



Building Success. Together.

May 27, 2011

Dear Ms. Blumenthal ,

American Bankers Association (“ABA”)¹ commends the Consumer Financial Protection Bureau (“CFPB”) on the initial draft mortgage forms drafts that would merge the Truth in Lending Act and the Real Estate Settlement Procedures Act disclosures as required by the Dodd-Frank Act. The draft mortgage forms set forth clearer and more comprehensible disclosures that will better serve consumers. ABA believes these forms provide an excellent base to advance toward meaningful reform of the existing mortgage disclosure process.

ABA submits these comments in the spirit of ensuring that this initial step is conducive to workable disclosure for all stakeholders in the mortgage finance system. We congratulate CFPB for providing an open process that allows for exchange and communication, and for promoting input from banking institutions. ABA members have extensive and sustained experience in understanding consumer financial needs, and we are pleased to offer our insights to advance the success of this reform process.

The comments set forth below represent an initial reaction to the draft mortgage disclosure forms released by CFPB on May 18. Our comments focus on the format of the draft forms, and on their general clarity and intelligibility. We note, however, that our observations are very preliminary, and are necessarily restricted to the physical presentation of the initial forms. As CFPB has recognized, the draft forms are being released without the necessary context of the rules that will determine the timing of the disclosures, the binding nature of their content, and the responsibilities that will attach to the issuer. Moreover, CFPB has not revealed what existing disclosures these forms will replace. These elements are crucial to determining whether the disclosure reforms are meaningful and whether banks can effectively implement the changes. We understand that the Bureau will entertain discussion about these issues in future steps of the process.

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.

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 forms labeled as “Ficus Bank” contain the clearest presentation of information. This opinion is based on several factors. First, the form contains clearly demarcated headers that are effective in separating and ordering the contents of the disclosure. Second, the layout is one in which the reader is able to start at the top of the form and systematically read the information horizontally without confusion. This does not occur with the “Pecan Bank” prototype, where the information runs both vertically and horizontally, depending on the section. Finally, the order of the information, with the “Key Loan Terms” on top, set forth the most effective presentation of the information that is necessary to understanding the loan product.

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

- **Page 1:** ABA concurs with the Bureau’s overall concept and content of the front of the disclosure form, as represented by the prototypes posted by the Bureau.
 - The Bureau has appropriately arranged the form so that the front and prominent top portion of the form lists the “key loan terms” of the loan, including interest rate, monthly payment and monthly taxes and insurance. ABA members suggest that two key elements lacking in this block are “points” and “cash needed to close.” These additional elements would complete the list of critical terms that consumers truly need to shop for the best mortgage
 - ABA agrees with the approach of using the front of the disclosure to immediately and prominently list the terms that require caution on the part of the consumer, and that force the consumer to focus on those loan terms that could place consumers in financial trouble if not appropriately considered.
 - ABA members appreciate the intent of the “Comparisons” table but are unconvinced its goals are achieved by this format or the content presented here. The role of APR in these disclosures implicates many substantive and comprehensibility issues beyond the formatting focus of this stage of the feedback process. Consequently, ABA is reserving its comments on the use of APR to future comments.
 - The “projected payments” table received mixed reviews among ABA members primarily with respect to the content, but also to the understandability of its presentation. Certainly, “cash needed to close” is generally accepted as responding to a primary interest of applicants. Less certain is the value consumers place on a depiction of the longer term obligation the borrower is undertaking. ABA members will discuss this matter further and provide recommendations on this item in future comments.
- **Page 2:** ABA also concurs with the Bureau’s overall concept of the second page of the prototype disclosure forms, though we point out that this segment of the form raises some difficult questions that merit consideration in ongoing stages of development.
 - The concept of providing a summarized itemization of “estimated closing costs” is helpful to shopping consumers. There are difficulties in how the prototype forms group

and sum these different charges together, but the overall approach of including some itemization is commendable. ABA will present further recommendations on this item in future comments.

