June 5, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G St., NW
Washington, DC 20552

Re: Docket No. CFPB-2018-0009 (submitted electronically)

Dear Acting Director Mulvaney:

On behalf of the members of The Real Estate Services Providers Council, Inc. (RESPRO®), I appreciate the opportunity to comment on the Request for Information on the Bureau of Consumer Financial Protection (Bureau) rulemaking process.

RESPRO® represents the largest and most successful settlement services companies operating throughout the United States. Our members and their more than 600,000 employees and agents facilitate millions of real estate and mortgage transactions each year. A critical element in the smooth operation of this system is consistency and certainty in laws, rules, regulations and their enforcement. The Bureau should promulgate clear rules that promote efficient markets and transactions while protecting consumers from bad actors. It should also endeavor to provide clear guidance on the rules under its purview consistent with the underlying statutes and enforce laws consistent with their longstanding interpretation.

Rules should not be Needlessly Complicated

RESPRO® has experience with many laws under Bureau authority but especially the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). In my time prior to becoming President of RESPRO®, I worked extensively on the Department of Housing and Urban Development's RESPA disclosure changes in the mid 2000s as well as the TILA/RESPA Integrated Disclosure (TRID) effort under Dodd-Frank. For decades industry and the consumers sought more simplicity and less paperwork. Instead they received monstrous new rules and confusing new disclosures. It is as if those writing the rules were getting paid by the page, the hour, or both. This is perhaps the biggest potential area for fundamental change.

The actual intention of "combining TILA and RESPA" was to strip unnecessary and confusing aspects of both and simplify the disclosures. In particular, the thought was to largely do away with the confusing TILA disclosure and include its absolutely necessary requirements on a simpler Good Faith Estimate (GFE). This was not just some industry desire; it was the desire of no less than Senator Warren herself.[1] No one envisioned multipage initial disclosures or even changes to the closing process. Indeed, many thought HUD went beyond its statutory authority in creating the tolerance structure it eventually did in 2008.[2] The main point is that the law requires a "good faith estimate" not a hard and unwavering delineation of the charges. Nonetheless, industry went along because ultimately it thought it was easier to implement the final changes than to fight them.

The Bureau's TRID effort obviously did not lead to simplification. To this day there are many uncertainties as well as concrete issues such as the needlessly confusing disclosure of title insurance that in many states is simply contrary to reality. That is but one issue in the grand scheme of things. Is this the most efficient and effective regulation it

[1] http://money.cnn.com/2011/05/18/pf/mortgage_disclosure_form/index.htm
[2] This article is a good summary of comments on the initial HUD proposal in 2002.
http://dirt.umkc.edu/archives/dirt2003/jan2003/respa%20article.pdf

can be? Is it even close? No. However, industry has invested so much in compliance because it was clear at the time that there was no turning back, that it would likely be more costly to scrap the whole mess and implement a truly useful and simple system that starts with a one page GFE that might have a box with the APR on it.[3] I will not revisit the reams of good suggestions that have been made and ignored over the last two decades. My only point is a) that this is not how a good rule or regulation is made and b) this is exactly how many regulations are made.

Suggestions

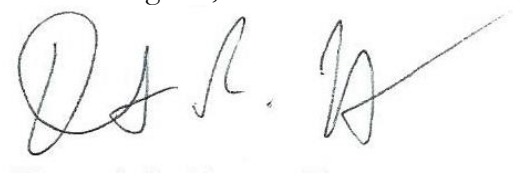
Below are some suggestions to improve regulations and perhaps develop more of a model process that yields efficient regulations that do no more and no less than required.

1) The Bureau should err on the side of simplicity and evaluate the true costs and benefits of what it is doing. Most regulatory agencies have broad authority and the Bureau has some of the broadest. It should use this authority to do LESS, when less is simply better. Regulations should not be a make work project for lawyers.
2) The Bureau should take small business concerns seriously and also use practitioners as a resource. There are many knowledgeable people in Washington to be sure, but they are not the people who will have to live with these rules day in and day out. It is important to reach out to those who will and take their suggestions seriously. Many of the problems with TRID and other rules could have been avoided by listening more closely to practitioners.
3) When issuing rules, continue to issue practitioner guides. Though there always can be improvement, the Bureau has been good at issuing guides. Of course, the guides should be able to be explicitly relied upon (perhaps included in the final rule) and not contain disclaimers warning against such.
4) The Bureau should be more generous in using trial implementation periods where appropriate and useful. Much TRID consternation could have been avoided if the Bureau utilized the explicit statutory authority to institute a trial period.[4]

Conclusion:

Once again, RESPRO® appreciates the opportunity to comment. Thank you for your time and consideration on this matter and many others that affect RESPRO®, its members, and their clients and customers. If we may be of any assistance, please do not hesitate to contact me at ktrepeta@respro.org or (202) 862-2051.

With best regards,



Kenneth R. Trepeta Esq.
President and Executive Director

[3] In all my years, the most difficult thing to explain and for consumers to understand is the Annual Percentage Rate (APR). It does have some intrinsic value but because of the fact that no one understands it, it is almost useless and should be scrapped. If not scrapped, all the filler that goes with it should be scrapped and it is should just be a box with asterisk that leads to an explanation of why it is different than the interest rate on the loan.

[4] Section 1032 talks at length about conducting trials and grants the Bureau broad authority. http://www.dodd-frank-act.us/Dodd_Frank_Act_Text_Section_1032.html I (and others) brought this up many times including to Director Cordray himself but the idea was rejected and the only explanation I was given is the section did not apply to TILA/RESPA which is patently absurd under a plain reading. Indeed, the trial disclosure and TILA/RESPA mandate are all in the same section with the trial section immediately preceding the TILA/RESPA section.