MORTGAGE BANKERS ASSOCIATION

November 10, 2014

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

Re: Docket No. CFPB-2014-0028, Request for Comment on Proposed Amendments to the Integrated Mortgage Disclosure Rule under the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) and the 2013 Loan Originator Compensation Rule under the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the subject proposed rule (the Proposal) issued by the Consumer Financial Protection Bureau (CFPB or Bureau). The proposal would make two important modifications to the Truth in Lending Act (TILA) - Real Estate Settlement Procedures Act (RESPA) final rule (Integration Rule) including (1) an adjustment to the timing requirement for a revised disclosure when the consumer locks a rate or extends a rate lock after the initial disclosures are provided and (2) an amendment to permit language related to new construction loans to be included in the Loan Estimate form in the rule.

The proposal also would amend the 2013 Loan Originator Final Rule to require placement of the Nationwide Mortgage Licensing System & Registry ID on integrated disclosures and make certain technical corrections, cross-references and wording changes to clarify various provisions to Regulations X and Z as amended by the Integration Rule established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank) Act.[2]

MBA welcomes the Bureau's efforts through this proposal to address concerns raised by MBA and other stakeholders concerning the Integration Rule. MBA has consistently supported greater transparency in the mortgage process for consumers and the important TILA RESPA integration work of the Bureau for that purpose. We recognize and support the Bureau's dedication to this project and its diligent outreach to stakeholders to clarify what is an extraordinarily detailed and extensive Integration Rule. Finally, MBA thanks the CFPB for its involvement in several MBA forums and conference sessions over the past year that have

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

[2] Public Law 111–203 (2010). Dodd-Frank Act sections 1098 and 1100A mandated the CFPB to publish the Integration Rule. 12 U.S.C. 2603(a), 15 U.S.C. 1604(b).

focused on the Integration Rule and we look forward to the Bureau's participation as we continue to assist our members in implementing the new rule.

While MBA does support the direction of the proposed changes, we do urge certain modifications. We also urge the Bureau to timely address other matters considering that the deadline for implementation is now only slightly more than nine months away. While we appreciate formal clarifications to the rules, we also urge yet again that the Bureau, like virtually every other regulatory agency, establish far more nimble means of communicating authoritative guidance to regulated entities for this and all Bureau rules. Specifically, for the reasons detailed in this letter, we respectfully urge the CFPB to address not only the issues raised in this Proposal, but several other important points:

1. **Rate Lock -** Adjust the timing requirement when the consumer is required to lock a rate or extend a rate lock but allow the lender three days to issue a revised Loan Estimate rather than one-day as proposed.

2. **Construction Loans -** Add a provision for the language for revisions to the Loan Estimate for construction loans as proposed, but include a few prefatory words on the Loan Estimate to better explain the context of the disclosure issue. In addition, provide a sample disclosure for such language.

3. **Sequencing -** Add language to the commentary removing any doubt that a lender may "sequence" and require additional items of information needed from a borrower, such as date of birth and current address, before the six items of information for an application are gathered. Otherwise, the six items should be expanded or "other necessary information" be explicitly permitted to be obtained as current law allows.

4. **Use of the Closing Disclosure in Place of the Revised Loan Estimate -** Clarify that the Closing Disclosure may be provided earlier than three business days prior to consummation, and any changes due to a valid changed circumstance may be disclosed through the use of a revised Closing Disclosure.

5. **Owner's Title -** Revise the form to resolve conflicts with state laws regarding the disclosure of owner's title and lender's title insurance to alleviate the need for an additional contradictory form for state purposes and/or advise that such a form is not a matter for which the lender will be held liable or preempt state law.

6. **Disclosure of Lender-Paid Costs on the Loan Estimate -** The Bureau's position on the disclosures of lender-paid costs on the Loan Estimate is unclear. MBA suggests that CFPB provide clarification on how these items should be disclosed.

7. **Guidance Generally -** Establish a better and more nimble means of providing authoritative guidance in addition to rulemaking – as other agencies have – to protect consumers.

I. Details Of Concerns

1. Rate Lock

MBA appreciates the proposal to revise the timing requirements to provide a revised Loan Estimate to the consumer where there are changes in interest rate dependent charges after a rate lock, rate extension, or re-lock. Currently, the Integration Rule would require issuance of the revised Loan Estimate the same day as any of these actions.

