PRESERVING FAIR STANDARDS FOR COMMUNITY LENDERS

November 6, 2012

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

Electronic Delivery

Re: Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z); Docket No. CFPB-2012-0028; RIN 3170-AA19 (the "Mortgage Disclosures Proposal" or the "Proposal").

Dear Ms. Jackson:

Thank you for the opportunity for the Community Mortgage Lenders of America to provide you with Public Comments to 12 CFR 1026; Docket No. CFPB-2012-0028 Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z).

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.

The many changes being made to the residential mortgage lending regulatory framework have broad implications that must be balanced. The CMLA believes that the objectives of the Mortgage Disclosure Proposal and other residential mortgage lending regulations should be to achieve effective consumer protections while at the same time keeping low-cost mortgage financing options readily available to consumers. We are concerned that the Mortgage Disclosures Proposal and numerous other mortgage lending proposals under the CFPB impose substantial new burdens and costs on lenders that will drive many of them to increase the fees charged for many mortgage products or to scale back or close their lending operations. Ultimately, in this new regulatory environment, substantial additional changes and requirements will harm consumers and severely weaken the already fragile economic recovery.

The Three-Day Advance Closing Disclosure Rule

The CMLA supports the concept of early disclosure of all amounts that will be charged to the consumer and seller in a timely fashion. The requirement in the proposed rule that the borrower receive the Closing Disclosure Form three business days prior to the closing however, is simply not possible or prudent in all instances, due to the fact that some of the amounts that are included in that final disclosure are not available prior to the three day advance time frame. For example, the charges that cannot accurately be determined at until very close to the closing include the following:

- the cost to the lender of procuring a verification of employment on the morning of the closing to, among other things, ensure that the borrower has retained the ability to repay the loan;
- the cost to the lender of procuring a final inspection of the premises for an FHA loan on the morning of the closing to, among other things, ensure that the collateral has been properly repaired for the consumer and meets the requirements of the FHA;
- the cost to the borrower of recording an additional document used for their convenience (such as a power of attorney);
- the cost to the settlement agent for a final rundown of title to ensure that the property has not changed hands to, among other things, ensure compliance with short sale requirements during the pendency of the contract to purchase; and
- tax payments that are made by a seller prior to closing.

Rate Lock Issues and the Three Day Disclosure Statement Rule: Effectively managing interest rate locks for the benefit of consumers can have a dramatic effect on the appropriate advance disclosure period:

- Without a rate lock extension, the borrower may lose the rate;
- With a rate lock extension, the borrower may be required to spend a considerable amount to get the new lock;
- The cost of the lock can be increased by the length of time that the lock remains active; and if the 3-day waiting period triggers other difficulties that delay closing beyond three days (see below), and then the cost of the extension could significantly work against the borrower's best interest.

Underwriting Issues and the Three Day Disclosure Statement Rule: The resolution of underwriting issues that may arise, for the benefit of consumers, can have a dramatic effect on the appropriate advance disclosure period:

- Verifications may expire. Depending on the type of loan program and investor, verifications of income, employment, deposit, and other matters must not be aged over a certain period. Moving the closing back by three days may cause those verifications to expire, which could add weeks – and not days – to the delay.
- Credit may expire. Like verifications, the borrower's credit must be dated within a certain period of the note date. If the closing is pushed back a few days, then credit could expire and require re-verification of credit, thereby also unnecessarily increasing borrower costs.

Practical Difficulties for Borrowers and the Three Day Disclosure Statement Rule: There are many practical difficulties borrowers face that can have a significant adverse impact upon them should there closing date be delayed during this additional three day disclosure period. These include difficulties with the timing of movers, utilities, deliveries, and other "real-world" practical matters that will be complicated by unnecessary delay. In many areas of the country it is customary for a seller to appear at a closing with a bill for the "fill up" of a residential oil tank. At a price of $3.50 or more per gallon and a 275 gallon oil tank this would lead to an additional cost to the borrower which could be well over $100. The buyer would have known that this expense was going to be factored into the costs, but the seller has no need to provide it until the time of closing. It is unlikely that the buyer would want an additional three days to ponder this cost. We would add to this the natural frustration that the borrower will undoubtedly feel toward their lender, Realtor/builder, closing agent, and all other participants in the transaction – and perhaps even towards legislators and regulators - as their frustration mounts. This would seem to do very little for any effort to restore the public's confidence in the housing/lending industry.

Disclosure Fatigue and the Three Day Closing Disclosure Rule: At some point, borrowers will become fatigued by repeated disclosures and delays. We question the effectiveness of an imposed re-disclosure and delay under these circumstances. If the fundamental terms of the loan have changed, then re-disclosure and an additional shopping

period might be warranted; but minor changes that do not have a significant impact on the transaction or the borrower should not be subject to an arbitrary and unyielding waiting period that has the very real potential to scuttle the borrower's transaction and undermine, rather than enhance, their confidence in the process.

