THE IMPACT OF THE CONSUMER FINANCIAL PROTECTION BUREAU ON THE RESIDENTIAL REAL ESTATE INDUSTRY: A PRACTICAL APPROACH

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I. INTRODUCTION

The Great Recession of 2007–2009 and its aftermath continue to have grave repercussions.[1] An estimated seven million Americans lost their homes during the recession[2] and "nearly $11 trillion in household wealth vanished."[3] The impact on American families is profound, widespread, and grim.[4] Vulnerable families have been displaced, sacred homes ripped away, and desired neighborhoods and communities forcibly abandoned.[5] Housing instability contributes to family turbulence, negatively influences the behavioral and social development in children, and in many instances causes physical and mental illness.[6] The vast implications of the Great Recession may never fully be known; however, one thing is for certain, America cannot afford to endure another financial crisis of this magnitude.[7]

A key trigger of the financial crisis and Great Recession was the burst of the U.S. housing bubble, which peaked in 2004.[8] As a result,

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[1] Christopher L. Peterson, *Consumer Financial Protection Bureau Law Enforcement: An Empirical Review*, 90 TUL. L. REV. 1057, 1058-59 (2016).

[2] Bob Sullivan, *7 Million Americans Lost Their Homes During the Recession. Are They Ready to Buy Again?*, THE RED TAPE CHRONICLES (April 24, 2015), https://bobsullivan.net/restless/7-million-americans-lost-their-homes-during-the-recession-are-they-ready-to-buy-again/.

[3] Peterson, *supra* note 1, at 1059.

[4] G. Thomas Kingsley, Robin Smith, and David Price, *The Impacts of Foreclosures on Families and Communities*, THE URBAN INST., 1, 6 (May 2009).

[5] *Id.* at 8, 16, 20.

[6] *Id.* at 10.

[7] Restoring American Financial Stability Act, S. 2611, 156th Cong. (2010).

[8] Frank Gregoire, *The Dodd-Frank Act and Your Daily Practice*, 14-HOUR REAL ESTATE CONTINUING EDUC. COURSE EDITION 15.2, BERT RODGERS SCH. OF REAL

Congress and various regulatory agencies responded with dramatic legislative and regulatory changes aimed at stemming losses and preventing future similar catastrophic happenings.[9] Time will tell if the efforts produce viable and sustainable results, especially now that America has a new real estate mogul in place as commander in chief, President Donald Trump ("Trump").

In the wake of the most severe financial crisis since the Great Depression,[10] President Barack Obama proposed a new financial agency focused directly on consumers, rather than on financial institutions.[11] This landmark piece of legislation, passed by the 111th Congress of the United States of America and signed into law by President Obama in July 2010, is the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[12] The Dodd-Frank Act was designed "[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, . . . to protect consumers from abusive financial services practices, and for other purposes."[13] Because of the multifaceted nature of the financial crisis, the Dodd-Frank Act's scope of coverage has "broad and deep implications affecting every corner of the financial services [industry] . . . including real estate and mortgage lending."[14] A majority of financial services including "mortgage loans, mortgage loan originations, real estate appraisals, and valuations prepared by individuals other than licensed and certified appraisers" are affected in some way.[15] The intricate details of the Dodd-Frank Act in its entirety are beyond the scope of this Article. This Article focuses on a major component of the Dodd-Frank Act, the Consumer Financial Protection Bureau ("CFPB"). As a principal federal regulator for major housing and credit-related statutes, such as the Real Estate Settlement

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ESTATE, INC. 1, 32 (2015).

9 *Id.*

10 *Creating the Consumer Bureau,* CONSUMER FIN. PROT. BUREAU, (2016), https://www.consumerfinance.gov/about-us/the-bureau/creatingthebureau/.

11 *Id.*

12 Gregoire, *supra* note 8.

13 Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 1(a) (2010).

14 Gregoire, *supra* note 8.

15 *Id.*

Procedures Act of 1974 ("RESPA"), the Truth in Lending Act ("TILA"), and the Fair Credit Reporting Act, the CFPB "consolidates most federal consumer financial protection authority in one place."[16] Because these statutes in many instances apply directly to the purchase and sale of residential property, the CFPB plays a vital role to the residential real estate profession.[17]

Residential real estate professionals have the honor and privilege to assist people in their quest to obtain the American dream—homeownership.[18] "Homeownership expands personal liberty, builds communities, and helps Americans create wealth."[19] For many people, purchasing a home is the single largest investment they ever make.[20] Many home purchasers require a mortgage loan to make the dream of homeownership a reality.[21] In response to the burst of the U.S. housing bubble, the CFPB implemented dynamic changes to the process of purchasing a home with a mortgage.[22] Although the CFPB does not affect real estate brokers and agents as much as mortgage professionals, it does impose some significant implications in the day-to-day operations of the industry as a whole.[23]

This Article takes a practical approach to analyzing the CFPB impact on the residential real estate industry, particularly residential real estate professionals and their clients, buyers, and sellers of real

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[16] CREATING THE BUREAU, *supra* note 10.

[17] Timothy A. Slating, *Are You Ready For the New Residential Real Estate 'Consummation' Rules?*, 103 Ill. B.J. 24, 24-26 (2015).

[18] Jenny Werwa, *Realtors Help Families Own Piece of American Dream, Says Secretary Castro*, NAT'L ASS'N OF REALTORS (May 12, 2015), https://www.nar.realtor/news-releases/2015/05/realtors-help-families-own-piece-of-american-dream-says-secretary-castro.

[19] Clare Trapasso, *What a New GOP President Would Mean for Homeowners*, REALTOR.COM NETWORK, (July 21, 2016), http://www.realtor.co/news/trends /republican-platform-real-estate/.

[20] *Id.*

[21] Ann Carrns, *Owning a Home, Mortgage Free*, N.Y. TIMES (Jan. 16, 2013), https://mobile.nytimes.com/blogs/bucks/2013/01/16/owning-a-home-mortgage-free/?referrer=.

[22] Gregoire, *supra* note 8.

