



PRESERVING FAIR STANDARDS FOR COMMUNITY LENDERS

Loan Originator Compensation Truth in Lending Act (Regulation Z); Loan Originator Compensation 12 CFR 1026

October 16, 2012

The Honorable Richard Cordray
Director, Consumer Financial Protection Bureau
1801 L Street, NW
Washington, DC 20036

Dear Director Cordray:

Thank you for the opportunity for the Community Mortgage Lenders of America to provide you with Public Comment to 12 CFR 1026; Truth in Lending Act (Regulation Z) Loan Originator Compensation; Proposed Rule.

The Community Mortgage Lenders of America (CMLA) was founded out of concern that emerging federal policies threaten to severely diminish community based lending, while increasing concentration among the nation's largest financial institutions, to the detriment of competition and consumers. CMLA members include community banks and non-banks who survived the mortgage crisis because of close attention to prudent and traditional underwriting standards with a strong commitment to sound lending.

With regard to the following:

Section 1026.25 – Record Retention

CMLA Comment: We concur with the CFPB's proposals under Section 1026.25(c) (2) and (3) extending record retention requirements from two to **three years** (versus five) with the exception of the following:

Proposals under the "*Clarification of the types of compensation-related records that are required to be maintained under the Rule.*"

Though the CMLA concurs with the overall record retention requirement, in order to comply with the rule, systems and technology will need to be modified to automate the proposed required documentation retention requirements AND the new disclosure requirements. The majority of independent mortgage lenders (depository and non-depository) are dependent upon third-party service providers for their origination and operation activities to include: a.) modification of initial disclosures including TILA and RESPA related documents, as well as b.) automated loan pricing engines that determine loan pricing to the consumer. It is the belief of the CMLA that sufficient time for these providers to modify their systems is required for adherence to these proposed changes – we believe one year allows for such system changes.

With regard to the following:

Section 1026.36 – Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling (i.e., Loan Originator, Mortgage Broker and Compensation)

Subsection 1036(a) (1) – Arranges, Negotiates, or Otherwise Obtains - Definition

CMLA Comment: We consider the definition of a mortgage originator to be excessively broad in as much as the current definition would include individuals that are not necessarily mortgage loan originators. We propose the following modification to your proposed definitions:

“takes an application, arranges, offers, negotiates, or otherwise obtains an extension of consumer credit for another person” includes “assists a consumer in obtaining or applying for consumer credit by advising on credit terms (including rates, fees, and other costs), ~~preparing application packages (such as a loan or pre-approval application or supporting documentation), or collecting information on behalf of the consumer to submit to a loan originator or creditor,~~ and includes a person who advertises or communicates to the public that such person can or will provide any of these services or activities.”

Subsection 1026.36(a)-5.iii Exclusions from Compensation

CMLA Comment: We concur that “compensation” should exclude payment from the consumer or from a person other than the consumer to the loan originator. This specifically excludes payment for services customarily provided by third party providers, for certain services other than core loan origination services including, but are not limited to, title insurance or appraisal, as long as those services is bona fide and reasonable.

We recommend that ancillary services be listed on the GFE and TILA as the service and fee the loan originator must pay on behalf of the consumer (e.g., Credit Report, Title Fees, Escrow Fees, Appraisal, etc.) and continue to be disclosed on separate lines on the HUD-1.

Subsection 1026.36(a)-5.iv Exclusions from Compensation

CMLA Comment: The CMLA supports the proposed comment and clarifications that bona fide returns or dividends paid on stocks or other equity holdings, including those paid to loan originators who own such stock or equity interests, are not considered compensation for purposes of § 1026.36(d) and (e).

Proxy for Loan Terms

CMLA Comment: We concur with the elimination of credit score as a proxy for transaction terms.

We also believe that geographic location is should be eliminated as a proxy. The primary factor to be considered includes the differentials in housing costs between different geographic locations, and thus the balance of the underlying note.

Compensation Based on Terms of Multiple Individual Loan Originators’ Transactions

CMLA Comment: Regarding the loan originator’s ability to participate in IRS qualified defined benefit, defined contribution, 401(k), profit sharing plans, etc. (“Qualified Plans”). It is our position that the IRS’s governing rules and regulations regarding the qualification of an organization’s plan should remain the defining characteristic as to whether or not an employee, including loan originators, should be eligible to participate in Qualified Plans. Our basis of this recommendation relates to the fact that these plans and any employer’s contributions are substantially regulated and has little to do with multiple transactions and more to do with the organization’s willingness to supplement their employee’s

long term retirement. Furthermore, any exclusion of a class of employee from a Qualified Plan appears to be a direct violation of the IRS's basis for determining the status of qualification under the agency's rules and regulations.

