American Bankers Association
Building Success. Together.

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By electronic delivery to:

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Federal Trade Commission
Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
https://ftcpublic.commentworks.com/ftc/mapadrulenprm

Re: Notice of Proposed Rulemaking: Mortgage Acts and Practices – Advertising Rule, Rule No. R011013; 75 Federal Register 60352 (September 30, 2010)

Ladies and Gentlemen:

The American Bankers Association (ABA) welcomes the opportunity to respond to the Federal Trade Commission's (FTC) notice of proposed rulemaking relating to deceptive acts and practices that may arise in mortgage advertising.[1] The ABA represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.

Summary of Comment

ABA supports the FTC's efforts to protect consumers from unfair or deceptive acts, including deceptive mortgage advertising practices, committed by non-bank mortgage market participants. The banking industry is fully supportive of effective consumer protection and believes that abuses in the mortgage lending process will only be solved if gaps in the existing supervisory structure are closed, and unsupervised or minimally supervised participants are subjected to a supervisory and enforcement regime that parallels that of the federally regulated banking system. At the time the Omnibus Appropriations Act of 2009 was passed, the grant to the FTC of rulemaking authority to define specific unfair and deceptive acts and practices committed by non-bank mortgage brokers, lenders, and servicers was an expeditious and appropriate way to close existing gaps.

However, the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA)[2] has dramatically changed the regulatory landscape. It offers the possibility that supervisory gaps will be narrowed as it consolidates within one agency rulemaking, supervisory, and enforcement authority over a broad range of consumer financial service providers and associated products, especially regarding residential mortgage finance. The legislation is intended to usher in a new era of regulation in which streamlined and simplified regulation ensures transparency and promotes fair competition. To achieve this, ABA believes that the

[1] *See* 75 Fed. Reg. 60352 (Sept. 30, 2010).
[2] Pub. L. 111-203, 124 STAT. 1373 (2010) *to be codified at* 12 U.S.C. §5301 *et seq*.

federal banking agencies and the FTC must engage with the Bureau of Consumer Financial Protection (Bureau) in a coordinated review of regulatory initiatives and a reevaluation of the goals and methods of financial regulation. Until that process is complete, we urge the FTC not to proceed with this rulemaking.

Background

Section 626 of the Omnibus Appropriations Act of 2009 (Omnibus Act), signed by President Obama on March 11, 2009, directed the FTC to initiate within 90-days of enactment "a rulemaking proceeding with respect to mortgage loans" in accordance with section 553 of the Administrative Procedure Act.[3] This provision was noteworthy in that it freed the FTC of its usual Magnuson-Moss rule writing strictures. The Credit Card Accountability, Responsibility and Disclosure Act of 2009 (CARD Act) later clarified that directive, specifying that the FTC rulemaking "shall relate to unfair or deceptive acts or practices regarding mortgage loans."[4] Section 511 of the CARD Act further clarified that the FTC's rulemaking authority is limited to those entities over which the FTC has jurisdiction under the Federal Trade Commission Act (FTC Act), entities other than banks, thrifts, federal credit unions, or non-profits.[5]

On June 1, 2009, the FTC published in the Federal Register an Advance Notice of Proposed Rulemaking to solicit comment on the contours of a proposed rule that would prohibit or restrict unfair or deceptive acts and practices that might occur during the life-cycle of a mortgage loan, practices occurring during the marketing, origination, or servicing of a loan (MAP ANPR).[6] No further regulatory action was taken for more than a year.

On July 21, 2010, President Obama signed the Dodd-Frank Act. Title X of DFA establishes a Bureau of Consumer Financial Protection (Bureau) with supervisory and enforcement authority over non-depository "covered persons," including mortgage brokers, lenders and servicers.[7] Section 1097 of Title X also transfers to the Bureau exclusive rulemaking authority pursuant to an enumerated list of consumer financial protection laws, including section 626 of the Omnibus Act.[8] In other words, Congress prospectively withdrew the special grant to the FTC of APA rulemaking authority over non-bank mortgage lending practices, demonstrating its intent for comprehensive mortgage lending reform under titles X and XIV of DFA.