Exemptions Under the Three Day Closing Disclosure Rule: Although the CFPB has proposed exemptions to the waiting period requirement, we believe that the exceptions are too narrowly drawn and, respectfully, are arbitrary. For example, a $100 "wild card" exemption is far too insignificant to have any real impact on this requirement of the proposed rule. If such an exemption is allowed, the amount of the exemption should bear a relationship to the overall loan amount or other terms of the loan – just as the "tolerance buckets" of the Good Faith Estimate (Loan Estimate) do. Additionally, the exemption should be a net exemption, which can be netted against a reduction in other costs. The Bureau should also provide greater allowance for changes that are actually beneficial to the borrower, have been caused by the borrower, or are otherwise agreeable to the borrower. For example, a buyer may have initially chosen to forego an owner's policy of title insurance but then reconsidered the decision just prior to closing. Few would argue that an owner's policy does not benefit a consumer, but the Bureau's rule would nevertheless require the consumer to take an additional three days to consider such a simple decision. Finally, the **exemption for buyer/seller negotiation should be clarified to ensure that the seller may not deliberately postpone a closing by manipulating the Three Day Rule and thus causing the borrower to risk losing a deposit or sale.**

Personal Emergencies and the Three Day Disclosure Statement Rule: The CFPB has proposed to retain the ability of a consumer to waive the waiting period if there is a "personal emergency." This standard already exists under TIL, but it is so narrowly drawn that many CMLA members have never been able effectively to rely upon it. The CFPB should clarify and broaden the definition of "personal emergency" to take into full account real, practical issues that consumers encounter-- – including those described above, and including, in particular, changes expressly requested by the borrower that are beneficial to the borrower.

The "All-In" APR Calculation

It is important to note that the Dodd-Frank Act does not require major changes to the calculation of the annual percentage rate ("APR"). The level of forthcoming regulation has the potential to impose additional confusion and costs on both lenders and consumers. As the CFPB has noted, the current APR provides little value to consumers. It neither enhances the borrower's understanding of his or her obligation in a mortgage transaction nor serves as an accurate shopping tool. The CMLA respectfully recommends that the proposed "All-In" APR approach complicates rather than simplifies this concept and its usefulness for consumers. It needs a lot more work, in our view, including far more extensive consumer and industry (and particularly small lender) comments if it is be a workable and meaningful approach.

In particular, the proposed "All-In" APR" approach included in the proposed rule should be delayed until its effect on high-cost mortgage regulations can be better studied and predicted. The Bureau clearly stated that the new APR calculation will cause more home loans to fall into the "high cost category," but the proposed rule does not thoroughly consider the ramifications of that effect, including the prejudice to consumers who will no longer be able to work with small community lenders who are unable to sell or transfer such newly classified high-cost loans on the secondary market.

Further, for regulatory and administrative efficiency reasons, we oppose the "transaction coverage rate" alternative. While it might limit the number of high-cost mortgages, it requires two regulatory definitions instead of one, and unnecessarily doubles the administrative burden of complying with the HOEPA rules and mortgage disclosure rules by requiring two different complicated calculations when one is perfectly adequate for both purposes. This burden falls particularly hard upon the smaller community lenders that are members of the CMLA.

For these reasons, among others, we urge the CFPB to keep the APR calculation as simple as possible and only revise it to add items that are expressly required by the Dodd-Frank Act. Before making any changes, we encourage the CFPB to study the costs and benefits of any changes through focus groups of consumers who represent the broad spectrum of borrowers. Interacting directly with borrowers is the only way to improve disclosures and ensure that consumers receive the information they need without confusing them with a lot of extraneous data they do not want or understand.

Additional Burdens On Small Community Mortgage Lenders

Whatever final decisions the Bureau makes with respect to these comments of the CMLA and others with respect to this Proposal, we think it imperative that the Bureau delay its effective date for a considerable period. In this connection, we note that the Dodd-Frank Act does not impose a specified effective date for this rulemaking upon the Bureau. Requiring compliance with the final form of the Bureau's Mortgage Disclosures Proposal before the Bureau first finalizes its multiple related proposals (including what it refers to as its Affected Title XIV Disclosures), and then carefully considers the costs to comply with the entirety of such rules, particularly by small community mortgage lenders, inevitably not only will dramatically and adversely affect them but also have that same deleterious impact upon the access to mortgage credit they provide to consumers who rely upon them.

