CBA | CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

February 7, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Request for Information Regarding the Mortgage Loan Closing Process – Docket No. CFPB – 2013- 0036

Dear Ms. Jackson:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB's) request for information on the mortgage loan closing process. Specifically, the CFPB is requesting information on key consumer "pain points" associated with mortgage closings and how these pain points may be addressed by market innovation and technology. This is the initial step in the CFPB's next phase of its "Know Before You Owe" initiative with regard to mortgages, with the first phase being the development of the new combined TILA/RESPA disclosures that will become effective on August 1, 2015.

For this initial step in the process of collecting information on the mortgage loan closing process, the CFPB has requested comments on a number of specific questions. Below are CBA's general comments on the mortgage closing process and the CFPB's approach in reviewing this process, followed by responses to the specific questions posed by the CFPB.

General Comments

CBA and the banking industry certainly share the goal of improving the loan closing process for consumers and want to work closely with the CFPB as it embarks on this process. However, we have concerns with the timing of this process, the scope of the CFPB's inquiries, and how the CFPB will use the information collected.

---

[1] The Consumer Bankers Association ("CBA") is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

As for timing, we believe it will be best for both the CFPB and the industry if the CFPB delays this information collection project until well after the TILA/RESPA rules go into effect on August 1, 2015. These rules will have a significant impact on both the mortgage loan closing process and the disclosures consumers receive as part of this process. Again, we support the goal of additional improvements in the mortgage closing process, but this should be based on the most accurate information available, which must take into account the effects of these new TILA/RESPA rules.

Another reason to delay this information collection project is because the banking industry has just completed the long and arduous process of complying with the numerous CFPB mortgage rules that became effective in January 2014, in addition to the other rules required under the Dodd–Frank Wall Street Reform and Consumer Protection Act. The banking industry must now devote significant time and resources in order to be in compliance with the TILA/RESPA rules by August 1, 2015. Although the industry wants to fully participate and assist the CFPB with providing information on the mortgage loan closing process, there is currently little time and few resources banks can devote to this project, especially within the very short 30-day comment period the CFPB provided in this request for information.

Another concern we have is with the scope of this request for information. It appears to focus primarily on the specific loan closing event, which is the time the consumer signs the required documents to conclude the home purchase process. We believe this focus is too narrow, and the CFPB should analyze this event in the context of the entire mortgage loan process, which begins at the time the borrower applies for the loan. A number of events occur during this entire process that may affect the loan closing, such as when there are changes to the home purchase terms, or the terms of the loan, that may occur before the closing. Other factors may also impede this process, such as the recordation and title systems, in that these systems vary across the country and are often outdated.

We also believe reviewing the mortgage loan process in its entirety will benefit consumers. Such a review will provide greater opportunities to assess ways in which to enhance, streamline, and make this process more transparent as a means to better engage consumers from the time they apply for the loan. If consumers are engaged during the entire process in this manner, they will then have better knowledge, understanding, and confidence when they conclude this process at the loan closing, which should help minimize the problems and issues that currently arise.

The key reason consumers are confused by the mortgage closing process is due to the overwhelming amount of often duplicative documents consumers are asked to review and sign at the time of the loan closing. One reason for this is the numerous federal and state laws and regulations that apply to the mortgage loan process. If this document issue can be addressed, such as through federal preemption of state law disclosure requirements, this process can be more transparent to consumers, which can then help alleviate the problems consumers experience as part of the mortgage closing process.

In this request for information, the CFPB has stated that the goal is to address the problems at loan closing by the use of technology and market innovation as a means to encourage the development of a more streamlined and efficient process. We certainly support this goal, which can be best achieved by means such as collecting and sharing certain best practices with the industry as they pertain to technology and innovation.

In our view, rulemaking would be the least desirable means to address these issues. As referenced above, the banking industry has just completed the long and arduous process of complying with the numerous CFPB mortgage rules effective in January 2014 and is now focusing on complying with the TILA/RESPA rules. The industry does not currently have the resources to address and comply with additional rules in this area. Also, technology and innovation changes rapidly, and rulemaking is the least effective means to address these rapid changes.

Even with regulation, the CFPB only has supervision authority over banks over $10 billion in assets and certain nonbank entities. However, there are numerous other parties involved in real estate transactions that are not supervised by the CFPB, such as settlement service providers, settlement agents, and attorneys. As a result, we do not believe the CFPB's goal of streamlining and improving the mortgage loan closing process can be successfully accomplished through additional rulemaking.

Responses to Specific Questions

As noted above, our member banks have been struggling in their efforts to successfully comply with the other CFPB mortgage rules. However, we did receive a limited number of responses to the specific questions raised by the CFPB, as outlined below:

<u>Consumers and Closing</u>

1. What are common problems or issues consumers face at closing? What parts of the closing process do consumers find confusing or overwhelming?