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[3] Omnibus Appropriations Act of 2009, Pub. L. 111-8, § 626, 123 Stat. 524 (2009).
[4] Credit Card Accountability, Responsibility and Disclosure Act of 2009, Pub. L. 111-24, 123 Stat. 1734 (2009)
[5] 15 U.S.C. §§ 44, 45(a)(2).
[6] 74 Fed. Reg. 26118 (June 1, 2009) (the Mortgage Acts and Practices or MAP ANPR).
[7] Pub. L. 111-203, *supra*, §1024(a)(1)(A), *to be codified at* 12 U.S.C. §5514.
[8] Pub. L. 111-203, *supra*, §1097 ("The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.").

Despite this impending elimination of rulemaking authority, on September 30, 2010, the FTC published in the *Federal Register* a notice of proposed rulemaking (NPRM) under section 626 that would prohibit "any material misrepresentation, whether made expressly or by implication, in any commercial communication regarding any terms of any mortgage credit product."[9] The proposed rule also sets forth a non-exclusive list of nineteen misrepresentations about fees, costs, obligations, and other aspects of mortgage credit that would violate the rule.[10] Finally, it would impose a 24-month recordkeeping requirement.[11] It proposes all of this without any acknowledgment of DFA's amendment of section 626 and the prospective elimination of the very authority the FTC relies upon.

The FTC rule-making fails to recognize that in DFA Congress has changed course.

Noticeably absent from the NPRM is any explanation for the FTC's decision to move forward with the proposed rule, despite Congress's clear intent to coordinate residential mortgage consumer protection reform through the new Bureau and to transfer the old Omnibus Act authority from the FTC to the Bureau. In the DFA's amendment of the Omnibus Act, Congress has made clear its preference for the regulation of mortgage practices covering non-banks to be conducted by the new Bureau. The fact that Section 1097 is not technically effective until the designated transfer date is no reason for the FTC to tread on Congress's clear expectation. Unlike existing regulatory authorities such as the Truth-In-Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) where well-established regulatory schemes are in place and for which there is an ongoing need to provide for guidance until the Bureau is prepared to take over, the FTC has no such established regulatory scheme in place. The FTC has barely started its assignment under the Omnibus Act. Indeed, the proposed rule addresses only one of the four components of the life of the mortgage transaction on which the MAP ANPR solicited comment.

Moreover, had Congress intended for the FTC to proceed with this rulemaking it would have included language evincing that intent as it did with respect to the ongoing efforts of the Department of Housing and Urban Development (HUD) and the Board of Governors of the Federal Reserve System (Board) to propose a single, integrated model disclosure that combines the required disclosures under TILA and RESPA. In section 1032(f) of DFA, Congress clearly acknowledged the continuing efforts of HUD and the Board to combine the disclosures, stating:

> 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*

[9] 75 Fed. Reg., *supra*, at 60360.
[10] *Id.* at 60359 – 60361 (The list has been generated from the most common misrepresentations that have been the basis for state and FTC enforcement actions in the past; it is intended to be illustrative of the kind of claims that are prohibited.).
[11] *Id.* at 60362.

> *the Secretary of Housing and Urban Development carries out the same purpose."*)(Emphasis added).[12]

In the absence of any indication that Congress intended for the FTC to proceed with this rulemaking, ABA urges the FTC to suspend the proposal until the Bureau can incorporate the mandate of section 626 within the directives and timetables recited in Title XIV. This will permit the review and revision of advertising disclosure rules to be undertaken within the context of a coordinated review and reform of mortgage lending laws and regulations.

Proceeding with this rulemaking undermines the Administration's aspirations for coordinated regulatory reform.

The Congressional mandate in section 626 for the FTC to initiate an APA rulemaking "with respect to mortgage loans" was an early acknowledgement of the need to address unlawful and deceptive practices being committed by state-licensed mortgage brokers, lenders, and servicers and of the immediate need to provide the FTC with additional regulatory power to combat these abuses. In our comments in response to the MAP ANPR, ABA supported the FTC's efforts to close gaps in the existing supervisory structure, but we cautioned the FTC to ensure that any rules it promulgates are clearly focused on identified abuses and their non-bank sources and do not result in duplicative and potentially conflicting rules applicable to bank-affiliated mortgage lenders, brokers, and servicers.

The enactment of the Dodd-Frank Act, however, has dramatically altered the regulatory landscape, rendering unnecessary and inappropriate the FTC's continued rulemaking under section 626's grant of authority. An essential component of regulatory reform was the consolidation of federal consumer protection responsibilities into a new Bureau of Consumer Financial Protection that was given supervisory and enforcement power over all non-bank mortgage market participants and exclusive rulemaking authority over a wide range of consumer financial protection laws, including section 626.