- A statement of whether an escrow account will be required in the transaction may have informational value, but the choices presented in the draft form do not convey the full range of choices that exist in real world situations.
- The sections dealing with mortgage insurance, loan servicing, the consumer's right to receive a copy of the appraisal and adjustable rates are generally useful and offer good information to the consumer. ABA will offer more detailed recommendations on these items in future comments.
- The "important dates" portion is important in shopping and of value in consumer decision-making. This item could be more prominently displayed in the form. We note, however, that the wording of this item will be important to ensure that consumers understand the nature of the disclosures presented in this form. The precise wording of this item will have to be discussed in future deliberations, as CFPB establishes the precise nature of the disclosures made in this form.

Technical Points and Formatting Issues

ABA members expressed concern about potential implementation challenges posed by the formatting of the forms. Both forms include a number of graphics, columns, and horizontal lines that may prove challenging to reproduce – for example, on the Ficus Bank form in the "Key Loan Terms" section, the graphic "yes" followed by an arrow and the dashed vertical lines with an arrow in the "Projected Payments" section may be difficult to reproduce. Indeed, our members stated that many core processors and form vendors were unable to reproduce the tabular formatting requirements of the Regulation DD overdraft fee disclosures on periodic statements. They urge consideration of these challenges and where possible, simplification of graphics and formatting. In addition, while supportive of a concise, two page form, ABA members urge CFPB not to require that the form be printed on one page, using the front and back of one sheet of paper, as this presents challenges for copying and electronic imaging of the form.

ABA members agree that the form should include an itemization of Estimated Closing Costs. However, they expressed concern that the form may lack sufficient space to itemize all closing costs and urge the Bureau to make this section of the form expandable, as necessary to permit itemization. In addition, bankers believe that to enhance consumer understanding of the costs of a mortgage transaction, the Estimated Closing Costs section of the form should clearly delineate between closing costs, prepaid items, and required services. We welcome the opportunity for additional discussion of the precise grouping of these costs.

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

Finally, it is unclear at this time whether the form is to be used only as a preliminary disclosure. However, our members believe that it will be important to use the same form if it is necessary to re-disclose closing costs and as a final disclosure. They believe that consistent use of one form will enhance consumer familiarity with and understanding of the form as well as their ability to make comparisons. Thus, our members suggest the addition of a section (or line) with check-boxes to indicate whether the form has been provided as an initial disclosure, a re-disclosure, or a final disclosure.

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.

Appendix:
Detailed Observations on the Form Content

Below are more detailed observations and comments on the specific elements of the draft forms. These observations and comments were advanced by ABA members participating in focus groups, and would not therefore constitute official positions taken by ABA. We offer these items as observations conveyed by our members for general consideration by Bureau staff.

- It is unclear whether the forms anticipate the use of mortgage brokers. At first glance, it is uncertain where the broker's name would appear, or how their fees are to be listed.
- The "Key Loan Terms" chart should include a listing of points.
- Some have expressed skepticism that the "projected payments" section of page one of the Ficus Bank form provides information applicants want or need to make a decision about their loan. It is also an area where the substance of the information provided is subject to a wide variety of alterations especially in the adjustable mortgage case as not to convey in a reliable manner a true picture of such projected payments. The impact of an adjustable mortgage on payments may be better expressed in the second position on the form as part of translating the shopping terms to a representation of the payment obligation.
- Some members urge further consideration on features requires "cautions," and inclusion in this "caution" segment. For example, would interest only or step rate loans require a "caution"? Further, the question arises about the additional information that would be required to be disclosed if a term falls under the "caution" definition? ABA points out that in many instances, certain features deemed "risky" would nonetheless constitute superior choices for the consumer. As such, the wording of the disclosure will need to be carefully crafted to ensure that such terms are not discouraged.
- The explanatory sentence accompanying the "Annual Percentage Rate" is not at all clear.
- With respect to Ficus Bank form's page two, members underscore the need to distinguish closing costs from escrows. The form design should reflect this distinction by separating identifying escrow set asides and tallying closing costs separate from escrows and then combining the two categories to reflect estimated cash due at settlement.
- Line G of the "estimated Closing Costs" chart should separate lender credits from seller credits. These factors are inherently different, and should be calculated differently by the consumer when shopping. Further, lender credits relate to the value of the fees covered by lenders as part of the loan product deal. It should not, therefore, be confused with other credits that are inherent to the "buy-sell" portion of the transaction.
- In terms of presenting the "loan details," aggregating closing costs that are required for the loan with costs that are related to the purchase of the property and non-required services greatly undermines the usefulness of closing cost information for loan shopping purposes. The total of costs of services required for the loan should be separately stated.
- With regard to the "origination fee," it is not clear whether this would include all lender fees including discount points. We note that if points are not broken out separately, it will be difficult for the borrower to deduct them for tax purposes and it may also be difficult to show that they are bona fide discount points under the Qualified Mortgage tests.

