October 16, 2012

Monica Jackson
Office of the Executive Secretary
Consumer Finance Protection Bureau
1700 G Street, N.W.
Washington, DC 20552

RE: Truth in Lending (Regulation Z) Loan Originator Compensation Proposed Rule
Docket Number CFPB-2012-0037
RIN 3170-AA13

Dear Ms. Jackson:

The Massachusetts Mortgage Bankers Association (MMBA), on behalf of a combined CFPB Task Force which comprises members from the Massachusetts Mortgage Bankers Association (MMBA), Rhode Island Mortgage Bankers Association (RIMBA), Connecticut Mortgage Bankers Association (CMBA), Vermont Mortgage Bankers Association (VMBA), Mortgage Bankers and Brokers Association of New Hampshire (MBBA-NH) and the Maine Association of Mortgage Professionals (MAMP) appreciates this opportunity to submit comments to the Consumer Financial Protection Bureau (CFPB) on its Proposed Rules to amend regulations under the Truth In Lending Act regarding loan origination compensation.

On behalf of the associations listed above (the ñAssociationsò), we would like to recognize your efforts to protect consumers by eliminating steering and believe the proposed rule will have a positive influence on the mortgage industry. Consumers will benefit from a competitive mortgage market and loan originators will benefit by having a level playing field with respect to compensation.

The CFPB Task Force would like to offer the following commentary on the proposed rules:

Requirement to Make a No-Point, No-Fee Loan Option Available:

We applaud the Bureau's desire to give consumers a standard basis for comparison in shopping for a mortgage, and appreciate the recognition that some consumers may be "unlikely to qualify for such," but are concerned that the variety of situations where this option isn't available will make it prohibitive for lenders to defend themselves, and that lenders may restrict financing options for consumers in response. In today's market, with robust pricing from the secondary market, the competitive nature of the industry and fixed rate rate-reduction refinances as the predominant loan, the no-point, no-fee loan is available for most borrowers.

21 School Street, 2nd Floor, Boston, MA 02108
Phone: (617) 570-9114 / Fax: (617) 570-9115

The Associations would respectfully argue that mandating these options is sometimes not economically possible and more importantly not always in the best interests of the consumer.

The first basic tenant of mortgage banking is that the lenderǿs revenue can only come from two sources 1) Points paid by the borrower and 2) Proceeds obtained through the sale of that loan in the secondary market.

The second tenant is that the lender is responsible for paying all costs associated with the loan that are not paid by the borrower and listed on the settlement statement.

In the case of ñNo Pointsò loans the lenderǿs revenue can only come from the proceeds obtained through the sale of that loan in the secondary market. Any expenses incurred but not paid by the borrower are the liability of the lender and are deducted from the loan sale proceeds.

In the case of the ñNo Points No Closing Costò loan the lender incurs even greater expenses. With these products, the lender is responsible for closing costs otherwise paid by the borrower, in addition to its own overhead and costs incurred in originating the loan. Such expenses must be paid from the loan sale proceeds.

These options are particularly difficult to offer on Adjustable Rate loans and loans with smaller balances where the prices paid by the secondary market are often not high enough to cover closing costs and generate a profit for the lender. With smaller balances, lenders also wrestle with the high cost loan restrictions.

While most programs and transactions would allow lenders to offer these options to consumers there are real and common situations which preclude a lender from offering these options without incurring a loss to do so.

It is our contention that a given lenderǿs ability to offer these options to consumers is completely dependent on what the secondary market will pay for a given loan and puts their ability to offer these programs at a reasonable profit outside their control. Further we believe that any mandate will at times put them in a position to be out of compliance or lose money.

We would further offer that in order to remain competitive lenders must already offer these options whether mandated or not and do whenever is practicable. Mandating that they be offered across a lenderǿs entire spectrum means they will be forced to offer programs to consumers which at times will cause them to lose money.

The unintended consequences of such a mandate must be considered. One such consequence will be that lenders will offer fewer programs to consumers. Products which cannot generate a profit when offered with a ñNo Pointò or as a ñNo Point No Closing Costò option may not be offered at all. The goal of this mandate is to make it easier for consumers to compare programs and options offered by multiple lenders and at the same time make more programs and options available to them. In this case the most likely outcome of this mandate is that the number of programs available to consumers will fall.

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Here are real examples, however, where the option wasn't available:

- ARMs with capped premiums - a $200,000, 5/1 ARM, 80% LTV purchase with a 700 FICO locked on October 1 priced out at 2.875% with 1.442 points and $800 in fees, a total of $3684 in combined discount/ origination fees. This was the lowest combination available for origination/discount on that day due to traditionally lower premium pricing on ARM products, and 1.75% in total loan level pricing adjustments (LLPAs) imposed by Fannie Mae.
- Low downpayment and lower FICO loans - the first-time homebuyer with 5% down on a $212,000 purchase, 640 FICO, locked a 30-year conventional FRM with Mortgage Insurance on October 1 priced out at 3.875% with 0.481 points and $800 in fees, $1681 in combined origination/discount driven by 3.00% in LLPAs imposed by Fannie Mae and investor. This was the lowest fee combination available on that day.
- Investment property - a 30-yr FRM rate/term refinance for non-owner at $200,000, 700 FICO, 75% LTV locked on October 1 priced out at 3.875% with 0.856 points and $800 in fees, $2512 in combined origination/ discount driven by 3.25% in LLPAs imposed by Fannie Mae. This was the lowest fee combination available on that day.
- Condominium - a 30-yr FRM on a primary residence condo at $200,000, 80% LTV and 700 FICO locked on March 15 priced out at 4.50% with 1.033 points and $800 in fees, $2866 in combined origination/ discount, 2.50% in LLPAs. This was the lowest fee combination available on that day.
- Limited secondary market premiums - Rate/term refinance, 80%, 700 FICO, 30-yr FRM locked on March 15 priced out at 4.50% with 0.283 points and $800 in fees, $1,366 in combined fees, 1.75% in LLPAs. This was the lowest fee combination available on that day due to limited higher coupon pricing in the secondary market.