A primary reason for the consolidation of rulemaking authority within a single agency was to ensure the streamlining and simplification of consumer financial regulation. As explained by the August 2, 2010 speech of Secretary of the Treasury Timothy Geithner at New York University's Stern School of Business:

> [W]e will not simply layer new rules on top of old, outdated ones. Everyone that is part of the financial system – the regulated and regulators – knows that we have accumulated layers of rules that can be overwhelming, and these failures of regulation were in some ways as appalling as the failures produced where regulation was absent. So alongside our efforts to strengthen and

[12]Pub. L. 111-203, *supra* §1032 (f).

> improve protections for the economy, we will eliminate rules that did not work. Wherever possible, we will streamline and simplify.[13]

Elizabeth Warren, Assistant to President Obama and Special Advisor to Secretary Geithner charged with standing up the Bureau, echoed this goal when she spoke to the Financial Services Roundtable on September 29, 2010 about achieving regulatory simplification through "principles-based" regulation:

> To build the consumer agency, we will be drawing on the proven experience and competence of the staff at many federal agencies. But if all we do is bring together those staffs to continue writing "thou shalt not" regulations and layering on more disclosures, then we will have missed a real opportunity. And if all those resources are used just to force an entire industry, begrudgingly or worse, to accept marginal changes in a few forms, we will have missed a real opportunity. On the other hand, if we use this moment to rethink our approach to regulating financial services, then we can seize the opportunity to do something unexpected—and exceptional.[14]

The banking industry supports the goals of regulatory reform – of reevaluating and streamlining the regulation of financial products and services to ensure fair and transparent products and services for consumers and financial markets that promote competition and innovation for the banking industry. Over the past two years, banks have been subject to 50 new regulations, and DFA mandates the issuance of at least 263 more regulations over the next several years.[15] Community bankers tell us that the regulatory compliance burden is reaching the point at which many are seriously questioning the viability of the community bank business model, and all banks report that they are analyzing the continued feasibility of particular products and services.

Nowhere is the need for coordinated reform more pronounced than the mortgage lending area. The revelation that underwriting and disclosure failures played a significant role in the housing market meltdown brought intense pressure on the Board and HUD to revise regulatory standards related to mortgage lending, resulting in the initiation of ten mortgage-related rulemakings between 2008 and the present.[16] Moreover, the enactment of Title XIV of DFA will ensure that

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[13] Timothy F. Geithner , U.S. Secretary of the Treasury, Remarks at New York University's Stern School of Business (Aug. 2, 2010), *available at* http://www.treasury.gov/press/releases/tg808.htm.

[14] Elizabeth Warren, Remarks at the Financial Services Roundtable Leadership Dinner (Sept. 29, 2010), *available at* http://www.aba.com/aba/documents/Compliance/2010/Financial_Services_Roundtable_09292010.pdf .

[15] *See* ABA Rulemaking Dates Chart *available at* http://www.aba.com/aba/documents/RegReform/Rulemaking.pdf *See also* CRS Report R41380, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Regulations to be Issued by the Consumer Financial Protection Bureau, by Curtis W. Copeland, at 3 (August 25, 2010)("By one count , the legislation mentions a total of 243 'rulemakings'…Others have placed the number of rules expected to be issued pursuant to the act even higher.").

[16] *See* 73 Fed. Reg. 44522 (July 30, 2008)(Board amendment of Regulation Z imposing new requirements for Higher-priced mortgage loans and new advertising rules); 73 Fed. Reg. 68204 (Nov. 17, 2008) (HUD amendment of RESPA rules); 74 Fed. Reg. 22822 (May 15, 2009)(HUD revision of elements of RESPA rule); 74 Fed. Reg. 43428 (Aug. 26 2009) and 74 Fed. Reg. 43232 (Aug. 26, 2009) (Board's proposed amendments to Regulation Z to improve

the intense pace of rulemakings related to mortgage lending continues. A conservative estimate of the number of additional mortgage-related rulemakings required by Title XIV is eleven – in addition to the required integration of the TILA and RESPA disclosure rules.[17]

As the banking industry has repeatedly stated in comments to regulatory proposals affecting mortgage lending, the piecemeal amendment of regulations and the layering of additional regulation on the existing regulatory frameworks has resulted in unworkable complexity, confusion, and waste to the detriment of transparency and the recovery of the mortgage market. To achieve real reform will require a coordinated, comprehensive review and reevaluation of statutory mandates; the identification of consumer needs and their understanding of financial products and disclosures; and consideration of the impact of regulation on innovation and financial markets. Such reform will require a willingness to reevaluate the goals and methods of regulation. It will require all involved to take chances and to accept change, but it is the only way to ensure a mortgage market that works for consumers and financial institutions.