- Note that the origination fee disclosure states that “this fee cannot change.” Given the absence of substantive rules accompanying this draft disclosure, members cannot fully comment on tolerances.
- With regard to the line listed as “Non-Required Services,” it is unclear when non-required services would be required to be listed. ABA members believe that there is a dangerous potential for inconsistency among lenders on which services will have to be listed and in the amounts of those services. Such inconsistencies would undermine the usefulness of the form for loan shopping because these charges have nothing to do with the ability to close loan, but are nonetheless included in the “total closing costs” figure.
- Currently the HUD-1 Settlement Form shows the amounts of mortgage insurance and homeowner’s insurance that actually are paid at or prior to closing in “Items Required By Lender to Be Paid in Advance” of the 900 series, and it shows the escrow deposits for the future payment of those amounts in “Reserves Deposited With Lender” in the 1000 series. The CFPB draft forms confuse these two concepts. This portion of the disclosure will require a determination of whether it is preferable to show the amounts that are paid in advance of closing, or alternatively, show how much will have to be paid at closing, including the escrow deposit amount.
- Line G squarely raises the issue of the manner in which “No Closing Cost Loans” or “Zero Cost” loans must be disclosed. Currently, all lender-paid fees must be shown on the GFE, but the consumer must engage in a mathematical subtraction of the lender credits to eventually determine the benefit of the discounts and the lender credits. ABA would urge that fees not paid for by the consumer be disclosed as such—fees that consumers won’t be required to pay should be shown as “0.”
- The escrow account disclosure must account for instances where escrows are optional, but not required. In addition, it should reflect that some transactions require the escrowing of some items, but not others. Further variations arise in instances where escrow accounts are not “required” but will be established unless the consumer asks that they not be.
- The escrow disclosure chart in these draft forms raise a clear illustration of the direct conflict that will arise between this process and the enormous quantities of proposals that are pending from the Federal Reserve Board’s recent rulemakings under TILA. ABA members would urge that the Bureau concentrate on this RESPA-TILA merger before advancing with any other pending rulemakings that are transferred from sister agencies.
- In the “Important Dates” section, it is unclear what is meant by the statement that the estimate “expires.” This articulation implies the obligation to offer a locked rate for some period of time. Note that if this same form will be used in instances of any required re-disclosures, then this date block will have to be completed differently, or entirely ignored. Is this date affected, for instance, by whether the rate is locked or floating? Is it affected by when the commitment will expire?
- With regard to information on fully-indexed interest rates and corresponding p, the forms show the starting rate and maximum lifetime rate. The forms also appear to show the lowest possible monthly payments and the highest possible monthly payments. However, there is nothing that indicates what the rates and payments would be if the index remained the same. In this sense, two loans could have identical starting rates and payments and maximum rates and payments, but substantially different fully-indexed rates and payments. The consumer should be aware of that difference.
- The initial disclosures should be organized with the following “flow”—First, provide a chart that provides the “shopping elements” of the loan, including: (i) Fixed v. adjustable, (ii) loan term, (iii)

Rate (APR) and points, and (iii) market segment by conforming, jumbo and FHA. Second, having prominently disclosed the “shopping” elements of the prospective loan product, the natural next step would be to estimate how that translates to a payment obligation for the loan amount applied for (or available.) From a design perspective, this should be in second position on the first page. Third, and perhaps final position on the first page would be items that may be generally described as loan contingencies, or items that applicants may not think about, but that they should be alerted to if they exist. In addition to the items appearing as cautions in the Ficus Bank form, the existence of mandatory escrow and mortgage insurance appearing on the Ficus Bank form page two might be better included in this category on page one.