For example, in its required Regulatory Flexibility analysis accompanying the Proposal, the Bureau estimates that there will be a one-time cost to comply with its record keeping requirements of less than $5 per originated loan. Those requirements include retaining complete evidence of compliance with the Closing Disclosure Requirement, and all documents related to it, for five years after settlement, and in machine readable, electronic XML format. The Bureau's analysis of the costs of complying with these requirements assumes that only a small fraction of small creditors maintain their own compliance software and systems, and that they would incur costs of $100,000, one-time and up-front, to update them to comply with the Proposal (based upon, among other things, its estimate that creditors with existing electronic storage systems would need to expend 40 hours or software and IT staff time to develop the ability and capability to exposure data from the their existing systems to the standardized and requirement format.) The Bureau's analysis further assumes that each loan officer or other loan originator will need to receive only two hours of training regarding their implementation of the Proposal in its final form.

In all respects, this analysis is terribly flawed, and seriously underestimates the associated costs of compliance and record-keeping associated with the Proposal. Costs that likely will, in fact, be prohibitive for many small community mortgage lenders. It is the understanding of the CMLA, from its members, that the costs to them for software and programming for small community mortgage lenders that maintain their own systems even assuming that appropriate professionals will be available to them, particularly in rural and underserved areas will be many multiples of the estimates the Bureau has described. And even then, all such estimates assume that the Bureau has provided clear guidance as to exactly what data elements a creditor must maintain, in the required format and for five years, to evidence their compliance - something the Bureau has yet to do.

Furthermore, even for small community mortgage lenders that do not maintain their own compliance systems in this area, they will need to rely upon vendors to assist them in meeting their needs. None of the costs that such vendors would encounter in revising their systems – are included costs that small community mortgage lenders inevitably would need to pass through to their consumers. These additional burdens have not been considered by the Bureau in its analysis.

Finally, the training estimates relied upon by the Bureau (two hours of training), in this areas is not only impossibly low on its face; it also ignores the considerable costs of on-going training as clarifications of the Proposal are issued during what appears to the members of the CMLA to be a likely extended, confusing and disruptive implementation period.

In this connection, we do note that the Bureau expressly solicits comments on whether a small business exemption from these requirements is appropriate, and asks some basic questions about appropriate metrics to be employed by it should it choose to fashion such an exemption.

It is the view of the CMLA and its members that a small community mortgage lender exemption from these requirements, and many others under contemplation by the Bureau, would be both appropriate and necessary, for these reasons and many others, and our Association would be pleased to work closely with the Bureau in fashioning and considering its scope and form. But, equally respectfully, this comment period hardly provides an ample opportunity for the Bureau or

our Association to do so, and before that can be accomplished, the Bureau should not, respectfully, issue its Proposal in final form.

There are also other aspects of the Proposal that inappropriately and seriously adversely affect small community mortgage lenders.

The Proposal states once a creditor has received six defined pieces of information, it has an "application" for purposes of the requirements of Regulation Z and this proposed rule. Respectfully, we think that the Bureau's proposal to remove a seventh or catch-all element in its definition of what constitutes an "application" for triggering the requirement to issue a Loan Estimate is unreasonable, short-sighted, and particularly dis-advantageous for small community mortgage lenders. Our members need to be able to consider, as just two examples, whether the loan carries a fixed or adjustable rate of interest, and whether or not an escrow will be required, before they should be required to issue the Loan Estimate--with all the attendant consequences of its being not fully accurate that its carries. They need the ability to determine such additional "facts" if their Loan Estimates are truly to be helpful to consumers, and issued in "good faith." And, they particularly need the flexibility to postpone the issuance of a Loan Estimate for consumers only wanting, instead, a determination of their "pre-qualification" for a mortgage loan or mortgage loan program, as long as such pre-qualification statements make clear that they are not the Loan Estimates required by the Proposal.

The rigidity of the Bureau's Proposal in this area would deny this important flexibility to small community lenders, to the detriment of the consumers they serve, and further undercut their ability to provide the personalized service to such consumers that is the hallmark of their service model and a core attribute of their continued viability in a regulated mortgage marketplace that in this respect and so many others appears to favor larger competitors.

Finally, small community lenders need the continuing flexibility to use either third party settlement agents to deliver the required Disclosure Statements and to settle loans, or to rely upon their own capabilities or those of their affiliates to do so. The Proposal would deny that choice or flexibility to them, and that is neither appropriate nor in the best financial interests of consumers.

On behalf of the membership of the Community Mortgage Lenders of America, we appreciate this opportunity to provide our comments with respect to the Bureau's Proposal.

Very truly yours,

Mark McDougald
For the Board of Directors

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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.