By proceeding with this rulemaking, the FTC stands in the way of coordinated and comprehensive reform. Although the FTC asserts that the proposed rule "simply prohibits misrepresentations"[18] and does not impose any affirmative advertising disclosures that might conflict with existing Board rules, it makes no similar assertion with respect to Title XIV. The proposed rule, however, would result in the layering of yet another advertising rule on top of the existing regulatory structure which includes: the advertising rules the Board issued in July of 2008 under Regulation Z;[19] state laws or regulations that mandate advertising disclosures or address deceptive advertising practices;[20]the mortgage advertising mandates under the Helping Families Save Their Homes Act of 2009;[21] and finally, if adopted, the Board's recently proposed amendments to Regulation Z imposing disclosures for the advertisement of reverse mortgages and HELOCs.[22]

As a result, prior to issuing an advertisement for a mortgage product offered by a bank affiliate, subsidiary, or vendor, a bank would have to engage in a painstaking review of the applicable advertising disclosures rules to ensure compliance with the myriad requirements of each. Then the bank would have to consider whether the proposed advertisement might be deemed to violate the FTC's rule prohibiting "any material misrepresentation, expressly or by implication, in any

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consumer disclosures on closed-end mortgages and HELOCs); 74 Fed. Reg. 66584 (Dec. 15, 2009)(HUD's SAFE Act Proposal); 75 Fed. Reg. 58505 (Sept. 24, 2010)(Board proposal to amend Regulation Z to implement a higher HPML rate threshold for jumbo loans);75 Fed. Reg. 58469 (Sept. 24, 2010)(Board proposal for payment example disclosures for consumer credit secured by real property under MDIA); 75 Fed. Reg. 58539 (Sept. 24, 2010)(Board proposal to amend Regulation Z rules governing right of rescission, disclosures for loan modifications, reverse mortgages, HELOC advertising, etc.); 75 Fed. Reg. 66544 (Oct. 28, 2010)(Board interim final appraisal rule).

[17] *See* ABA Rulemaking Dates Chart *available at* http://www.aba.com/aba/documents/RegReform/Rulemaking.pdf.

[18] 75 Fed.Reg., *supra*, at 60359.

[19] 12 C.F.R. §§226.16, 226.17, 226.24.

[20] *See, e.g.*, Me. Rev. Stat. Ann. Tit. 9-A, 9-301 (2009); MD. Code Regs. 09.03.06.05 (2009); Nev.Rev.Stat. Ann. 645B.196 (2009); N.Y. Bank Law 595-a (Consol.2010).

[21] Pub. L. 111-22, 123 Stat. 1632 §203(2009).

[22] *See* 75 Fed. Reg. 58539 (Sept. 24, 2010).

commercial communication regarding any term of any mortgage credit product."[23] This analysis, in turn, would require consideration of each of the nineteen illustrative misrepresentations about fees, costs, obligations, and other aspects of mortgage credit that would violate the rule. Euphemistically described as an "illustrative" list of misrepresentations, the list would engender yet another exhaustive review of a proposed advertisement against the nineteen examples of actionable misrepresentations provided in proposed §321.3(a)-(s).

In addition to this regulatory "check-box" exercise, the proposal would introduce an additional risk – the risk that an enforcement action for deceptive misrepresentation could be initiated by the Bureau, the FTC, or a state attorney general against an advertisement that otherwise complies with the disclosure requirements of Regulation Z and applicable state law. This liability risk is likely to turn advertisements into quasi-legal notices in which valuable information to consumers is obscured by information intended to guard against allegations of deceptive misrepresentation. Moreover, the threat of such a claim may discourage mortgage advertising to the detriment of the recovery of the housing market that depends on consumer awareness of, and response to, competitive mortgage products.[24]

The FTC asserts that "a rule prohibiting misrepresentations in mortgage advertising would enable the agency to protect prospective borrowers more effectively by establishing clear standards for advertisers," however, nothing about the proposed rule adds clarity. Instead, it adds unnecessary complexity and uncertainty – the antithesis of the spirit of regulatory reform as embodied in the Dodd-Frank Act and articulated by the Administration.