These examples have less to do with borrower qualifications and more with secondary market pricing and policies, and are therefore not uncommon.

We would ask that you shift this requirement from a zero-zero option to a "lowest combination of discount points, origination points and origination fees" to avoid an adverse impact on small businesses to comply and/or a lender-imposed limitation on the availability of loans to consumers in situations like those mentioned above.

Require an Interest-Rate Reduction When Consumers Elect to Pay Upfront Points or Fees:

The Associations agree with CFPB's intent, but believes that proving compliance will be difficult. Although the CFPB is not expecting a linear reduction in fee for rate (example. 0.50% in fee for 0.125% in rate), it is reasonable to expect a lower interest rate as a result of increased fees.

However, our concern comes to an examination ï how does a mortgage lender prove compliance when each loan scenario is different or when pricing changes frequently? As an example - it took 0.25% in fee to buy-down from 3.50% to 3.375% but another 2.00% in fee to buy-down to 3.25%.

A depository or non-depository lender may have several different factors - secondary market, competition, and capacity ï all influencing daily pricing. The Associations would ask CFPB to define - specifically what is necessary to document compliance with this requirement.

Restrictions on Loan Originator Compensation:

Flat fee requirement: The proposed rule does not require that loan originators be paid a flat fee and reinforces the payment of compensation tied to loan amount. The Associations applaud the CFPB for getting it right, as this would have had adverse impact on smaller loan size markets and transactions.

Clarification of 'proxies': The Associations agree with the current rule which prohibits loan officer compensation tied to any terms which may be influenced by the Loan Officer. This prohibition should and does include categories such as loan product, interest rate, adjustment features, etc. It appears the new ruling would allow compensation flexibility for loan parameters which are not within the loan officerǿs control such as purchase vs. refinance and origination of CRA and low-moderate income products. While it seems relatively clear a loan officer cannot control whether a customer refinances or buys a home, considerably more time, education and effort is required to originate a low-moderate or CRA qualifying transaction than a conventional loan. An unintended consequence of the current rules is many skilled loan officers have migrated to originating conventional loans instead of loans under to low- and moderate-income borrowers, and other labor-intensive loan programs that receive positive consideration under the Community Reinvestment Act (ñCRAò). They cannot be compensated sufficiently for the amount of time and effort which is required to provide a thorough job of education and navigation through the complicated process. This is harming the consumer as credit access to CRA and low-moderate income loans has become more limited and/or more difficult. Please clarify the Agencyǿs position on these categories.

Restrictions on Arbitration Clauses and Financing of Credit Insurance:

The Associations have no comment regarding arbitration clauses but would ask the CFPB to clarify whether traditional financing of mortgage insurance (like FHA MIP or conventional mortgage insurance) is prohibited, since it is not specifically mentioned. The Associations believe that the financing of single-premium, borrower-paid mortgage insurance (that is refundable in accordance with applicable law) is not prohibited by this provision.

The Associations support borrower financed single premium mortgage insurance as an allowable prepaid. As a method of paying for a required credit enhancement for low down payment mortgage loans it significantly improves affordability during the critical first years of the mortgage loan. The following is an example.

- A $95,000 30-year, fixed rate mortgage at 4.0% has a monthly PI payment of $452.04 per month. A $95,000 mortgage on a $100,000 property has a first year and annual renewal premium of .50% or $475 a year or $39.59 per month. The total PIMI would be $491.63

- A $95,000 30-year fixed rate mortgage also has the option of paying a single premium of 2.4% or $2,280 (refundable during the first five years). If financed by adding it to the loan amount the new mortgage is $97,280. At 4.0% over thirty years the new mortgage would carry a monthly PI of $462.89 or $28.74 less than the loan with regular monthly

MI. The cost of the financed single premium is $10.85 a month rather than $39.50 per month for regular monthly premiums.

The MMBA and our affiliated Associations appreciates the CFPBôs efforts in developing the Proposed Rule on Compensation. We believe that if this Proposed Rule is implemented correctly, the industry will continue to provide homeowners with appropriate and viable financial options for refinancing or purchasing a home. Our member banks, credit unions and lenders will continue to work with borrowers on ways to sustain homeownership in this challenging housing market.

We look forward to working with you as the CFPB considers these important matters. Please contact us if you have any questions or if we can provide additional information.

Sincerely,

Deborah J. Sousa

Deborah Sousa
Executive Director

The Massachusetts Mortgage Bankers Association (MMBA) is the Commonwealth's trade association representing the real estate finance industry. Founded in 1974, the MMBA is the largest mortgage association in New England and is one of the most successful in the country. The association works to ensure the continued strength of the Commonwealth's residential real estate markets; to expand homeownership prospects through affordability; and to extend access to affordable housing. The MMBA promotes fair and ethical lending practices and promotes excellence and integrity among real estate finance professionals through a wide range of educational programs, advocacy and industry-wide publication. Its membership of approximately 300 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, insurance companies, appraisers, etc. and others in the mortgage lending field. For additional information, visit MMBA's Web site: www.massmba.com.