

August 10, 2011

Ms. Pamela Blumenthal
Consumer Financial Protection Bureau,
1801 L Street, NW.,
Washington, DC 20036
Via email: pamela.blumenthal@treasury.gov

Re: Amended Draft Mortgage Forms—TILA and RESPA Disclosures

Dear Ms. Blumenthal:

American Bankers Association (ABA)¹ appreciates the opportunity to offer comments to the Consumer Financial Protection Bureau on the amended draft mortgage forms that would merge the Truth in Lending Act and the Real Estate Settlement Procedures Act disclosures, as required by the Dodd-Frank Act.

The comments set forth below represent our members' reactions to the third round of draft mortgage disclosure forms released under the "Know Before You Owe" initiative. These comments focus on the format of the draft forms, and on their general clarity and intelligibility. These comments are necessarily restricted to the physical presentation of the initial forms, since these draft disclosures are being released without the necessary regulatory context that sets forth the timing of delivery or the responsibilities that attach to the issuer.² These observations do not, therefore, constitute "official" comments that set forth ABA's position. Rather, these comments are observations from members with knowledge and expertise in the mortgage lending and origination process.

Overall Observations on Format

As an initial comment, the ABA bank members that comprised our focus group were overwhelmingly of the opinion that the draft form labeled as "Camellia Savings Bank" (Camellia) contains the better presentation of mortgage/settlement cost information. Our members feel that page 2 of Camellia sets forth an itemized set of costs that is preferable to the summary, or "grouped," disclosures found in the Azalea Savings Bank (Azalea) form. Generally speaking, ABA member banks believe that the high level of detail offered in Camellia is necessary to allow the consumer to understand the costs involved and to

¹ The **American Bankers Association** 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.

² For instance, page 1 of the form disclosure contains a statement that the figures on the form will "expire" at a date that is 15 days after the form's "issued" date. This statement assumes timing and tolerance rules that are different from current RESPA and TILA requirements, but not fully explained in the form presentation.

empower them to shop for the best mortgage offered in the market. Although Camellia's itemization of fees may somewhat "crowd" many numbers into one page, our members believe that the numbers and categories included in this form provide precisely the fee information that consumers want to know and will ask for when shopping for a home loan. Our members also note that the higher level of detail offered in this form protects the consumer against lump-summed fee disclosures that may camouflage hidden charges.

ABA members also believe that, as presented, Camellia contains clearly demarcated headers that are effective in separating and arranging the contents of the disclosure. The layout is orderly and follows a logical procession so that the consumer is not confused.

With this preference in mind, we offer the following comments that track the general order set forth in the preferred Camellia prototype.

Page 1

Graphics:

With regard to the CFPB graphic at the bottom of page 1, ABA would discourage the use of such graphics on this and any other mandated disclosure form. Graphics and specialized logos are awkward to administer in printed forms and are very expensive to reproduce. In addition, as the logo is currently positioned in the form, it is likely that the consumer will mistake that name and logo for that of the lender. We also believe that the statement and e-mail provided next to the logo—"For additional information and tools, visit www.consumerfinance.gov/futureurl"--may be misidentified and used by consumers to send inquiries about the details of the loan.

We recommend, therefore, that the logo be deleted. The form should simply state that use of the form is required by federal law and direct the consumer to submit all questions pertaining to the estimated loan transaction to the originating institution, as set forth in the form's header. The form could also specify that general information about the home buying process can be obtained through the Bureau's URL.

Projected Payments Box:

The category entitled "Estimated Taxes and Insurance" would appear to break out an amount to disclose the estimated taxes and insurance for the transaction, and would then specify, through a subcategory, that such amounts would be collected into an escrow account and paid through a monthly escrow charge. This is not at all clear from the presentation in this box. Note that in this category, the consumer is being presented a total figure for estimated taxes and insurance (in this case \$309), and is then presented with a sub-line in the same category that is entitled "Escrow." That sub-line contains an additional figure (in this case \$1,250) that appears to have no connection with the estimated Taxes & Insurance figure (\$309). Our members anticipate customer confusion from this presentation and urge inclusion of an explanation that the \$1250 figure represents the sum of the Monthly Loan Payment and the Estimated Taxes and Insurance.

Our members also anticipate customer confusion caused by the figure disclosed in the “Monthly Loan Payment” line of the “Loan Terms” section, and the disclosure “Expect to pay a total of \$1250 per month” contained in the “Estimated Taxes and Insurance” section. Although they impart separate information about monthly loan costs, these figures are very much related, and their relationship needs to be explained further. To illustrate the confusion, note that the shopping consumer will read the “Monthly Loan Payment” line and conclude that they need \$940/month to afford the home. However, the “Escrow” line in the next box introduces the concept that the consumer should “expect to pay \$1,250 a month to start.” This will leave the consumer unsure of “real” total monthly payment for that transaction.