[23] Brian Summerfield, *The Impact of Dodd-Frank on Real Estate*, NAT'L ASS'N OF REALTORS (May 13, 2011), http://live.blogs.realtor.org/2011/05/13/640/.

property. Additionally, this Article looks through the lens of a magnifying glass and narrowly views the implementation of the CFPB in the field of residential real estate transactions. First, this Article provides a background on the legislative and regulatory history of the CFPB.[24] Second, this Article discusses the impact of the CFPB regulation on residential real estate brokers and agents.[25] Third, this Article analyzes the impact on consumers of real estate.[26] This Article concludes with a brief discussion on the potential direction of the CFPB regulation and what real estate professionals and consumers may expect in the future.[27]

II. BACKGROUND

Title X of the Dodd-Frank Act provides the CFPB with unprecedented powers.[28] The CFPB is an independent bureau in the Federal Reserve System and is considered an executive agency[29] "subject to very little oversight from the Federal Reserve."[30]

The CFPB describes itself as "a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives."[31] This new regulatory agency has been characterized as the "centerpiece" of the Dodd-Frank Act[32] and has stringent violation policies that it is not shy to enforce.[33] One key power given to the CFPB by Congress is

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[24] *See infra* Part II.
[25] *See infra* Part III.
[26] *See infra* Part IV.
[27] *See infra* Part V.
[28] *See* Ken Harney, *The Consumer Financial Protection Bureau*, 14-HOUR REAL ESTATE CONTINUING EDUC. COURSE EDITION 15.2, BERT RODGERS SCH. OF REAL ESTATE, INC. 1, 54 (2015).
[29] 12 U.S.C.A. § 5491(a) (2016).
[30] Brenden Soucy, *The Consumer Financial Protection Bureau: The Solution or the Problem?*, 40 FLA. ST. U.L. REV. 691, 691 (2013).
[31] *About Us*, CONSUMER FIN. PROT. BUREAU, ABOUT US (2016), https://www. Consumerfinance.gov/about-us/.
[32] Summerfield, *supra* note 23.
[33] *Id.*

enforcement.[34] This power includes "the ability to file complaints, engage in litigation, negotiate settlements, and impose fines against entities or individuals the bureau believes have violated consumer financial protection statutes."[35]

For over thirty years, federal law required lenders "to provide four different disclosure forms to consumers applying for a mortgage."[36] These forms, developed separately by two different federal agencies, TILA and RESPA, contained ambiguous and inconsistent language.[37] Congress enacted TILA in 1968 to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit . . . ."[38] TILA requires disclosure of specific loan financing information, such as the annual percentage rate ("APR") and the cost of credit.[39] The regulations implementing TILA, known as "Regulation Z,"[40] require creditors to disclose "clearly and conspicuously" specific information pertaining to credit transactions.[41] On July 21, 2011, TILA's general rulemaking authority was transferred to the CFPB pursuant to the 2010 Dodd-Frank Act.[42] Congress initially enacted RESPA in 1974 to protect consumers by requiring pertinent and timely disclosures concerning the closing on a home purchase.[43] These disclosures include the APR, a calculation of the total cost of the loan using a federal formula set forth in RESPA, points, and other expenses a lender requires a borrower to pay in accordance with the home loan.[44]

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[34] Harney, *supra* note 28, at 55.
[35] *Id.*
[36] *TILA-RESPA Integrated Disclosure TRID, Regulatory Overview*, NAT'L ASS'N OF REALTORS, (May 12, 2015), http://narfocus.com/billdatabase/clientfiles/172/25/2358.pdf.
[37] *Id.*
[38] 15 U.S.C. § 1601(a).
[39] *Id.*
[40] 12 C.F.R. § 226.1.
[41] *See* 15 U.S.C. §§ 1632(a), 1635(a).
[42] Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 1(a) (2010).
[43] *CFPB Consumer Laws and Regulations*, CFPB (April 2015), http://files.consumerfinance.gov/f/201503_cfpb_regulation-x-real-estate-settlement-procedures-act.pdf.
[44] *Top 10 Things Real Estate Agents Should Know About the New TILA-RESPA*

The two primary purposes of RESPA are: (1) to foster competition amongst lending institutions and provide borrowers with standardized documents allowing them to effectively comparison shop and make informed decisions regarding their real estate transactions; and (2) to prohibit certain unlawful practices such as kickbacks and referral fees that can drive up settlement costs for home buyers.[45] Both TILA and RESPA have undergone several amendments through the years, including the most recent consolidation under the Dodd-Frank Act.[46]

The 2010 Dodd-Frank Act directed the CFPB to consolidate the mortgage loan disclosures under TILA and RESPA.[47] As a result, the TILA-RESPA Integrated Documentation ("TRID"), preferably referred to as the Know Before You Owe ("KBYO") rules, became effective October 3, 2015.[48] The CFPB requires lenders to use the new Loan Estimate Form ("Loan Estimate") and the Closing Disclosure Form ("Closing Disclosure") for most transactions involving a consumer mortgage.[49] These forms require new stringent, time-sensitive rules that all parties to a real estate transaction must follow.[50] If not followed carefully, consumer uncertainty and market disruption results.[51]

The government extensively regulates private market real estate transactions.[52] Staying current is not an easy task because regulations are in a constant state of flux. Now that America has a new commander in chief, there is much uncertainty surrounding how Trump will affect the real estate market. "The Grand Old Party released its [sixty-six-page] Republican Platform" at the Republican National Convention in

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Integrated Disclosures, OLD REPUBLIC TITLE, https://www.ortconline.com/Web2/Downloads/English/CFPB_Top-10-things-Real-Estate-Agents-should-know.pdf (last visited August 27, 2017).

[45] *CFPB Consumer Laws and Regulations,* CFPB, *supra* note 43.

[46] *Id.*

[47] NAT'L ASS'N OF REALTORS, *supra* note 36.

[48] *Field Guide to the TILA-RESPA Intergrated Disclosure Rule (TRID), NAT'L ASS'N OF REALTORS,* http://www.nar.realtor/field-guides/field-guide-to-the-tila-respa-integrat ed -disclosure-rule-trid (last visited Nov. 2015).

[49] NAT'L ASS'N OF REALTORS, *supra* note 36.

[50] *Id.*

[51] *Id.*

[52] Summerfield, *supra* note 23.

July 2016.[53] The platform states "[w]e must scale back the federal role in the housing market, promote responsibility on the part of borrowers and lenders, and avoid future taxpayer bailouts."[54] The Republicans desire to repeal or in some fashion limit the Dodd-Frank Act.[55] Claiming "[f]rom start-ups forgone to home loans not made, Dodd-Frank's excessive regulation and burdensome requirements have helped contribute to the slow economy we all endure today,"[56] Republicans desire to do away with the CFPB or at least subject it to the congressional appropriation process.[57] If congressional appropriation occurs, the CFPB risks becoming severely underfunded.[58] Republicans claim that the CFPB's "regulatory harassment of local and regional banks,"[59] which are key source of most residential mortgages, makes it more difficult for Americans to fulfill the American dream of owning a home.[60]

But economists are skeptical; the CFPB was created to protect consumers against predatory mortgage lending companies, and "[t]he financial system needs to be protected."[61] While Trump threatens to repeal, Republicans must proceed with caution when ripping away such a dynamic piece of legislation; evidence shows effective and optimistic results thus far.[62] The National Association of REALTORS® ("NAR") reports that "consumers remain largely optimistic about attaining the benefits of homeownership" and advocates that the CFPB "implement[s] thoughtful and effective regulation that does not unnecessarily burden the home buying process."[63] Although there are many unknowns about tomorrow, we turn now to some unprecedented

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53 Trapasso, *supra* note 19.
54 *Id.*
55 *Id.*
56 *Id.*
57 *Id.*
58 *See id.*
59 *Id.*
60 *Id.*
61 *Id.*
62 Christie Desanctis & Charles Dawson, *NAR Comments on Know Before You Owe Rulemaking*, NAT'L ASS'N OF REALTORS (Oct. 19, 2016), http://www.realtor.org/articles/nar-comments-on-know-before-you-owe-rulemaking.
63 *Id.*

changes that deserve attention.