MBA had indicated that the same day requirement for a revised Loan Estimate respecting locks, re-locks, and lock extensions presents significant logistical problems to lenders. These would likely necessitate the establishment of cut-off times after which consumers would be unable to lock and/or a prohibition that rates could not be locked until the business day after the consumer's request. As the proposal recognizes, the results of the current rule will inconvenience consumers and restrict their options.

This proposal, in contrast, would provide creditors the next business day to provide the revised disclosure. The proposal indicates the Bureau believes there is benefit to consumers receiving the loan estimate as early as possible and that a lender should also be able to provide a revised Loan Estimate based on interest rate dependent charges more quickly than other types of disclosures.

While the change to a no later than the next business day construct would be helpful and MBA supports this direction, MBA believes the proposal would be improved to better serve consumers if it were to allow lenders *three days* to issue a loan estimate after a lock, lock extension, or re-lock.

Adoption of a three-day time limit would conform this area of the rule to the time limits for the initial issuance of the Loan Estimate and other changes of circumstances. Having a different time frame for rate locks and rate related issues unnecessarily complicates the process and increases the risk of borrower confusion with multiple disclosures. Compliance officers will have to learn a unique set of rules and consumers will be confused if they receive multiple Loan Estimates on different timelines.

Although MBA shares the view that while it is important that a disclosure come promptly, it believes it is just as important that it be accurate. Sufficient time to achieve accuracy is time well spent.

Considering the multiplicity of regulatory requirements that are facing lenders, and the enormous burden on those that are small businesses, MBA does not believe a single day is sufficient for many to create, mail or deliver a revised Loan Estimate. Nor do we believe the choice of a one-day timeframe over a three-day timeframe is necessary to avoid consumer harm, and may even contribute to confusion on the part of consumers.

For example, a consumer may in the same phone call with a lender obtain a verbal rate lock and advise of a changed circumstance that will modify fees. If the timeframes are different, a lender would be forced to either attempt to address both the lock and changed circumstance in a Loan Estimate issued on the next business day or—the more likely result—issuing a revised Loan Estimate on the next business day to address the lock, and another revised Loan Estimate on the third business day to address the changed circumstance. The receipt of two revised Loan Estimates in close proximity to each other would cause confusion and, ironically, lessen the chances that consumers would focus on the amended disclosures at all.

For all of these reasons, we respectfully urge the CFPB to amend the Proposal to allow the issuance of a revised Loan Estimate to reflect a lock, lock extension, or re-lock on the standard timeframe for other changes, which is three business days. Aligning the requirements for these changes with the requirements for other changes would lessen regulatory burden, decrease costs, and lessen the possibility of consumer confusion.

2. Construction Loans

MBA appreciates and supports the Bureau's proposal to permit a clear and conspicuous statement on the Loan Estimate for construction loans providing "You may receive a revised Loan Estimate 60 days prior to consummation."

MBA and its members urged such language to inform borrowers of these special provisions for construction loans. To provide further clarity to borrowers we urge that the following be inserted to prefix this phrase. The language as revised would read: "This is a loan for a home under construction. You may receive a revised Loan Estimate 60 days prior to consummation." MBA also urges the Bureau to provide a sample disclosure including this language, to ensure lenders provide the language using the format the Bureau considers most understandable to consumers.

3. Sequencing

Under the Integration Rule, the consumer's provision of six items of information requires the issuance of the Loan Estimate to the consumer no later than three days after such information is provided.[3] There is confusion; however, following the Bureau's webinars about how and whether information can be gathered prior to the provision of the six items. Considering that information beyond the six items is essential to providing an accurate and meaningful estimate, MBA urges that the rule or commentary explicitly permit requests for information by lenders and mortgage brokers that may be sought for applications online or otherwise before all six items are provided and a Loan Estimate required.

We urge the Bureau to consider how collection of these six items can trigger other obligations under different laws and regulations. Borrowers' submission of the six items may trigger certain requirements under the *Equal Credit Opportunity Act*, including an obligation to act with reasonable diligence to collect information from third parties – including credit reports. Additionally, we are concerned that submission may trigger the Home Mortgage Disclosure Act reporting obligation. The regulation and commentary do

[3] 12 CFR 1026.19(e)(1)(iii)

not explore these issues and we urge the Bureau to provide written guidance to the industry as quickly as possible so that industry may begin any needed system updates to ensure compliance.

We believe that allowing lenders to require the additional information they deem necessary would be the most flexible and certain solution to the issues detailed above, however, we are aware that the Bureau wants to limit the amount of information that consumers must provide prior to receiving their Loan Estimate.

