REBECA ROMERO RAINEY
Chairman
R. SCOTT HEITKAMP
Chairman-Elect
TIMOTHY K. ZIMMERMAN
Vice Chairman
DEREK B. WILLIAMS
Treasurer
J. MICHAEL ELLENBURG
Secretary
JACK A. HARTINGS
Immediate Past Chairman
CAMDEN R. FINE
President and CEO

http://www.regulations.gov.

October 18, 2016

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

Re: Docket No. CFPB-2016-0038, Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

The Independent Community Bankers of America[1] appreciates the opportunity to provide comments to the Consumer Financial Protection Bureau (CFPB or Bureau) on the proposed amendments to the TILA RESPA mortgage disclosures (Proposal). The CFPB's November 2013 mortgage disclosure rules have impacted virtually every facet of the residential mortgage lending process. And while the Bureau provided a lengthy implementation period, the complexity of the disclosure rules has created many compliance questions that have disrupted the market, delayed closings, and reduced

[1] The Independent Community Bankers of America®, the nation's voice for nearly 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 51,000 locations nationwide, community banks employ 700,000 Americans, hold $3.9 trillion in assets, $3.1 trillion in deposits, and $2.6 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

WASHINGTON, DC ▪ SAUK CENTRE, MN ▪ IRVINE, CA ▪ TAMPA, FL ▪ MEMPHIS, TN
1615 L Street NW, Suite 900, Washington, DC 20036-5623 | 800-422-8439 | FAX: 202-659-1413 | Email: info@icba.org | Website: www.icba.org

consumer access to some mortgage products. Some of these issues have been worked out as industry became accustomed to the rules, however, many questions still require authoritative answers from the CFPB. Further, as the Bureau and the prudential regulators conduct examinations of the lending industry, they will likely discover additional situations where authoritative guidance will be necessary. We encourage the CFPB to continue to work with industry stakeholders to understand, and address these issues in a timely and constructive manner.

ICBA Position

ICBA thanks the Bureau for its outreach to community banks and other stakeholders over the past year to better understand the impact of the new disclosure rules and its efforts to address many of the issues that have surfaced through this Proposal. ICBA supports many of the proposed changes – that if finalized – will resolve a number of the most prominent ambiguities.

ICBA strongly supports the following proposed changes:

- allowing the issuance of a revised Closing Disclosure within three days of learning of a change;
- applying the mortgage disclosure rules to all loans secured by cooperative units, whether or not they are considered real property;
- clarifying that lenders may share a modified Closing Disclosure with sellers and other third parties; and
- including tolerance provisions for the total of payments that parallel existing tolerances for the finance charge and disclosures affected by the finance charge.

However, we do have concerns regarding the effective date of the proposed amendments, the timing requirements for multiple-advance construction loans, and enforcement outlined below which we urge the Bureau to address before finalizing the Proposal.

Effective Dates

While many of the proposed amendments will require systems changes – which ICBA urges the CFPB to be sensitive to – some of the changes will significantly ease compliance for community banks and other lenders and we strongly encourage the Bureau to implement an October 3, 2015 effective date for these parts of the Proposal. ICBA recommends that new guidance on reissuing the Closing Disclosure after a change, loans secured by cooperative dwellings, and sharing Closing Disclosures with third

1615 L Street NW, Suite 900, Washington, DC 20036-5623 | 800-422-8439 | FAX: 202-659-1413 | Email: info@icba.org | Website: www.icba.org

parties should be made effective for all applications received on or after October 3, 2015. By implementing these changes retroactively to the original effective date of the disclosure rules, the Bureau would reaffirm its intention to treat the early implementation phase of the rule as a learning period for the entire industry.

Timing Requirements for Multiple-Advance Construction Loans

Under the Proposal, a creditor that generally makes both construction and permanent financing available upon receiving an application for construction financing where the consumer does not expressly state that he/she will not obtain permanent financing from the creditor, must deliver or place in the mail the Loan Estimate disclosure for both the construction and permanent financing no later than three business days after receiving the application. Requiring that the permanent-phase Loan Estimate be provided within three days of the initial application would be extremely problematic and difficult to implement due to the way these transactions are generally processed by community banks.

Often, when community banks offer both construction and permanent financing there will be separate systems and specialized staff for the processing of each type of loan. Construction lending requires specific expertise and knowledge of different legal, disclosure, and disbursement requirements, whereas the permanent financing portion of the transaction is a normal mortgage loan and generally follows a similar process.