III. REAL ESTATE BROKER AND AGENT IMPACT ANALYSIS

A. Background

The CFPB has no statutory authority over the everyday activities of real estate brokers and agents.[64] These professionals are primarily regulated at the state level.[65] The CFPB does, however, have full regulatory powers over "one of the key federal laws affecting brokers, real estate sales personnel, builders, title and escrow companies, and others who participate in home financing and closing transactions—RESPA."[66] The regulatory responsibility for RESPA, formerly managed by the Department of Housing and Urban Development ("HUD"), transferred to the CFPB as part of the Dodd-Frank Act reorganization.[67] The CFPB oversees and enforces all federal financial laws specifically protecting consumers.[68] For the real estate industry, this represents the legal safeguards residential real estate consumers rely on when obtaining a mortgage loan to purchase real property.[69] The CFPB promotes "fair, transparent, and competitive markets" for consumers.[70]

B. Key Areas of CFPB Enforcement

The two key areas where RESPA, under the CFPB, impacts real estate professionals are (1) RESPA Section 8 violations and exceptions, including the Affiliated Business Arrangements ("AFBA"); and (2) the traditional Good Faith Estimate ("GFE") and HUD-1 Settlement Documents ("HUD-1").[71] These two key areas of regulation, discussed in turn below, provide the CFPB with the power to investigate and

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[64] Harney, *supra* note 28, at 56-58.
[65] *Id.* at 56.
[66] *Id.*
[67] *Id.*
[68] *CFPB and Real Estate Agents*, MARINOSCI LAW GRP., PC AND LIBERTY TITLE & ESCROW CO., http://www.libtitle.com/Images/CFPB_and_Real_Estate_Agents.pdf (last visited Nov. 21, 2016).
[69] *Id.*
[70] *Id.*
[71] Harney, *supra* note 28, at 56-58.

develop cases against both companies and individuals working in the real estate field, "even where the targets are primarily regulated by other agencies or at the state level."[72]

RESPA, passed by Congress in 1974, originally aimed to "prevent undisclosed kickbacks and artificial price inflation by real estate agents, lenders, and title insurance companies."[73] The Dodd-Frank Act grants RESPA's rule-making authority to the CFPB; this rule-making authority includes the supervision and enforcement of RESPA compliance and regulations, as well as the ability to target real estate agencies and individual agents directly.[74] The CFPB can enforce RESPA in a variety of ways; however, real estate professionals should pay close attention to RESPA sections 8(a) and (b).[75] RESPA section 8(a) pertaining to business referrals states in pertinent part:

> [n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.[76]

A "thing of value" is defined as "any payment, advance, funds, loan service, or other consideration,"[77] and can range from concert or theme park tickets to sizable cash payments provided to a real estate licensee by, for example, a title company.[78] Due to the pro-consumer nature of CFPB regulation, analysts believe that the CFPB will become quite aggressive in enforcing the anti-kickback requirements of RESPA.[79] RESPA section 8(b) pertaining to splitting charges states in pertinent part: "[n]o person shall give and no person shall accept any

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72 *Id.* at 57.

73 MARINOSCI LAW GRP., PC AND LIBERTY TITLE & ESCROW CO, *supra* note 68.

74 *Id.*

75 *Id.*

76 12 U.S.C. § 2607(a) (2015).

77 MARINOSCI LAW GRP., PC AND LIBERTY TITLE & ESCROW CO., *supra* note 68.

78 Harney, *supra* note 28, at 57.

79 *Id.* at 57.

portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed."[80] Basically, under RESPA sections 8(a) and (b), real estate industry participants involved in a transaction with home financing or other real estate settlement service, are prohibited from giving or accepting anything of value in exchange for business.[81]

RESPA violations pose steep liabilities. Both civil and criminal liability applies to the prohibition against kickbacks and other unearned fees including: (1) civil liability to the parties affected, up to three times the amount paid for settlement services; (2) liability for costs associated with any court proceeding together with reasonable attorney's fees; and (3) a fine up to $10,000 or imprisonment for not more than one year, or both.[82] Real estate agents must be extremely cautious. This is a social profession that heavily relies on building a network of people who know, like, and trust one another. Many real estate agents rely on referrals to conduct their business. With such a close network of professionals all servicing the same real estate customers, it is no surprise that gifts of gratitude are socially desirable. If, however, a lender, law firm, title company, or other real estate service provider offers a real estate agent anything of value for the referral of business, a RESPA violation has occurred.[83] The threshold is receiving anything of value above and beyond earned brokerage commission for referrals of settlement transactions.[84]

With such broad liability, avoiding RESPA violations is a hot topic in the real estate industry. Importantly, there are a few noteworthy exceptions. First, section 8(c)(2) pertaining to fees, salaries, compensation, or other payments states in pertinent part: "[n]othing in this section shall be construed as prohibiting . . . (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually

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[80] 12 U.S.C. § 2607(b) (2015).

[81] MARINOSCI LAW GRP., PC AND LIBERTY TITLE & ESCROW CO., *supra* note 68.

[82] *Id.*

[83] *Id.*

[84] *Id.*

performed."[85] In addition, section 8(c)(3) permits "payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers."[86] This means that real estate professionals may continue to pay referral fees to other licensed real estate professionals, an accepted practice for decades. Second, section 8(c) provides an AFBA exemption so long as the consumer receives a written disclosure either at the time of the loan application, with the GFE, or at the time of the referral, specifying the nature of the relationship and the estimated charge or range of charges generally made by the provider.[87] Such a disclosure must clearly and unambiguously discern that the consumer is not required to use the referral company.[88] Beyond the impact of the CPFB enforcement, there are additional practical considerations that directly impact the daily practice of real estate agents.