If this is the case, the Bureau should revise the definition of “application” in 12 CFR 1026.2(3)(ii) to specify additional items of information. One lender reports that the consumer’s current address and the consumer’s date of birth are essential to obtaining credit information. Both of these elements are therefore critical to preparing the Loan Estimate. If credit bureaus now require the borrower’s address and date of birth for purposes of the Fair Credit Reporting Act identity theft and address discrepancy requirements, then the definition of application must be changed to encompass these items.

The addition of these two elements will not cause any consumer inconvenience or harm. But their omission will. Based on the definition of application, if the lender has all six items but is unable to obtain a credit report, it still must issue a Loan Estimate and because the lender would be assumed to have obtained a credit report—and per the rule’s operation—it could not revise the Loan Estimate once it obtained the credit report. If the Loan Estimate must be issued based on an assumed or default credit score or history that is significantly different that the consumer’s, or an address that is not the consumer’s current mailing address, the Loan Estimate will be inaccurate.

If the Bureau chooses to add items to the definition, we would urge that discussions be opened with stakeholders so the list of items is complete enough to result in an accurate estimate. Lenders are held to these estimates absent changed circumstances.

As indicated above, another option is to explicitly provide that the six items of information plus other information required by the lender is necessary for a loan estimate. This is how RESPA works today and we have heard of no difficulties with that approach. We recognize the CFPB intended that a consumer be able to receive a Loan Estimate by providing a minimum of information but additional information is needed in all cases.

These three alternatives: permitting sequencing to obtain other necessary information; amending the list of permissible items required for a Loan Estimate; or continuing current practice of permitting lenders to request other necessary information are all viable approaches. We do not believe simply limiting the items to six items without any of these options is a viable approach to ensure accurate Loan Estimates for consumers.

4. Use of the Closing Disclosure in Place of the Revised Loan Estimate

The rule allows the lender to provide the Closing Disclosure so that the consumer receives it more than three business days prior to closing, and further allows the lender to issue a revised Closing Disclosure upon a valid changed circumstance and rely on the revised Closing Disclosure for the purpose of the good faith analysis.[4] The rule provides under certain circumstances this necessitates an additional three-business day waiting period, including for certain changes to the APR, changes to the loan product and the addition of a prepayment penalty.

The rule does not limit how early a Closing Disclosure may be provided to a borrower and it should not do so. The Closing Disclosure provides a borrower with more precise and detailed information than the Loan Estimate. The rule also contemplates changes that can occur after the Closing Disclosure has been provided but prior to consummation. Moreover, use of a Closing Disclosure is particularly important when a consumer asks to delay closing and changes occur.

Nevertheless, Bureau attorneys seemed to indicate in the Bureau's August 26, 2014 webinar that the rule does not in fact allow the Closing Disclosure to be given early and used in this manner, and such reliance would only be allowable for changes occurring within four business days prior to closing.

In light of this contradictory advice, we urge the Bureau to affirm that under the Integration Rule, a Closing Disclosure may be provided earlier than three business days prior to consummation, and any changes due to a valid changed circumstance may be disclosed through the use of a revised Closing Disclosure. At various times, including at the end of the month, lenders in an abundance of caution will deliver borrowers Closing Disclosures to ensure their customers all have the requisite time to review the documents pre-closing. The CFPB should foster, not hinder, early issuance and additional review time for CDs.

To this end, the CFPB should provide guidance on how a Closing Disclosure can be used by the lender and the consumer. The Calculating Cash to Close section contemplates a comparison of the Loan Estimate to the Closing Disclosure and not the Closing Disclosure to the revised Closing Disclosure.

In offering guidance, the Bureau also could strongly caution lenders to carefully consider the requirements that the Closing Disclosure reflect the actual terms of the transaction; that any estimates included in the Closing Disclosure be based on the best information reasonably available; and that lenders must act in good faith and with due diligence in obtaining such information [5]

5. **Owner's Title**

MBA has learned that the rule's requirements on how to disclose title insurance rates causes both the borrowers Cash to Close and the seller's proceeds figures to be incorrect in areas where sellers typically pay all or part of the title insurance for the buyer. The rule requires the lender's title insurance policy to be disclosed at the full,

[4] 12 CFR 1026.19(e)(4)(ii) and 1026.19(f)(2)(i), we believe
[5] 12 CFR 1026.19(f), cmt. 19(f)(1)(i).

undiscounted rate and the owner's policy at a computed, reduced rate even when both policies are issued simultaneously.