The proposed requirements would also not improve the consumer experience. By providing this additional Loan Estimate, consumers are more likely to be confused and concerned that they are being considered for a form of credit that they may not have any intention of applying for and have not indicated they wish to apply for with the construction financing lender.

Under the proposed requirements for multiple-advance construction loans, creditors would be required to deliver a Loan Estimate for a loan the consumer may not even want. Even if a consumer does intend to obtain permanent financing from the same lender, that portion of the transaction may not close for many months or even years. During that time, costs may change dramatically and the original Loan Estimate would likely not provide any useful information to the borrower. In those situations, creditors would generally be able to issue a new Loan Estimate for the permanent financing 60 days before consummation of the transaction.

If the community bank is not ultimately the permanent financing lender, it will have invested significant resources in having its processors enter all of the necessary data to

1615 L Street NW, Suite 900, Washington, DC 20036-5623 | 800-422-8439 | FAX: 202-659-1413 | Email: info@icba.org | Website: www.icba.org

generate and validate a Loan Estimate for a loan for which the borrower has not even applied. If the lender is using two separate systems for these very different types of financing and there is a per-loan charge, the community banks may also generate a system cost which will passed onto consumers. If the borrower ultimately does not obtain the permanent financing with the community bank, then, depending on the system, the community bank may have to perform manual filtering of their Home Mortgage Disclosure Act (HMDA) and Equal Credit Opportunity Act reports to weed out phantom loan applications created solely for the purposes of generating a Loan Estimates for unwanted permanent financing. Tracking procedures would also be required to maintain changes in two loans, or potentially even two systems, and to close out the phantom loan applications. Even if the lender and borrower do enter into the permanent loan, some of the HMDA data may reflect inaccurate application dates and similar information.

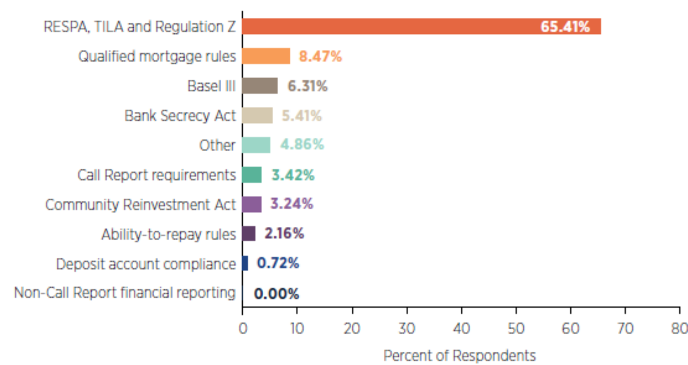
Considering these factors, community banks which currently offer both construction and permanent financing may choose to either add more steps or forms to the process to ensure they do not issue a Loan Estimate that provides no meaningful information, or they may even choose to withdraw their permanent financing products, thereby reducing consumer choice. Instead of adopting the proposed requirements, ICBA urges the CFPB to adopt an approach for multiple-advance construction loans which would allow community banks and other creditors the choice as to whether provide the permanent financing Loan Estimate at the time of the application for the construction financing.

Enforcement

Community banks have invested heavily in complying with the disclosure rules, but the complexity of the requirements has made it inevitable that some industry participants will be found non-compliant. A recent survey conducted by the Federal Reserve and the Conference of State Bank Supervisors found that nearly two thirds of community bankers indicated that RESPA, TILA, and the Regulation Z rules – of which the mortgage disclosure requirements are a part – were the most confusing regulations to administer.[2]

[2] Federal Reserve System and Conference of State Bank Supervisors, *Community Banking in the 21st Century, 2016*, 19-20 (2016).

1615 L Street NW, Suite 900, Washington, DC 20036-5623 | 800-422-8439 | FAX: 202-659-1413 | Email: info@icba.org | Website: www.icba.org



Moreover, smaller entities – including many community banks – are heavily reliant on vendors to update systems and software to comply with the rules. Unfortunately, not all vendors have taken the same interpretations of the rules and some have failed to deliver necessary updates in a timely manner. Considering this, and as mentioned earlier, ICBA urges the CFPB and other prudential regulators to continue taking a diagnostic and corrective approach regarding good-faith compliance efforts through the implementation of these proposed amendments.

Conclusion

ICBA continues to appreciate the CFPB's thoughtful outreach to community banks throughout the implementation process and we look forward to continuing to work with the Bureau on this important rule. If you have any questions regarding ICBA's comments, please contact me at joseph.gormely@icba.org or (202) 659-8111.

Sincerely,

/s/

Joseph M. Gormley
Assistant Vice President & Regulatory Counsel