ABA continues to support a level regulatory playing field.

Make no mistake; ABA continues to support the policy goals of holding non-bank mortgage practices to the standards expected of bank lenders. However, attempting to conduct rule-making regarding such non-bank practices when the mortgage finance practices of all lenders is subject to DFA reform is not a wise or effective use of government or industry resources. Despite our aspirations for a regulatory scheme that levels the playing field, ABA believes that a coordinated and comprehensive review and reevaluation of the mortgage lending regulatory framework recognizes the challenges to effective implementation and will advance this goal far better than the piecemeal regulatory initiatives of different agencies. For this reason ABA has joined with other mortgage finance trade associations to urge the Board to coordinate with the new Bureau to suspend intermediate mortgage-related rulemaking until it can be incorporated into a more transparent, comprehensive, and coordinated approach through the Bureau. (See attachment A.) We ask no less of the FTC.

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[23] 75 Fed. Reg., *supra at* 60370.

[24] In addition, the impact of the rule is unlikely to impact evenly all mortgage market participants. Larger institutions with in-house legal counsel and adequate compliance staff to conduct the necessary review and analysis may assume the risk and continue to advertise new mortgage products, but for smaller institutions, the additional review and risk are likely to be additional disincentives to mortgage advertising which, in turn, may affect their decision to re-enter the mortgage market.

Until such time as the framework of DFA is fully implemented, we believe that the FTC can be true to its mission and obligation to protect consumers by continuing to pursue enforcement actions consistent with its existing precedent as reflected by the cases that form the foundation for the NPRM.

Conclusion

ABA appreciates the opportunity to comment on these important issues. If you have any questions, please contact the undersigned at 202-663-5073 or via email at voneill@aba.com.

Sincerely,

Virginia E. O'Neill
Senior Counsel
Center for Regulatory Policy

ATTACHMENT A

November 10, 2010

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Secretary Geithner, Secretary Donovan and Chairman Bernanke:

The undersigned trade associations, representing the real estate finance industry, appreciate the Board's and HUD's efforts to improve disclosures to mortgage borrowers under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA). At this point, however, Special Advisor to the President Elizabeth Warren and Treasury staff have begun discussions internally and with stakeholders to combine the two disclosures into a single, integrated disclosure, and we understand that effort will be a first priority of the new Bureau of Consumer Financial Protection (Bureau).

Every segment of the financial services industry shares the objective of doing something "exceptional" to improve the mortgage disclosure process for consumers and we fully support this important work. Both disclosures are provided to borrowers throughout the mortgage process and integrating them will greatly increase transparency and consumer understanding of the mortgage transaction.

Notwithstanding, it is important to recognize that this vital initiative is being undertaken in the midst of a surfeit of proposed and final regulations that require fundamental changes to the mortgage finance business model and a generation of systems which support it.

Major changes under TILA, including HOEPA revisions, and new loan officer compensation rules, along with new RESPA disclosures, SAFE Act compliance and appraisal standards, to name a few, have stretched thin the compliance capabilities of financial institutions. If these efforts are not coordinated going forward, the cumulative regulatory burden will threaten the availability of housing finance options.

Likewise, these initiatives have stretched the abilities of stakeholders to consider proposals and provide needed input. The numerous rules recently issued by the Board and other agencies are listed in Attachment A. Many more are to come under the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).

Accordingly, while we believe disclosure improvement should be the first priority, considering these other imperatives and the need to assure energies are directed to this important effort, we believe it is essential that all federal regulatory efforts to establish new mortgage disclosure requirements under RESPA and TILA and DFA be accomplished in an orderly and coordinated manner.

To this end, we urge you to work with Professor Warren, and subsequently the Bureau Director, to develop a comprehensive plan for disclosure reform that includes an agenda and timetable to propose, finalize and implement <u>all</u> mortgage disclosure revisions by the Board, Bureau and other agencies in an orderly manner.

The plan should establish RESPA-TILA integration as a first priority and assure that other rules to improve mortgage disclosures complement that effort. ***Accordingly, we believe efforts of individual agencies, including the Board's to improve TILA disclosures, at this point should be rescheduled to later in the process, to avoid diverting the efforts of stakeholders into what may become a fruitless pursuit and/or confusing the joint RESPA-TILA simplification effort itself.*** Moreover, to maximize public involvement, we believe the plan should be made public so stakeholders can appropriately allocate their resources.

