

April 16, 2012

The Honorable Richard Cordray  
Director  
Consumer Financial Protection Bureau  
1700 G Street, N.W.  
Washington, DC 20552

Dear Director Cordray:

We read with great interest your interview with Kate Davidson in the March 26, 2012, issue of the *American Banker*, in which you stated, “We want to make sure we get that as right as we can, so we're trying to be careful.”

The undersigned organizations are especially grateful that you are taking this approach. While this statement was about the Qualified Mortgage rulemaking, we want to help the Consumer Financial Protection Bureau get it right on all of the mortgage-related rulemakings, especially the Know Before You Owe project to integrate, streamline and simplify mortgage disclosures.

In order to get this particular rulemaking right, we suggest first that it be coordinated with other key rulemakings and that relevant guidance on rulemakings be followed. We also suggest that a rulemaking schedule be established, that an ANPR be considered and, finally, that the testing protocol be expanded to cover the range of loans in today's market.

The new mortgage disclosures not only need to integrate RESPA/TILA regulations but they also need to work hand in hand with the QRM, QM and HOEPA rules. However, the CFPB is designing the new mortgage disclosures before it has finalized those other rules. We are concerned that putting the cart before the horse is a recipe for unnecessary delays in the rulemaking process that will inhibit the Bureau's goal of making sure that, “the costs and risks of these financial products are made clear.” In addition, this patchwork is likely to add unnecessary costs and delays to industry's implementation and compliance efforts and will confuse consumers.

The Office of Management and Budget's Office of Information and Regulatory Affairs highlighted the importance of regulatory scheduling in its [March 20, 2012 memo](#)<sup>1</sup> which instructs the heads of executive departments and agencies to ensure the: “coordination of timing, content, and requirements of multiple rulemakings that are contemplated for a particular industry or sector, so as to increase net benefits; and Consideration of the interactive and cumulative effects of multiple regulations affecting individual sectors as part of agencies' retrospective analysis of existing rules.”

We recognize that this memo may not apply directly to the CFPB. Nevertheless, it does provide a useful framework for which to consider all of the new mortgage regulations required under the

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<sup>1</sup> <http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf>

Dodd-Frank Act. We also recognize that CFPB is under strict statutory deadlines for publishing rules on other regulations. Below are a few suggestions, as indicated, for how the Bureau can balance these challenges:

1. Publish for comment an orderly rulemaking schedule. The schedule could lay out 1) the details of each regulatory proposal, 2) how they interact with each other, and 3) the order in which you plan on proposing, finalizing and requiring industry to implement each regulation. By providing this schedule CFPB can reduce uncertainty and help consumers and industry better plan for the future.
2. Consider using the Advanced Notice of Proposed Rulemaking (ANPR) process to satisfy the requirements under section 1032 of Dodd-Frank Act. This will allow the public to provide the Bureau with useful feedback that can be used to guide the drafting of all of these proposed rules.
3. Improve implementation by testing the draft disclosure forms on actual closed loans for a full range of loan products and for a wide range of local real estate practices. This testing would ensure that the forms are workable and include the right loan information, for a variety of states. Such testing would demonstrate where the forms are well designed and where they may need improvement. Thorough, real-world testing can reduce both the challenges and costs of implementation that are ultimately borne by consumers. This also would facilitate implementation of the new disclosure forms and prevent certain loan products from becoming unavailable because the forms and rules do not accommodate them.

Laying out an orderly schedule and testing will ensure that the Bureau meets the goals of [Executive Order 13563](#)<sup>2</sup>. In that Executive Order, President Obama urged agencies to “identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.” To implement this Executive Order, OIRA directs agencies to “take active steps to take account of the cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules.” It also directs them to carefully consider, in the analysis of costs and benefits, the relationship between new regulations and regulations that are already in effect. This cost-benefit directive is especially important for the Bureau, whose regulations are subject to a statutory cost-benefit analysis under 12 USC 5512(b)(2)(A).

We appreciate that the Bureau has been as open as it has been so that stakeholders can offer input on the design of the new disclosure forms. As you noted, the Bureau has, “gotten a lot of feedback that needs to be sifted through” on the design of the forms. However, stakeholders have not had the same ability to offer input on the underlying regulations that will govern the forms and instruct our members how to properly fill them out. Our ability to offer useful feedback to the Bureau has been limited by this lack understanding of the underlying rules that will govern the use and application of the forms. The Bureau offered the public and stakeholders nine opportunities to offer comment on the design of the forms but just one opportunity to offer input on the underlying regulations that will govern them. More public comment on the regulations is necessary to ensure that we get this right.

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<sup>2</sup> <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>

In addition to this letter, we intend to file more detailed comments on the Bureau's Small Business Regulatory Enforcement Fairness Act outline by April 16, as the Bureau has requested. At the same time, we urge the Bureau to recognize that consumers and industry will benefit from efforts by the Bureau to harmonize and streamline multiple rules and take steps to improve this process. We look forward to continuing our work with you to truly improve disclosures for consumers across the United States.

Sincerely,

American Financial Services Association  
American Land Title Association  
Community Mortgage Banking Project  
Community Mortgage Lenders of America  
Consumer Mortgage Coalition  
Mortgage Bankers Association  
National Association of Federal Credit Unions  
National Association of Home Builders  
National Association of Mortgage Brokers  
National Association of Realtors  
Real Estate Services Providers Council, Inc. (RESPRO<sup>®</sup>)  
Real Estate Valuation Advocacy Association