C. Impact on Real Estate Broker and Licensee Closing Experience

The United States of America "is founded on the principle of equal opportunity: that each of us [have] 'inalienable rights' to 'life, liberty, and the pursuit of happiness.'"[89] Whether they realize it or not, real estate professionals are on the frontline day in and day out supporting this fundamental principle of our country, and are a "trusted resource[] for people choosing to buy a home."[90] The role of real estate professionals in society is critical and requires an elevated level of professionalism, skill, care, and diligence.[91] The new federal regulations are designed to support real estate professionals in providing seamless, transparent, and timely services to buyers and sellers of

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[85] 12 U.S.C. § 2607(c)(2) (2015).
[86] *See id.*
[87] *See id.*
[88] MARINOSCI LAW GRP., PC AND LIBERTY TITLE & ESCROW CO., *supra* note 68.
[89] Richard Cordray, *Prepared Remarks by Richard Cordray at the Corporation for Enterprise Development Conference*, CONSUMER FIN. PROT. BUREAU (Sept. 20, 2012), http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-by-richard-cordray-at-the-corporation-for-enterprise-development-conference/.
[90] *Know Before You Owe: The real estate professional's guide*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/policy-compliance/know-you-owe-mortgages/ real-estate-professionals/ (last visited Nov. 21, 2016).
[91] *See id.*

residential real estate.[92]

On November 21, 2013, the CFPB issued a final rule integrating disclosures and regulations required by RESPA and TILA resulting in what is known today as the KBYO initiative.[93] KBYO, implemented on October 3, 2015, integrates existing disclosures with the new Dodd-Frank Act requirements to "improve consumer understanding of the mortgage process, aid in comparison shopping, and help to prevent surprises at the closing table."[94] Significantly for real estate professionals, KBYO changes the home buying experience for consumers, and in effect impacts the work of real estate professionals.[95] With all this change, opportunities are endless for real estate professionals to differentiate themselves with knowledge, skill, and compliant practice. Mortgages are complex, confusing, and in many cases intimidating. KBYO primarily does two things: "(1) [i]t simplifies and consolidates some of the required loan disclosures, and (2) [i]t changes the timing of some activities in the mortgage process."[96] For instance, KBYO may impact the closing time frame of a residential real estate transaction.[97]

The Loan Estimate replaces the GFE and initial TILA disclosures, must be delivered to the consumer at least seven days before closing, and must be delivered within three days of loan application submission.[98] Title insurance must be disclosed as optional unless the lender requires the insurance as a condition of the loan.[99] If a borrower refuses title insurance, the lender cannot include it on the Loan Estimate.[100] The Closing Disclosure replaces the HUD-1 and final TILA disclosure, and must be delivered to the consumer at least three

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92 *Id.*
93 NAT'L ASS'N OF REALTORS, *supra* note 48.
94 *Id.*
95 CONSUMER FIN. PROT. BUREAU, *supra* note 90.
96 *Id.*
97 OLD REPUBLIC TITLE, *supra* note 44.
98 NAT'L ASS'N OF REALTORS, *supra* note 36.
99 *Your home loan toolkit, A step-by-step guide*, CONSUMER FIN. PROT. BUREAU 1, 17 (Aug. 2015), http://files.consumerfinance.gov/f/201503_cfpb_your-home-loan-toolkit-web.pdf.
100 *Id.*

business days prior to the date of the closing.[101] Importantly, closings now take a minimum of ten days and last minute changes must be kept to clerical in nature; otherwise, the closing may be postponed.[102] "A waiting period of 3 additional business-days applies when changes to the Closing Disclosure result in: (1) [a]n increase to the APR that becomes inaccurate by more than 1/8th of a point, (2) [t]he addition of a Prepayment Penalty, or (3) [t]he change of a loan product."[103] It is very important that real estate agents pay close attention to their client's contractual obligations because a delay in closing can create a breach of contract, potentially causing consumers to lose their deposit or even worse, lose their opportunity to close on the purchase of their home.[104] The time of three-day closings are long gone. Important to real estate agents is that closings may now realistically fall within a forty-five to sixty-day time frame; thirty-day closings may no longer be realistic when a consumer mortgage is required.[105] As such, real estate agents must be mindful of this during negotiations, and this must be properly reflected in the contract for sale and purchase.

Another hot topic with the Closing Disclosure is the fact that the lender, not the closing agent, typically prepares and delivers the Closing Disclosure.[106] As previously indicated, the Closing Disclosure must be delivered to the consumer at least three business days prior to the scheduled closing date.[107] In order to meet the closing delivery requirement, the closing agent must provide the lender appropriate information approximately ten to fourteen days prior to the closing, including the real estate company's state license number and the real estate agent's individual real estate license number.[108] Therefore, it is the responsibility of the real estate agent to manage effective

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[101] NAT'L ASS'N OF REALTORS, *supra* note 36, at 3.
[102] *Id.*
[103] *Id.*
[104] *See, e.g., If the Seller of a Home Cannot Close on the Agreed-Upon Date, is This Breach of Contract and What Recourse Does the Buyer Have?*, FREE ADVICE LEGAL (Apr. 19, 2017), http://real-estate-law.freeadvice.com/real-estate-law/buy_sell_ a_ home/seller-of-home-does-not-close-on-time.htm.
[105] OLD REPUBLIC TITLE, *supra* note 44.
[106] *Id.*
[107] NAT'L ASS'N OF REALTORS, *supra* note 36, at 3.
[108] OLD REPUBLIC TITLE, *supra* note 44.

communication with the closing agent, lender, cooperating broker (if applicable), the client, and all other parties participating in the real estate transaction.[109] This ripple effect demands extremely detail-oriented real estate professionals who maximize their communication and organizational skills to keep all parties moving forward in a timely fashion.

Importantly, the Closing Disclosure sent to the consumer is not always sent to the seller's side of the transaction.[110] The closing agent is the responsible party for providing the seller's side of the Closing Disclosure and may, at the closing agent's discretion, prepare a separate Closing Disclosure for the seller.[111] In addition, real estate agents rarely receive an advance copy of the Closing Disclosure prior to delivery to the consumer.[112] This is a key change from pre-CFPB regulation.[113] Now, more often than not, lenders send the Closing Disclosure to the closing agent and consumer simultaneously and refrain from sending a copy to the real estate agent.[114] Many lenders "refus[e] to share the Closing Disclosure with real estate professionals citing potential privacy violations of the *Gramm-Leach-Bliley Act* ("GLBA") or Regulation P."[115] This is an inconvenient disservice to consumers because consumers respect the professional, skilled, and informative opinions of their trusted real estate professional and time is of the essence in most real estate transactions.