Integration of RESPA and TILA Disclosures Should Indeed Be the First Priority

Our industry knows too well that consumers are inundated with countless ill-timed, uncoordinated and confusing disclosures during the mortgage process, which, as a result, are often ignored despite their importance. Both independent and governmental studies confirm that consumers are confused, and may even be misled, by the array of required forms. For nearly two decades, mortgage lenders and their trade associations have advocated a comprehensive overhaul of the mortgage disclosure process generally and joint RESPA -TILA reform in particular.

We believe that if the TILA and RESPA disclosures were made truly simpler and combined, or at least made harmonious and complementary – and if they and other essential information were provided to consumers in a coordinated manner at rational times in the process – consumers would be far better equipped to navigate the market, understand their mortgage and settlement costs, and shop intelligently to meet their financing needs.

We believe improving the transparency of the process is essential to true reform and needs to be the first stage of the reform process. The way should be cleared for stakeholders to channel their energies into this effort to facilitate its successful achievement.

Assuming that RESPA and TILA integration is accomplished, the next important step would be to simplify the many other disclosures, which add to the confusion, so that they too complement the RESPA and TILA disclosures and do not in any way detract from consumer understanding.

Separate Reform Efforts Paved with Good Intentions Have Yielded Suboptimal Results

A key purpose of DFA in establishing the new Bureau was to create a coordinated consumer protection effort by putting all consumer financial protection efforts in one place. Regrettably, the urgent need for coordination has been demonstrated all too well.

During the last few years, the Board and HUD, with the best of intentions, initiated separate efforts to improve disclosures under their respective laws that have resulted in new RESPA disclosures, additional TILA rules and several TILA proposals for reform. The results thus far have yielded complex, confusing and even conflicting requirements and very considerable costs.[1] Congress added to the confusion in 2008 by establishing new timing requirements for TILA disclosures, which differ from the timing of RESPA disclosures. These differences were exacerbated by additional timing requirements for redisclosure of the GFE under the new RESPA rule, and proposals pending in Congress are a concern.

In early 2008, HUD proposed its overhaul of the Good Faith Estimate (GFE) and HUD-1 Settlement Statement. It finalized the rule in November of 2008, and the regulations became effective January 1 of this year, with clarifying issuances that continue to this day. These new regulations establish substantive and procedural requirements that vary from those proposed by the Board. Untold implementation expenses have been and continue to be incurred by the lending industry.

[1] A recent example of overlapping and problematic TILA and RESPA requirements is the new Interim Final Regulation (MDIA) issued by the Board of Governors of the Federal Reserve System (Board). This rule will require disclosure of a new Interest Rate and Payment Summary form to show how an interest rate or payment amount may change. We agree disclosure of that information is important, but the new disclosure form repeats information that is already required to be disclosed on the GFE and HUD-1 under the new RESPA rule, but on a different form.

In the summer of 2009, after issuing rules to protect consumers from unfair, abusive, or deceptive lending and servicing practices, as well as accompanying changes to the Home Mortgage Disclosure Act (Regulation C), the Board separately proposed a complete overhaul of many of its TILA disclosures for closed-end and open-end transactions and required comments by December 24, 2009. Although provisions of the Board's proposal concerning loan officer compensation have been finalized, the disclosure provisions have not been finalized yet, making this an appropriate time to bring this effort into the RESPA-TILA integration process.

On September 24 of this year, the Board issued a second set of proposals of nearly 1,000 pages to further amend its TILA rules. These proposals, among other things, would revise disclosures for reverse mortgages, amend the rules for rescission of open-end and closed-end loans secured by consumers' principal dwellings, and add restrictions regarding unfair acts or practices.

Like the 2008 proposal, the Board's current proposal is requiring extensive review and an enormous investment of time by stakeholders to comment, diverting energy that would be better spent on RESPA-TILA integration. Although these proposals provide useful spadework that can help set the stage for future action, they may also be revised considerably as a result of the integration effort. ***Considering that comments are due December 23, and that to comment effectively the proposed changes must be considered in light of the RESPA-TILA proposals to come, a public announcement of postponement is warranted.*** The disclosure provisions could and should await the RESPA-TILA integration process.