We are advised this disclosure does not reflect the amount actually charged and is contrary to state disclosure requirements in approximately 25 states. Consequently, many title insurance industry professionals are considering providing a separate and contradictory form to disclose insurance charges.

MBA believes that not only will the provision of an additional and contradictory form be suboptimal, but also it will lead to consumer confusion contrary to the Bureau's goal of making closing costs transparent to the consumer.

Moreover, since lenders are responsible for the Closing Disclosure, we are concerned that they may become the target of claims and even enforcement actions based on these contradictory disclosures.

In order to resolve this problem and avoid confusing consumers, MBA urges the Bureau to either revise the form; issue guidance indicating that any supplementary form provided by closing agents is not a matter for which the lender will be held liable; and/or the Bureau should preempt state rules that contradict the Bureau's approach.

Considering that the Bureau's approach to disclosure of title insurance varies from state requirements and is questioned as inaccurate, a first step should be for it to explore revising the required disclosure. If the Bureau is to maintain its position, it should clearly articulate why its position is better for consumers considering that consumers will confront contradictory disclosures. Unless that type of finding can be made, the action of the CFPB may be regarded as arbitrary and because of its effect on the title industry the Bureau's actions may be regarded as regulating insurance itself.

If the Bureau, notwithstanding, determines to allow the issuance of disclosures that contradict the Closing Disclosure, considering lenders are liable for the Closing Disclosure, we believe the CFPB should make clear that lenders are not responsible for any additional disclosure offered by the title industry.

Finally, if the Bureau determines that its approach better serves consumers than state laws, it should use its authority to preempt state law. The virtue of this approach is that it would not force consumers to face contradictory disclosures.

In sum, we do not believe simply permitting disclosures by title agents and others that contradict the Closing Disclosure is a viable approach to ensure accurate disclosures to consumers unless the Bureau takes one or more of the additional actions recommended here.

6. **Disclosure of Lender-Paid Costs on the Loan Estimate**

The Integration Rule states that only charges "the consumer will pay "[6] be disclosed on the Loan Estimate and would seem to indicate that lender-paid costs should not be included. However, seemingly contradictory language in the preamble to the final Integration Rule and verbal interpretations provided by CFPB staff calls into question whether this was actually the Bureau's intent. For example, when discussing the Loan Estimate the preamble to Integration Rule states, "consumers should be provided information on the services required by the creditor, and the cost of those services, even if the creditor is providing credits to offset the cost of those required services."[7] While this language suggests that the Bureau intended that all lender-paid charges be included in the lender credits disclosure, this conclusion is inconsistent with the plain language of the Integration Rule. We request clarification of the disclosure requirements.

7. **Written Guidance**

While MBA restates its appreciation for the Bureau's willingness to offer oral guidance through webinars, and other channels, clearly, due to the complexity of the Integration Rule, reliable, written guidance on these and other issues is essential. The current process of offering verbal guidance has led to confusion in many areas including some of the matters addressed here.

We have consistently urged that uniform written guidance developed with stakeholders' input that can be relied upon will further fair competition and minimize the possibility of undue liability increasing costs. Most importantly, it will ensure that consumers will not be harmed by unnecessary confusion. We would like to meet with the Bureau on this point as soon as possible to explore workable options.

II. <u>CONCLUSION</u>

MBA appreciates the opportunity to comment on this Proposal and the Bureau's dedication to implementing Dodd-Frank's requirements to provide transparency to the mortgage market. We support the changes proposed with modifications. Moreover, given the looming deadline for TILA RESPA integration, we urge the CFPB to address several other matters discussed here and foster an ongoing dialogue to address other issues as they appear. In that vein, we also urge the Bureau to move forward to develop a nimble means of providing authoritative guidance as other regulators do and we respectfully ask for a meeting on this subject.

If you have any questions regarding this comment, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or at kmarkison@mba.org; or Joe Gormley, Associate Regulatory Counsel, at (202) 557-2870 or at jgormley@mba.org.
Finally, we would appreciate an opportunity to meet with Bureau representatives to discuss these comments further.

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[6] 12 CFR § 1026.37(f)(1).
[7] 78 Fed. Reg. at 79952

Sincerely,

Stephen A. O'Connor
Senior Vice President of Public Policy & Industry Relations
Mortgage Bankers Association