Consumers have reported that the KBYO mortgage initiative "makes it easier to focus on what is important."[116] In addition, the new design and narrative make the loan details and costs much easier to understand, providing consumers with the opportunity to identify errors

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[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *NAR Issue Brief, CFPB Makes Clear Lender's Present Ability to Share CD*, NAT'L ASS'N. OF REALTORS, http://www.narfocus.com/billdatabase/ clientfiles/172/19/2721 .pdf (last visited Nov. 22, 2016).
[116] CONSUMER FIN. PROT. BUREAU, *supra* note 90.

or concerns easily.[117] At the most basic level, real estate agents must be able to talk their clients through the KBYO forms and must also manage timely closings consistent with the new regulatory time constraints.[118] Real estate agents should anticipate and recognize that a fallout of clients inevitably will occur due to the more stringent mortgage underwriting requirements. By knowing the rules, proactively anticipating and preparing in compliance with the new transactional process, and taking an educational and informative approach with clients, real estate agents will continue to grow their sphere of influence including loyal, repeat consumers. Lastly, real estate agents should continuously network and meet with their mortgage and closing partners and keep abreast of how the CFPB impacts their businesses. Keeping a clear line of communication open ensures seamless, smooth, and timely closings for valued consumers.

D. KBYO Program Enhancements

As with any new rule or regulation, growing pains and unanticipated challenges arise and need attention. Robert F. Kennedy once said, "[t]he challenge of politics and public service is to discover what is interfering with justice and dignity for the individual here and now, and then to decide swiftly upon the appropriate remedies."[119] Working as a real estate professional is a rewarding yet daunting task. On the one hand, real estate professionals are rewarded with helping others acquire their dreams, and naturally, are simultaneously rewarded with making a living. On the other hand, real estate professionals face new challenges hindering the delivery of exceptional service to their clients. For instance, the new regulations sometimes cause closing delays and even closing cancellations; as a result, all parties to the real estate transaction suffer.[120] Real estate agents equipped with knowledge mitigate closing delays by properly communicating between parties and ensuring transactional safeguards are put into place, such as, properly accounting for a forty-five to sixty-day closing instead of the traditional

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[117] *Id.*
[118] *Id.*
[119] Corday, *supra* note 89.
[120] FLA. STAT. § 475.05 (2016)

thirty days or less when a consumer mortgage is required.[121]

On July 29, 2016, the CFPB announced a proposed rule amending KBYO.[122] In the rule amendment proposal, the "CFPB addressed lenders' reluctance to share the new Closing Disclosure with real estate professionals out of fear of liability for disclosing clients' nonpublic personal information."[123] A key disruption to real estate closings is a lender's refusal to share the Closing Disclosure with real estate professionals.[124] On October 18, 2016, NAR sent a letter to the CFPB commenting on its recent proposed rule amending KBYO regulation.[125] NAR alleged that "while KBYO has resulted in more transparency for consumers and increased accountability of financial institutions, ongoing compliance issues remain, costing time and money for consumers and the industry."[126] As a result, NAR urged the CFPB to:

> (1) emphasize that lenders and title agents should share the [Closing Disclosure] with real estate agents, in accordance with existing privacy law and regulation; (2) ensure lenders are able to revise the Closing Disclosure to reflect valid changes in circumstances; (3) extend post-consummation timeliness to correct minor KBYO errors; and (4) implement additional modifications to decrease consumer and industry uncertainty.[127]

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[121] Paul Takahashi, *Heads up Realtors: New mortgage lending rules will likely delay home closings*, HOUSTON BUS. J., http://www.bizjournals.com/houston/morning_call/2015/06/heads-up-realtors-new-mortgage-lending-rules-will.html (last visited April 10, 2017).

[122] *NAR Issue Brief, CFPB Makes Clear Lender's Present Ability to Share CD*, NAT'L ASS'N. OF REALTORS, http://www.narfocus.com/billdatabase/clientfiles/172/19/2721.pdf (last visited Nov. 22, 2016).

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] Christie Desanctis & Charles Dawson, *supra* note 62.

[127] Tom Salomone, *Letter to the Honorable Richard Cordray, Director of the Consumer Financial Protection Bureau*, NAT'L ASS'N. OF REALTORS (Nov. 22, 2016), http://www.narfocus.com/billdatabase/clientfiles/172/3/2761.pdf.

As advocated by NAR, the CFPB pointed out that GLBA already permits the sharing of the Closing Disclosure with real estate professionals.[128] Specifically, 12 C.F.R. § 1016.14(b)(2)(iii) states, "[r]estrictions on non-disclosure by financial institutions do not apply when the information is shared: [t]o provide a confirmation, statement, or other record of the transaction, or information on the status of the financial service or financial product to the consumer or the consumer's agent or broker."[129] The CFPB clarified that the Closing Disclosure is a "record of the transaction" that addresses the consumer credit as well as the appropriate real estate portions of the residential real estate transaction.[130] On July 7, 2017, the CFPB finalized updates to the KBYO mortgage disclosure rule "with amendments that are intended to formalize guidance in the rule, and provide greater clarity and certainty."[131] The final rule clarifies and confirms that the Closing Disclosure may be shared with third parties—a victory for real estate professionals nationwide.[132]

However, even though the CFPB formally addressed concerns of privacy and the ability to share Closing Disclosures with third parties, real estate professionals continue to experience disruption in servicing their clients.[133] Title companies and closing companies are not consistent with the Closing Disclosure implementation.[134] "In a survey of REALTOR® members conducted by NAR's Research Division, . . . [a]pproximately 29.8 percent [of] respondents reported lingering issues with gaining access to the [Closing Disclosure], despite the CFPB's recent final rule."[135] Additional disruption occurs when revised Closing Disclosures are required due to the fluctuating costs associated with the consumer loan closing.[136] Further, the CFPB amendments are proposed

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[128] NAT'L ASS'N. OF REALTORS, *supra* note 122.
[129] *Id.*
[130] *Id.*
[131] *CFPB Finalizes Updates to "Know Before You Owe" Mortgage Disclosure*, CONSUMER FIN. PROT. BUREAU (July 7, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-updates-know-you-owe-mortgage-disclosure/.
[132] *Id.*
[133] *NAR Comments on CFPB Black Hole Fix*, NAT'L ASS'N OF REALTORS® 1-2 (October 11, 2017), http://narfocus.com/billdatabase/clientfiles/172/3/2999.pdf.
[134] *Id.* at 2.
[135] *Id.*
[136] *Id.*

to address how creditors may use a Closing Disclosure to reflect the changes in costs imposed on consumers.[137] NAR advocates for increased lender flexibility to reissue Closing Disclosures to third parties when revised Closing Disclosures are necessary.[138] "Should the proposed rule be adopted, lenders, real estate professionals, and consumers, will benefit from the ability to reset tolerances for a valid reason falling within the existing regulations with a revised [Closing Disclosure] without causing settlement delays."[139] While the CFPB impact on real estate professionals is important, the CFPB impact on consumers stands at the heart of this new legislation.