Conclusion

In summary, we believe a comprehensive and orderly approach to mortgage reform is the only way to make certain that the RESPA-TILA integration process is successful. This will necessitate moving certain efforts of the Board and others to later in the process. Without a coordinated approach, we are concerned that piecemeal reform will continue until after the new Bureau takes over next summer.

We appreciate your consideration of this important issue and we look forward to assisting in the development of a coordinated plan to foster the reform effort in any way we can.

Thank you again for your efforts and your leadership.

With best regards,

American Bankers Association
American Financial Services Association
Community Mortgage Banking Project
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association

Attachment A

Rule	Publication Date	Compliance Date
Interest Rate and Payment Summary, Interim Final Rule. This requires a new disclosure form that repeats, in a different format, information already disclosed in a GFE.	75 Fed. Reg. 58470 (Sept. 24, 2010)	January 30, 2011
Loan originator compensation. This rule revises the method for determining loan originator compensation.	75 Fed. Reg. 58509 (Sept. 24, 2010)	April 1, 2001
Final rule requiring notice to consumers when a loan is transferred.	75 Fed. Reg. 58489 (Sept. 24, 2010)	January 1, 2011
Comprehensive rule changes for closed-end loans. This proposal would require a number of new or revised disclosures.	75 Fed. Reg. 58539 (Sept. 24, 2010)	Proposal
This rule would implement a statutory requirement mandating escrows on certain jumbo loans.	75 Fed. Reg. 58505 (Sept. 24, 2010)	Proposal. Board expects a final rule shortly after the public comment period closes.
SAFE Act registration of mortgage loan originators.	75 Fed. Reg. 44656 (July 28, 2010)	October 1, 2010. Registration within 180 days of Registry accepting registrations.
CRA definition of community development.	75 Fed. Reg. 36016 (June 24, 2010)	Proposal
Risk-based pricing notices.	75 Fed. Reg. 2724 (January 15, 2010)	January 1, 2011
Consumer financial privacy notice	74 Fed. Reg. 62890 (December 1, 2009)	Primarily December 31, 2009
Interim final rule requiring notice to consumers when a loan is transferred.	74 Fed. Reg. 60143 (November 20, 2009)	January 19, 2010
TILA – closed end, proposing major changes and several new disclosures.	74 Fed. Reg. 43232 (August 26, 2009)	Proposal
TILA – open end, proposing major changes and several new disclosures.	74 Fed. Reg. 43428 (August 26, 2009)	Proposal
Release of RESPA FAQs began	Released piecemeal	Largely January 1,

	between August 13, 2009 and April 2, 2010	2010
Information furnished to consumer reporting agencies	74 Fed. Reg. 31484 (July 1, 2009)	July 1, 2010
Information furnished to consumer reporting agencies	74 Fed. Reg. 31529 (July 1, 2009)	ANPR
CRA rules	74 Fed. Reg. 31209 (June 30, 2009)	Proposal
SAFE Act registration	74 Fed. Reg. 27386 (June 9, 2010)	Proposal
TILA / MDIA rules on, in part, timing of disclosures and mandatory waiting periods.	May 19, 2009	July 30, 2009
Affiliate marketing and ID theft red flags	May 14, 2009	May 14, 2009 and January 1, 2010
TILA-MDIA	73 Fed. Reg. 74989 (December 10, 2008)	Proposal
Major RESPA rules	73 Fed. Reg. 68204 (November 17, 2008)	Mostly January 1, 2010
HMDA rate spread reporting	73 Fed. Reg. 63329 (October 24, 2008)	October 1, 2009
Major TILA / HOEPA rules	73 Fed. Reg. 44522 (July 30, 2008)	October 1, 2009 (April 1, 2010 for § 226.35(b)(3))
HMDA, conforming to higher-priced loan definition	73 Fed. Reg. 44189 (July 30, 2008)	Proposal
Risk-based pricing	73 Fed. Reg. 28966 (May 19, 2008)	Proposal
Higher-priced mortgage loans	73 Fed. Reg. 1672 (January 9, 2008)	Proposal
Mortgage assistance relief services	75 Fed. Reg. 10707 (March 1, 2010)	Proposal
Mortgage advertising	75 Fed. Reg. 60352 (Sept. 30, 2010)	Proposal

Mortgage assistance relief services	74 Fed. Reg. 26130 (June 1, 2009)	ANPR
Mortgage advertising, origination, appraisals and servicing.	74 Fed. Reg. 26118 (June 1, 2009)	ANPR