Comparisons Box:

ABA members appreciate the intent of the “Comparisons” table but are unconvinced its goals are achieved by this format or the content presented here. We think the “estimated closing costs” figure is useful and necessary. However, the APR disclosure does not appear to add any value whatsoever—especially when accompanied by two sentences of explicatory language that fails to convey to the consumer what the figure really means. We think the “APR” figure implicates many substantive and consumer comprehension issues that are beyond the focus of this stage of the feedback process. We reserve these comments for future discussions.

Our members are also ambivalent about the use of a 5-year demarcation for comparison purposes. We are not necessarily opposed to this concept, but we question whether there is any real significance to 5 years, as opposed to 7, or perhaps 10. In this specific instance, a balloon payment would come due in year 7, so it is questionable whether the consumer can benefit from a detailed understanding of a 5-year equity position.

The wording of this 5-year disclosure item should also be clarified to more accurately reflect the element being disclosed. We recommend adding the following language in bold, so that the full sentence reads as follows—“Total you will have paid, **if you make scheduled payments as agreed**, in principal, interest, mortgage insurance, and fees.”

Page 2

As mentioned above, ABA concurs with the Bureau’s overall itemization concept of the second page of the prototype disclosure forms, though we point out that such itemization raises important instruction and regulatory issues that must be addressed via a future rulemaking. The proposed rules that accompany the disclosure forms will have to be specific in identifying what to disclose, how the tolerances (if any) are structured, and how fees are amended, added or deleted in instances of changed circumstances or consumer preference. We note that the existing RESPA and TILA substantive rules will determine the general contours of the timing and the liabilities attached to these disclosures. We are not yet clear about the relationship between these rules, the existing legal regime established

by RESPA and TILA, and the proposed disclosure forms. The current forms do not allow us to offer meaningful comment on these issues.

Box F--Payment Into Escrow:

The information contained in this box illustrates why many banks are hesitant about commenting on this disclosure reform process. Although the Bureau states that this exercise is focused upon clarity and intelligibility of the forms, this escrow box would force lenders to ignore RESPA Escrow requirements and to disclose calculations that are prohibited. In short, RESPA requires aggregate accounting for purposes of escrow calculations; however, this box would ask that the lender/servicer separate the escrow payment amounts into distinct categories for purposes of calculating “cushions.” Therefore, the lender/servicer would have to violate an important substantive protection contained in the RESPA statute.

In addition, this section does not make clear what is actually being disclosed to the consumer—at first sight, it appears that the box intends to inform the consumer what is being held in the overall escrow account. After further inspection, however, it appears to focus only on how much “cushion,” or escrow reserves, are being held by the lender/servicer. This needs to be clarified.

Summary Boxes:

The form’s summary boxes for “Estimated Closing Costs” and “Cash Needed to Close” will require fine-tuning. We cannot fully comment on the format set forth in this disclosure because we cannot ascertain what the Bureau is attempting to accomplish in terms of figures presented. We note, for instance, that lender credits and seller credits are separately listed under “Estimated Closing Costs” and “Cash Needed to Close,” respectively. Separating out these figures and determining where the credits apply may not be as orderly as the Bureau assumes. In addition, seller credits are generally promised amounts that a lender may not fully know at the time of disclosure. There may also be third party credits that would have to be included separately from lender or seller credits. Fitting these amounts into the GFE has always been awkward; the proposed form would turn this seller credit into a formal calculation that could pose disclosure (or tolerance) risks to the lender, depending on the substantive rules that accompany these forms.

Again, ABA cautions that there are substantive impacts to the disclosure methodologies set forth in these draft forms, and we will postpone full comment until that time where we understand the rule provisions that will guide these disclosures.

Signature Lines:

Finally, we note that the form has no signature lines. Our members unanimously called for the addition of a signature and date line to the form. Even if not formally required by RESPA or TILA, such signatures are often required by other stakeholders in the transaction,

Ms. Pamela Blumenthal
Consumer Financial Protection Bureau,
August 10, 2011
Page 5 of 5

and guidance from regulators as to where they should be placed would preempt any compliance misunderstandings later.

Conclusion

ABA commends CFPB for making the RESPA-TILA project a priority in its consumer protection initiatives. We believe that this effort is the principal step that must precede all other regulatory reforms in the mortgage lending area. We look forward to assisting CFPB in this disclosure reform process. If you have any questions, please contact **Rod J. Alba** (ralba@aba.com) or **Ginny O'Neill** (yoneill@aba.com). As always, ABA remains willing to assist the Board with any questions and concerns that will arise in this and future phases of this reform effort.

Sincerely,

Rod Alba

Rod J. Alba