IV. CONSUMER IMPACT ANALYSIS

A. Background

For many Americans, homeownership begins as a dream.[140] Flashback to early 2000, consumers were literally hand-fed mortgage loans on a silver platter.[141] The financial circumstances and stability of individual consumers seeking a home loan became an afterthought as financial institutions rushed to lend money so that they could benefit from selling bundled loans on the secondary market.[142] Financial institutions arguably offered a loan for every consumer, regardless of their financial situation.[143] "Homeownership expanded markedly as access to subprime loans and other factors made it much easier for lower-income families to purchase a home of their own."[144] There was

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[137] CONSUMER FIN. PROT. BUREAU, *supra* note 131.

[138] NAT'L ASS'N. OF REALTORS, *supra* note 133 at 1-2.

[139] *Id.* at 2.

[140] *American Homebuyers By the Numbers,* STATESMAN (May 21, 2017), http://www.statesman.com/business/consumer-advice/american-homebuyers-the-numbers-infographic/aMFfB9iWWEAht9E4ZkhvoN/.

[141] Barry Ritholtz, *It Shouldn't Hurt This Much to Get a Mortgage*, BLOOMBERG VIEW, https://www.bloomberg.com/view/articles/2014-10-24/it-shouldn-t-hurt-this-much-to-get-a-mortgage (last visited April 10, 2017).

[142] Brandon Cornett, *Subprime Mortgage Lenders – Past, Present and Future?* HOME BUYING INST., http://www.homebuyinginstitute.com/mortgage-types-25.php (last visit May 21, 2017).

[143] *Ritholtz*, *supra* note 141.

[144] G. Thomas Kingsley, Robin Smith, and David Price, *The Impacts of Foreclosures On Families and Communities*, THE URBAN INST., May 2009, at 1.

a frenzy of fast lending to make a fast buck—billions of fast bucks—and then "it all fell apart."[145] Millions of Americans suffered and are still suffering from the foreclosure crisis.[146] The effect of the unprecedented number of residential foreclosures ripples far beyond the realm of economics and the resulting social consequences to foreclosed upon families are severe.[147] It is vital that consumers never forget the fact that millions of families forcibly relinquished their sacred homes, desired neighborhoods, and cherished communities due to foreclosure. Furthermore, after suffering a foreclosure, many families are unable to re-enter the market as owner-occupants, but rather seek rental housing, attempt to live with friends or family members, seek subsidized housing arrangements, or become homeless.[148] The "rampant foreclosure problem [poses] serious repercussions not only for individual families, but also for communities across the country."[149]

Prior to CFPB regulation, home buyers purchasing a residential property with a mortgage loan essentially received four different disclosure forms in four very different and distinct formats, and in some cases with hundreds of pages to review at the time of closing.[150] Due to the pure volume of real estate closings, home buyers were rushed at the closing table and often became contractually liable to mortgage terms they could neither understand nor afford.[151] Too often, home buyers would purchase their property with very little (if any) knowledge about the mortgage loan and most importantly, how the mortgage loan would

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[145] *Id.*

[146] Robert Hennelly, *America's Foreclosure Crisis Isn't Over*, CBS MONEY WATCH, http://www.cbsnews.com/news/americas-foreclosure-crisis-isnt-over/ (last visited May 21, 2017).

[147] *See generally supra* note 136, at 19.

[148] *Id.*

[149] U.S Senator, Dianne Feinstein, *Mortgage Fraud and America's Foreclosure Crisis, How to Protect the American Dream of Home Ownership*, http://www.feinstein.senate.gov/public/index.cfm?a=Files.Serve&File_id=3b152e79-bc45-48e3-8692-ad9c80c21ca8&SK=0C8380A3AC716A7F84E1D44142357089 (last visited Nov. 20, 2016).

[150] *See* 12 C.F.R. § 1026 (2014).

[151] *Foreclosure Crisis*, INVESTOPEDIA, http://www.investopedia.com/ terms/f/foreclosure-crisis.asp?lgl=myfinance-layout (last visited May 21, 2017).

impact their financial and social future.[152] In many cases, home buyers became so swept away by the excitement and glamour of homeownership that they failed to recognize or appreciate the ability to properly shop around; as a result, major contractual obligations arose based on uninformed decisions.[153] Countless consumers caught up in the crave for homeownership blindly signed frustrating and confusing documents, dismissed the unknown, and willingly contracted their future financial stability away.

Subprime lending practices played a major part in the crisis.[154] "These practices include extending loans to people with less-than-optimal credit histories, and burdening them with loans that look good on the surface—but carry hidden costs and skyrocketing interest rates."[155] The CFPB "write[s] and enforces rules to protect consumers,"[156] and provides several tools and resources to assist consumers in making informed financial decisions.[157]

Buying a home is the single largest investment most people ever make in their lifetime.[158] Many home purchasers require a mortgage loan to make the dream of homeownership a reality.[159] The CFPB federal regulation is designed in such a way that prospective home buyers understand the terms of a mortgage loan, compare loans from different lenders, and in effect, make informed decisions regarding their chosen mortgage loan minimizing the risk of potential foreclosure and loss of homeownership.[160]

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[152] *Sub-Prime Loan Foreclosure Crisis*, SAFEGUARD PROPERTIES, http://www.safeguardproperties.com/News/All_Client_Alerts/2007/05/Sub-Prime_Loan_Foreclosure_Crisis.aspx (last visited May 21, 2017).

[153] *Id.*

[154] *Feinstein, supra* note 149.

[155] *Id.*

[156] *Owing a Home: Tools and resources for homebuyers*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/owning-a-home/ (last visited Nov. 20, 2016).

[157] *Id.*

[158] *See* Trapasso, s*upra* note 19.

[159] *See* Ann Carrns, *Not Carrying A Mortgage*, N.Y. TIMES, January 19, 2013, at B4.

[160] *See* Ken Harney, *The Consumer Financial Protection Bureau*, 14-HOUR REAL ESTATE CONTINUING EDUC. COURSE EDITION 15.2, BERT RODGERS SCH. OF REAL

In the process of purchasing a residential property, consumers receive required disclosure forms.[161] The CFPB has essentially consolidated four disclosure forms into two. The Loan Estimate and Closing Disclosure now replaces the former GFE, initial Truth-in-Lending Disclosure, HUD-1, and final Truth-in-Lending Disclosure forms, known today as TRID.[162]

B. Impact on Consumer Closing Experience

The CFPB takes a practical approach to recovery from the devastating Great Recession. Checklists may sound tedious, however, they are an extremely helpful tool for consumers. Time is of the essence in most real estate transactions and consumers, just like real estate professionals, must stay on top of their contractual deadlines and comply with regulatory time restraints to ensure a smooth, seamless, and timely closing.[163] While savvy residential home consumers do exist, statistics show that a vast majority of these consumers need a hand-holding approach when purchasing what is likely the largest investment made in their lifetime.[164] Even savvy buyers should not underestimate the importance of simple checklists, especially because real estate transactions are at risk of so many minute yet significant errors.

