October 2, 2017

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

Re: Docket No. CFPB-2016-0038 or RIN 3170-AA61 (submitted electronically)

Dear Director Cordray:

On behalf of the members of The Real Estate Services Providers Council, Inc. (RESPRO®), I appreciate the opportunity to comment on the proposed rule to amend the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) rules relating to the Know before You Owe or TILA/RESPA integrated disclosures (TRID) effort.

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 Consumer Financial Protection Bureau (CFPB or Bureau) should endeavor to continue to provide clear guidance on the rules it has promulgated and enforce laws consistent with their longstanding interpretation.

Using Subsequent Closing Disclosures to Properly Disclose Changes

In addition to making a number of changes and clarifications, CFPB proposes to fix the so called "black hole" by allowing a subsequent Closing Disclosure (CD) to be used to disclose fees in valid changed circumstances. Here is the relevant provisions and commentary:

> (4) *Provision and receipt of revised disclosures*—(i) *General rule*. Subject to the requirements of paragraph (e)(4)(ii) of this section, if a creditor uses a revised estimate pursuant to paragraph (e)(3)(iv) of this section for the purpose of determining good faith under paragraphs (e)(3)(i) and (ii) of this section, the creditor shall provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section **or the disclosures required under paragraph (f)((1)(i) of this section (including any corrected disclosures provided under paragraph (f)(1)(i) or (ii) of this section)** reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under paragraphs (e)(3)(iv)(A) through ~~(C), (E) and~~ (F) of this section applies.
>
> (ii) *Relationship to disclosures required under §1026.19(f)(1)(i)*. The creditor shall not provide a revised version of the disclosures required under paragraph (e)(1)(i) of this section on or after the date on which the creditor provides the disclosures required under paragraph (f)(1)(i) of this section. The consumer must receive a revised version of the disclosures

required under paragraph (e)(1)(i) of this section not later than four business days prior to consummation. If the revised version of the disclosures required under paragraph (e)(1)(i) of this section is not provided to the consumer in person, the consumer is considered to have received such version three business days after the creditor delivers or places such version in the mail.

Regulation Z Commentary, 1026.19(e)(4)

19(e)(4)(i) *General rule.*

1. *Three-business-day requirement.* Section 1026.19(e)(4)(i) provides that subject to the requirements of §1026.19(e)(4)(ii), if a creditor uses a revised estimate pursuant to §1026.19(e)(3)(iv) for the purpose of determining good faith under §1026.19(e)(3)(i) and (ii), the creditor shall provide a revised version of the disclosures required under §1026.19(e)(1)(i) **or the disclosures required under paragraph (f)((1)(i) of this section (including any corrected disclosures provided under paragraph (f)(1)(i) or (ii) of this section)** reflecting the revised estimate within three business days of receiving information sufficient to establish that one of the reasons for revision provided under §1026.19(e)(3)(iv)(A) through ~~(C), (E) and~~ (F) has occurred…

The changes fix the "black hole" by allowing the use of a CD to reset tolerances without regard to when the creditor learns of a change in relation to the date of closing. The restrictive timing element of the existing rule is removed, and the changes clarify that both an initial and a corrected CD can be used to reset tolerances.

We believe that the CFPB concern that firms may issue an early or premature CD can be remedied by CFPB issuing a warning that this practice will not be tolerated. In other words, issuing a CD so early in an attempt to "lock" people into a transaction will not be viewed favorably by the CFPB. We believe the vast majority of lenders will endeavor to deliver an appropriately timed and accurate CD in accord with the rule.

It has also been suggested that there is a fear creditors will add charges late in the process and harm consumers. However, under the proposed approach, a creditor still could only increase a cost based on a valid reason under section 1026.19(e)(3)(iv)(A) through (F). And a creditor remains subject to the requirement that estimates of fee amounts must be made based on the best information reasonably available to the creditor at the time the disclosure is provided. If a creditor increases costs in a manner that does not comply with the TRID rule, then that should be addressed through supervisory and enforcement action, not by establishing another unworkable rule. Creditors should not be limited in the ability to make valid changes in costs.

Some have also suggested that the CFPB should limit third party or creditor charges. Once again, under the proposed approach a creditor still could only increase a cost based on a valid reason under section 1026.19(e)(3)(iv)(A) through (F). There is no reason to limit a creditor regarding which fees may be increased if there is a valid basis to increase a fee. Even if a certain type of fee typically does not increase, there is no reason to prevent a creditor from increasing the fee if there is a valid reason to do so. A creditor should not be forced into the unworkable approach of being forced to choose between covering increased fee amounts or declining to make the loan.

Finally, CFPB has expressed concerns that this approach will lead to confusion and multiple CDs. The proposed approach will not necessarily mean that a consumer will receive more CDs. Again, under the proposed approach a creditor still could only increase a cost based on a valid reason under section 1026.19(e)(3)(iv)(A) through (F), and preventing the creditor from doing so because the consumer may receive additional CDs is not appropriate.

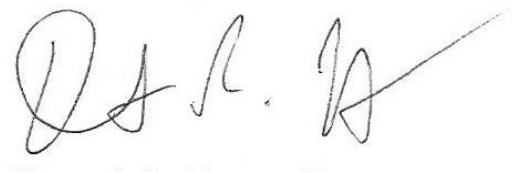
If the CFPB is concerned about additional CDs, it could revise the current provision that requires a revised Loan Estimate, or a CD in lieu of a Loan Estimate, be issued within three business days of receiving information that one of the bases in 1026.19(e)(3)(iv)(A) through (F) to change a fee exists. It is that timing requirement that forces the issuance of more disclosures than otherwise could be issued to advise a consumer of a change. That timing requirement is what forces creditors to issue multiple Loan Estimates and CDs to address periodic changes in fees.

Conclusion:

Once again, RESPRO® appreciates the opportunity to comment. We also appreciate the effort to refine the Know before You Owe/TILA RESPA Integrated Disclosure rule and guidance. We look forward to our continued work together to improve rules and regulations so that consumers truly benefit.

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,



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President and Executive Director