the Bureau conducted extensive outreach regarding the degree to which small creditors use electronic systems. The Bureau was informed by small businesses, trade associations, and software providers alike that, given the complexity of modern underwriting, investor requirements, and State and Federal legal requirements, all creditors use electronic systems for some aspect of the mortgage loan process. Thus, the Bureau is unaware of any creditors that do not currently have such electronic systems or use vendor software. However, the Bureau solicited comment on this issue. If the Bureau receives feedback indicating that paper-based creditors do exist, such feedback would be reflected in the Final Regulatory Flexibility Analysis, should the Bureau decide to adopt the proposed requirement in the final rule.

c. How does this requirement improve consumer's understanding of the mortgage disclosure forms?

The proposed requirement would help the Bureau and other regulators monitor compliance to ensure that the disclosures provided are reliable. Ensuring reliability will improve consumers' ability to understand their transaction and compare mortgage loans, as well as preventing tactics, such as bait-and-switch, designed to confuse consumers.

20. Many small businesses that are trying to navigate your website find it confusing. SBAR panel materials are difficult to locate because the materials on SBAR panels are on

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[20] *Id.* at 51186.
[21] *Id.* at 51276.

different pages on the CFPB website and until very recently, there was no search box on the CFPB website.

a. Are you aware of how the website is structured and of these concerns?

Yes, the Bureau is aware of these concerns.

b. Will the CFPB improve its website so that small businesses can easily find the information on rules subject to the SBAR panel process?

Since the Bureau launched consumerfinance.gov more than year and a half ago, we have heard from all of the site's audiences – consumers, small businesses, and many more – about features that are working well and ones that could be improved. In that time, the Bureau has refreshed the design of its homepage and navigation structure twice to respond to those concerns and make it easier for all members of the public to access the information and resources they need. For example, we have recently added a search box with natural language search functionality. We believe the website will always be a work in progress – constantly evolving to the needs of the people the Bureau serves – and will continue making improvements in the months and years ahead.

Attachment A

cfpb Consumer Financial Protection Bureau

1801 L Street NW, Washington, DC 20036

July 12, 2012

Charlie Barth
Director, Office of the Federal Register
800 North Capitol Street, NW, Suite 700
Washington, DC 20001

Dear Mr. Barth,

We respectfully request that your office immediately file for public inspection and publish at your earliest convenience the enclosed proposed rule with request for public comment from the Bureau of Consumer Financial Protection (Bureau) entitled, "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)."

Under section 1032(f) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Bureau must issue this proposal by July 21, 2012. Portions of this proposal also affect a number of other mortgage-related rulemaking actions that the Bureau will be proposing this summer. At least four of those rulemaking actions must be finalized by January 21, 2013, or certain amendments in the Dodd-Frank Act will become effective without clarifying regulations. In an effort to manage the respective comment periods efficiently and give interested stakeholders as much time as possible to submit substantive comments, the Bureau requests that your office immediately file the proposed rule and publish it at your earliest convenience. We understand that this is a busy time of year and appreciate your attention to this special request.

Also enclosed please find a CD that includes a true copy of the original signed document in MS Word format. Please call me at (202) 435-7152 to confirm the publication date of this document or if you have any questions. Thank you for your attention to this request.

Sincerely,

Lea Mosena

Lea Mosena
Attorney, Office of the General Counsel
Consumer Financial Protection Bureau