In a typical real estate transaction, after applying for a loan, lenders provide consumers with the first required disclosure, the Loan Estimate, by hand or by mail, within three business days of receiving the loan application.[165] As indicated above, the Loan Estimate replaces two previously utilized forms—the GFE and the Truth-in-Lending Disclosure—that supplied loan information in different formats; these different formats frequently confused consumers.[166] The Loan Estimate

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ESTATE, INC. 1, 54, 57 (2015).

[161] NAT'L ASS'N OF REALTORS, *supra* note 36.

[162] *Id.*

[163] *See* Jay Romano, *Your Home; When Time Is a Factor In a Sale*, N.Y. TIMES (Sep. 21, 2003), http://www.nytimes.com/2003/09/21/realestate/your-home-when-time-is-a-factor-in-a-sale.html

[164] *See* Trapasso s*upra* note 19.

[165] NAT'L ASS'N OF REALTORS, *supra* note 36.

[166] *Id.*

format makes it easy for consumers to understand the terms of the offered mortgage loan and highlights the most important mortgage information: the interest rate, monthly payment, and total closing costs.[167] This new format provides consumers with a clear and simple approach enabling the comparison of different potential mortgage loans offered by different lenders. Other important information disclosed on the Loan Estimate includes the cost of taxes and insurance and how the interest rates and payments may change in the future.[168] Therefore, consumers readily determine the affordability of the mortgage loan and the home—not only today, but also in the future.[169] Consumers may also identify critical features in need of avoidance, such as penalties for paying off the loan early or increases to the mortgage loan balance even if payments are made on time.[170]

Once the consumer has chosen a loan, found their dream home, signed a contract, and set the closing date, the second required disclosure under the Dodd-Frank Act is the Closing Disclosure.[171] Consumers must receive the Closing Disclosure at least three business days prior to the closing of the loan and must unambiguously communicate a list of all the actual costs paid for the mortgage and any additional costs that changed at the closing table.[172] The Closing Disclosure format and language must mirror the Loan Estimate disclosure.[173] Consistency in format and language is key in ensuring an easy comparison of numbers and in ensuring that consumers experience no surprises at the actual closing. Like the Loan Estimate, the Closing Disclosure replaces two previously utilized forms: the HUD-1 and Final Truth-in-Lending Disclosure, which often times confused consumers.[174] Importantly, revising the Closing Disclosure for any of the following three reasons may result in a delay of closing.[175] "A

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[167] *See Loan Estimate Explainer*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/owning-a-home/loan-estimate/ (last visited Nov. 20, 2016).

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] NAT'L ASS'N OF REALTORS, *supra* note 36.

[172] *Id.*

[173] Harney, *supra* note 28, at 58.

[174] NAT'L ASS'N OF REALTORS, *supra* note 36, at 2-3.

[175] *Id.*

waiting period of 3 additional business-days applies when changes to the Closing Disclosure result in: (1) [a]n increase to the APR that becomes inaccurate by more than 1/8th of a point, (2) [t]he addition of a Prepayment Penalty, or (3) [t]he change of a loan product."[176] It is very important that consumers pay close attention to their contractual obligations because a delay in closing can create a breach of contract, potentially causing a consumer to lose their deposit or even worse, lose their opportunity to close on the purchase of their home.[177] And finally, at the closing, the seller conveys the property by signing a deed over to the buyer, and the buyer signs the new mortgage and various other applicable closing documents.[178]

Some consumers believe that the high-level goals of the CFPB sound great in theory, nevertheless, question how these regulations affect them personally.[179] The CFPB promotes impressive user-friendly tools online to assist consumers in their quests for homeownership and recommends four key steps prior to making an offer on a home: (1) prepare to shop; (2) explore loan choices; (3) compare loan offers; and (4) get ready to close.[180] The CFPB asserts that "[c]hoosing the right home loan is just as important as choosing the right home."[181] CFPB tools and resources are provided so that consumers may "know what to expect—and what questions to ask—every step of the way."[182] During the "prepare to shop" step, the CFPB suggests several action steps such as: checking credit rating; assessing spending capability; making a budget; determining the affordable amount of a down payment; deciding on a desired amount to spend; considering whether the time is right to purchase a home; building a network of advisors; and creating a loan application packet.[183] During the "explore loan choices" step, the CFPB suggests several action steps such as: recognizing and understanding the different kinds of loans available; acquiring

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176 *Id.*

177 Romano, *supra* note 162.

178 *Owning a Home: Tools and resources for homebuyers*, CONSUMER FIN. PROT. BUREAU, http://www.consumerfinance.gov/owning-a-home/ (last visit Nov. 20, 2016).

179 *See* Trapasso s*upra* note 19.

180 CONSUMER FIN. PROT. BUREAU, *supra* note 177.

181 *Id.*

182 *Id.*

183 *Id.*

knowledge about loan costs; contacting several lenders; gathering and updating required personal paperwork needed for the loan; obtaining a prequalification or preapproval letter; selecting a loan that aligns with home purchase goals; and the fun part, finding the perfect home![184] During the third step of "comparing loan offers," the CFPB suggests several action steps such as: requesting loan estimates from several lenders; reviewing and comparing the loan estimates; fine-tuning the details of the loan offers; and selecting an appropriate loan offer for future reference.[185] Last, but certainly not least, during the fourth and final step of "getting ready to close," the CFPB suggests the following action steps: submitting required documents and answering all outstanding inquiries from the lender; scheduling a home inspection; shopping for and obtaining homeowner's insurance; reviewing revised loan estimates if applicable; shopping for title insurance and other closing services as may be required by the executed contract for sale and purchase agreement; closing the deal; and saving a neatly organized file of all closing documents.[186] To some, these detailed action steps may seem elementary; however, history evidences that many, if not most, consumers need education regarding the contract and purchase of their most valuable asset—their home![187]

Savvy mortgage borrowers know that the closing on the purchase of a residential home is a big deal—it is the moment a borrower commits to up to thirty years of mortgage payments and debt.[188] It is critical that consumers prepare for closings in advance so that they are confident and informed on the day of closing.[189] Informed borrowers pay close attention to the details of the closing to ensure the documents they are signing are in fact what they agreed to.[190] Savvy borrowers adopt a "no rush" policy and prohibit pushy closing agents from expediting the closing process.[191] Closing on the purchase of a home

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[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] Elijah M. Alper, Notes, *Opportunistic Informal Bankruptcy: How BAPCPA May Fail To Make Wealthy Debtors Pay Up*, 107 COLUM. L. REV. 1908, 1917 (2007).
[188] *See Id.*
[189] *See Id.*
[190] *See Id.*
[191] *See Id.*

and mortgage is one of the most significant financial commitments of a consumer's lifetime.[192] Consumers now have all the tools in place to make intelligent and informed decisions, and therefore, so does America's new government.