- The closing process overall and the number of closing documents, which in some cases are redundant from those provided earlier in the loan process.
- Consumers may be afraid to ask questions because they are fearful they may not receive the loan.
- Lenders are not always at the closing table and, therefore, there is reliance on the closing agent, or traveling notary, to educate the borrower.

2. Are there specific parts of the closing process borrowers find particularly helpful?
    - Receiving copies of all signed documents.
    - If there is a representative at the closing, such as an experienced settlement agent, who can answer questions that arise.

3. What do consumers remember about closing as related to the overall mortgage/home-buying process? What do consumers remember about closing?
    - The interest rate.
    - Depends on the experience, such as if problems arise with any of the documents that require additional borrower or lender attention.

4. How long does the closing process usually take? Do borrowers feel the time at the closing table was an appropriate amount of time? Is it too long? Too short? Just right?
    - For a simple loan, about an hour and a half to two hours.
    - Also depends on the closing agent and the experience of the agent and the consumer, especially for more complex loans.

5. How empowered do consumers seem to feel at closing? Did they come to closing with questions? Did they review the forms beforehand? Did they know they can request their documents in advance? Did they negotiate?
    - Depends on the prior experiences of the consumer and closing agent, as well as the level of coaching throughout the mortgage loan process.

6. What, if anything, have you found helps consumers understand the terms of the loan?
    - A person at the closing who is available and experienced in order to review and ensure the borrower understands the documents.

- An experienced lender and/or closing agent will ensure the customer receives at least one pre-closing call to review the documents, terms, cash to close, and the particulars of the closing event.

Errors and Changes at Closing

7. What are some common errors you have seen at closing? How are these errors detected, if at all? Tell us about errors that were detected after closing.
    - Incorrect information, such as name, address, etc.
    - Mortgage Disclosure Improvement Act (MIDA) waiting period on purchase transactions can harm consumers and/or make them feel frustrated when they are forced to wait to acquire new debt. This requires explaining the need to wait three days before drawing the revised loan documents.
    - Documents at closing may not be fully executed. These include missing signatures from non-borrowing spouses, incomplete notary execution, and signed names that differ from how they appear in the documents.

8. What changes, diverging from what was originally presented at closing, often surprise consumers at closing? How do consumers react to changes at closing?
    - Changed circumstances and the updated GFE.
    - Un-funding a loan that had been funded.
    - While customers may be frustrated with changes, they may feel they do not have a choice but to proceed with the closing agent's instructions or risk losing the loan and/or the home being purchased.

Other Parties at Closing

9. How, if at all, do consumers typically seek advice during closing? In person? By phone? Online?
    - Consumer may talk to the loan originator or mortgage consultant, or occasionally the processor, by telephone or email.
    - Consumer may have an attorney review the documents.
    - Consumer may have friends or family in the industry.
    - Consumer may "Google" their questions, although this does not always provide accurate information.

10. Where and to whom do consumers turn for advice during closing? Whom do they typically trust?
    - Similar to list above.

Closing Documents

11. What documents do borrowers usually remember seeing? What documents do they remember signing?
    - Note and HUD-1 Statement
    - Deed of Trust
    - Rescission Notice

12. What documents do consumers find particularly confusing?
    - Truth in Lending Act Disclosures
    - Good Faith Estimates
    - HUD-1 Statements

13. What resources do borrowers use to define unfamiliar terms of the loan?
    - See number 9 as those also serve as resources here.

Improving Closing

14. What, if anything, would you change about the closing process to make it a better experience for consumers?
    - Preparation for the consumer that is provided before closing, such as providing a checklist of the documents that will be signed. Could also include a pre-closing appointment for purposes of reviewing the documents.

15. What questions should consumers ask at closing? What are the most important pieces of information/documents for them to review?
    - Questions as to options if the borrower loses his or her job or otherwise cannot make the mortgage payment.
    - The process and what to expect with a servicing transfer for purposes of sending payments, etc.

16. What is the single most important question a consumer should ask at closing?
    - What happens if I cannot make my mortgage payment – what are my rights?

17. What is the single most important thing a consumer should do before coming to the closing table?
    - Have a full understanding of the loan terms.
    - Take advantage of homeownership counseling available during the home buying process.

Thank you for the opportunity to comment on the CFPB's request for information on the mortgage loan closing process. If you have any questions or wish to discuss these issues further, please feel free to contact me at (202) 552-6366 or at jbloch@cbanet.org.

Sincerely,

Jeffrey P. Bloch
Associate General Counsel