Regarding non-qualified bonus plans, the CMLA stands firm on the belief that periodic bonuses to loan originators should be based upon non-transactional standards not the terms of the loan. Examples of acceptable parameters such as volume, long-term performance, quality of loan submitted, operational performance, pull-through, percentage of purchase vs. refinance transactions and employee tenure should all be clearly defined as acceptable by the CFPB.

Regarding the Bright Line Rules and the De Minimus Tests, the CMLA believes these are discriminatory against the small mortgage lender and favors the large banks that have alternate sources of income outside their mortgage banking business. It is our position that non-qualified Bonus plans for small business be permitted to compensate loan originators under the pre-defined standards mentioned above.

Discount Points, Origination Points and Fees

CMLA Comment: We concur with the CFPB position on providing comparable loan estimates to the consumer demonstrating the bona fide difference between the interest rates under the "with" and "without" Discount Point / Origination Point and Fee scenarios (a.k.a. Safe Harbor). It is our position that these loan estimates should be a component of the soon-to-be-revised initial disclosures required within three days of taking a loan application. We believe that the loan estimate form should include the borrower's signature.

Regarding the inconsistent treatment of third-party charges, the CMLA concurs with the CFPB approach which provides that certain third-party charges are always excluded from discount points and origination points or fees, even when they are payable to an affiliate of the creditor or a loan originator organization.

Pricing Policy Approach

CMLA Comment: We believe the Pricing Policy Approach extends beyond the original intent of the Dodd-Frank Act. Given the already existing Fair Lending Laws, the mortgage lending industry is maintaining pricing policies and procedures that prevent and detect unfavorable consumer variances. Please note, the loan originators working for mortgage lending institutions do not typically have a role in determining an organization's overall pricing policy; accordingly, consumer steering based upon an organization's pricing methodology is unlikely. The Pricing Policy Approach is unrealistic, creates an added layer of regulatory burden and would create extensive additional procedural and technology change to the industry. Lastly, this approach is largely resolved by the consumer as it shops for the right mortgage loan terms amongst the vast array of lenders in the marketplace.

Market Based Benchmarks

CMLA Comment: We believe that the consumer is protected by existing Fair Lending Laws and the requirement of Lenders to provide clear disclosures in a timely fashion that allow for informed comparisons. We do not believe the establishment of Market Based Benchmarks would provide any additional protections to the consumer.

With regard to the following:

Section 36(f) – Loan Originator Qualification Requirements

CMLA Comment: We would like the Bureau to consider the overall MLO licensing / registration disparity in the marketplace. It is often argued by both depository and non-depository lenders that mortgage loan originators should be held to the same unified standards under both state and federal laws, including the SAFE Act. The licensing v. registration disparity between depository and non-depository institutions has created an unfair competitive advantage to both banking and non-banking institutions through overall regulatory, training and testing burdens as well as through unclear sales and marketing strategies.

In addition, disparate standards create a de facto non-compete for the Bank MLO as the current standard prohibits the Bank MLO from pursuing a license due to SAFE's corporate transparency. Should a bank MLO wish to obtain a license, there is no way for the bank MLO to obtain such a license without the risk of losing their current position. If a bank MLO chooses to pursue a license due to other job opportunities, they may be forced into prolonged unemployment before obtaining the license and moving on to the next opportunity.

Likewise, it has added a perception of competitive advantage to the non-depository MLO who can actively market his/her training and testing acumen as a result of SAFE.

Our depository and non-depository lender members (small lending institutions) concur with the overall statement that the disparity of MLO marketplace has created a primary advantage that lies with large depository institutions which, can absorb regulatory burden and control the MLO marketplace.

On behalf of the membership of the Community Mortgage Lenders of America, thank you very much for the opportunity to express to you some of our concerns.

Sincerely,

Mark McDougald
For the Board of Directors

About the CMLA

The CMLA is a national community mortgage banking trade association representing Main Street community mortgage bankers. Founded in 2009, the CMLA is dedicated to providing a voice for the independent community based mortgage bankers. The CMLA is founded on the principal that a

thriving independent mortgage banking sector increases competition in the industry and provides borrowers with greater choice resulting in lower costs and innovative products. For more information, visit www.thecmla.com, or call Kevin M. Cuff, Executive Director, 978.239.5612.

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