V. CONCLUSION

Under the leadership of America's new commander in chief, dismissal and denial of the historic Great Recession, which resulted in an unprecedented number of mortgage defaults, loan foreclosures, and home losses, would be catastrophic. Failure to stay apprised of the sizable acquired knowledge and effective systems put into place is unacceptable. The new administration is making bold promises that could dramatically impact, and ultimately limit, the federal government's role in the real estate market.[193] As mentioned above, NAR advocates "that the CFPB implement[ed] thoughtful and effective regulation that does not unnecessarily burden the home buying process."[194] Furthermore, NAR reports that "consumers remain largely optimistic about attaining the benefits of homeownership . . . ."[195] While there are still many unknowns, home purchasers who struggle to save for hefty home mortgage down payments may stand to benefit from the Trump administration.[196] President Trump has committed to cut taxes and decrease the number of tax brackets from seven to three.[197] Some economists and real estate professionals believe that in theory, this could position home buyers with more cash to spend on the home of their dreams.[198] However, real estate analysts are quick to acknowledge that some Republican reform proposals could force home buyers to pay larger down payments or pay higher interest rates.[199]

While the execution of CFPB regulation has not been flawless, considering the scope and magnitude of coverage, the implementation is

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192 *See Id.*
193 Trapasso, *supra* note 19.
194 Christie Desanctis & Charles Dawson, *supra* note 62.
195 *Id.*
196 Trapasso, *supra* note 19.
197 *Id.*
198 *Id.*
199 *Id.*

arguably quite impressive; the Dodd-Frank Act totaled 2,314 pages.[200] NAR reports that the CFPB website is grossly underutilized, which is unfortunate.[201] In fact, in a recent survey of REALTORS® a meager 3.3% of respondents reported clients utilized the CFPB website during their real estate transaction.[202] As with any new regulation, the KBYO rules have received mixed reviews.[203] The biggest complaint appears to be the lack of communication between the lenders and the real estate professionals who are working hard to ensure a smooth, seamless, and timely closing for their clients.[204] This lack of communication hinders the relationships between real estate professionals and their clients.[205] One REALTOR® provided, "[i]n my opinion the TRID guidelines have reduced the communication between lenders and realtors and it feels like a push to keep us out of the process[,]" while another shared "[w]e are all creatures of habit and hate changes.[206] Once I had about [three] closings under TRID, it all was like my first closing [thirteen] years ago. I don't see a problem now. . . ."[207] KBYO, one of the most comprehensive reforms to the mortgage disclosure process, continues to evolve as proposed amendments continue to surface. While some progress has been made, industry experts state that consistency amongst all closing companies is needed to ensure optimal results and to preserve the positive home buying experience for future homeowners.[208] NAR promotes transparent and efficient regulations to ensure a seamless home buying experience for consumers.[209] With the latest regulatory discussions supporting reduced ambiguities and increased flexibility regarding how lenders and title agents can manage and share the Closing Disclosure with real estate agents, NAR and real estate professionals look forward to receiving further enhancements to

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[200] Summerfield, *supra* note 23.

[201] *TRID: A Year Later*, THE NAT'L ASS'N OF REALTORS: RESEARCH DIV. (Oct. 2016), http://www.realtor.org/reports/realtors-and-the-new-closing-process-survey.

[202] *Id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

[206] *Id.*

[207] NAT'L ASS'N OF REALTORS, *supra* note 200.

[208] NAT'L ASS'N OF REALTORS, *supra* note 133 at 4.

[209] *Id.* at 1.

the existing legislation.[210]

Aside from the extraordinary progress that is underway, President Trump's Financial Services Team alleges that Dodd-Frank Act is a "sprawling and complex piece of legislation that has unleashed hundreds of new rules and several new bureaucratic agencies."[211] In addition, President Trump's Financial Services Team contends that "Dodd-Frank economy does not work for working people, [and that] bureaucratic red tape and Washington mandates are not the answer."[212] As a result, the Financial Services Team is expected to dismantle the Dodd-Frank Act and "replace it with new policies to encourage economic growth and job creation."[213] Analysts speculate that if the proposed dismantling provides easier means for banks to lend money to average Americans, increased buyer pool and increased home prices could result.[214] Analysts caution that if regulations are dismantled too far, America could be faced with another devastating housing bubble.[215]

The prestige of homeownership is truly special and unique. The CFPB prides itself on enforcing rules to protect consumers as well as providing free, user-friendly tools and resources online to assist consumers in making sound financial decisions.[216] Both real estate professionals and consumers should take advantage of these tools and resources, which are the result of the historical Great Recession of 2007–2009. The changes brought by the CFPB's KBYO rules remain positive for consumers, mortgage lenders, real estate brokers, and title companies.[217] The CFPB simplifies a very complex series of regulations to a level easily understood by residential real estate

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[210] *Id.* at 1-2, 4.
[211] *Financial Services*, PRESIDENT ELECT, DONALD TRUMP, https://www.greatagain.gov/policy/financial-services.html (last visited Nov. 20, 2016).
[212] *Id.*
[213] *Id.*
[214] Samantha Sharf, *How President Trump Could Affect The Value Of Your Home*, FORBES (Nov. 15, 2016, 9:27 AM), http://www.forbes.com/sites/samanthasharf/2016/11/15/how-president-trump-could-affect-the-value-of-your-home/#23b45c9e5796.
[215] *Id.*
[216] CONSUMER FIN. PROT. BUREAU, *supra* note 99, at 1.
[217] NAT'L ASS'N OF REALTORS, *supra* note 200.

professionals and consumers. It is highly recommended that residential real estate professionals and consumers take advantage of the countless number of helpful tools and resources available via http://www.consumerfinance.gov/owning-a-home/.[218] It is remarkable for a federal agency to provide hands-on support of this magnitude. While some believe that this is an overreach of governmental power, it is undeniable that such credible resources are beneficial.[219]

[218] CONSUMER FIN. PROT. BUREAU, *supra* note 90.
[219] Trapasso, *supra* note 53.