MARYLAND BANKERS ASSOCIATION

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Executive Summary: MBA Member Survey – Regulatory Challenges for Community Banks and Key Community Bank Concerns related to the Dodd Frank Act or its Implementing Regulations

In the summer of 2017, the Maryland Bankers Association surveyed its community bank members to identify the regulations posing the greatest challenges to their ability to serve their clients and communities. Included in this survey was a request for concerns specifically related to the Dodd Frank Act and its implementing regulations.

The following executive summary provides an overview of specific recommendations of how the regulatory environment can be improved and examples of how the current regulatory environment has impacted lending and access to credit. It includes comments from community bankers as they provide the best examples of how changes related to the DFA and other regulations are impacting their banks and respective ability to provide services and products to their customers. Some context related to the background and recommended changes is also included.

Due to the Dodd-Frank Act and other regulatory changes, the mortgage regulatory landscape has significantly changed and has gotten very complicated – causing some banks to exit the market, limiting the availability of mortgage credit for those whose properties or financial resources don't fit neatly into the framework provided by the rules. In addition, access to credit for small businesses has been impacted by the mortgage rule changes. Illustrating the complexity and unintended consequences of some of the regulatory changes is the following example from an MBA member banker.

> *We have a very good customer who runs a business on the same property where they have their personal residence. They were seeking credit and offered to pledge their real estate. Because this was their primary residence the issues above came into play and we could not make the loan because it would have to comply with the QM/ Ability to repay, escrow requirements and we couldn't use a balloon mortgage. We then tried to look at it as a Residential Loan and the secondary market would not accept the property because it contained the business. In short we couldn't do a business loan because of the residence and we couldn't do a residential loan because of the business.*

Modify "Qualified Mortgage" (QM) Rule

The Dodd-Frank Act Ability-to-Repay (ATR) rule and Qualified Mortgage (QM) standards require lenders to determine that a borrower has the ability to repay a mortgage and establish significant penalties and liabilities for failing to meet related requirements. While goals of ATR and QM are laudable, there are implementation concerns. For example, significant potential liability risks for violations have caused many lenders to limit lending to only QM safe harbor loans. Lenders that offer non-QM loans must charge higher rates in order to offset potential legal and compliance risks, even if the underlying credit risk for the related non-QM loan is relatively low. As a result, some categories of creditworthy borrowers that do not qualify for a QM loan are having trouble gaining access to sustainable and affordable mortgage credit.

Banker Comments: *The qualified mortgage (QM) is one area that in the past few years hurt poor families and small business owners - a number of banks have stopped making loans outside the limits imposed or are no longer making mortgage loans.*

The QM rules have changed the way community banks do business. Flexibility in underwriting, certainly one of the defining characteristics of community banking, has been severely limited by the expanded liability imposed by QM. This bank and many others have been reluctant to stray outside of the prescribed underwriting lines for fear of incurring this potential legal exposure.

The Ability to Repay provisions resulted in a number of credit worthy, but not plain vanilla, mortgage applicants being declined that we would have made prior to the regulation.

All of our residential mortgages need to be conforming and they are then sold so we have no solution for a borrower who doesn't conform to the secondary market requirements.

No such thing as quick turnaround on a mortgage.

Recommended Changes:

- As the CFPB begins its Dodd-Frank Act-required "look back" at CFPB rules, a focus area should be modifying the ATR rule with the goal of responsibly increasing access to credit.

- Treat loans held in portfolio as qualified mortgages to encourage more options for home lending. Eliminate the perpetual ability for non QM mortgage borrowers to sue originators. Due to the litigation risk, banks limit the percent of their mortgage assets in non-QM mortgages. This restricts the availability of mortgage credit, particularly for the non-cookie cutter mortgages. For example:
    - Loans sold to the GSE's have property restrictions; so many homes are deemed ineligible based on the property types which could include mixed use, agricultural component (livestock), condition or excess acreage.
    - Loans sold to the GSE's will regularly have a debt to income ratio (DTI) that exceeds 43%, provided the automated underwriting findings approve the loan. Non-QM loans which include loans held in portfolio and/or jumbo loans may have a DTI that exceeds 43%. Many banks may opt to not offer the loan since there is not a safe harbor. However, many of these non-QM loans are actually less risky with lower loan-to-value ratios (LTVs), excess reserves and history with the bank.
    - Many banks have offered first lien home equity lines of credit (HELOCs) as an alternative, requiring the customer to take an adjustable rate., which is less favorable for many customers that may prefer a longer fixed term.

Restrict the number of new Home Mortgage Disclosure Act (HMDA) fields to only those required by the DFA; do not to include the extra fields added by the CFPB

In October, 2015 the Consumer Financial Protection Bureau (CFPB) issued a new final HMDA rule that, among other things, significantly expands the data points to be collected and reported by lenders. The rule also changes the coverage requirements for institutions, transactions and reporting. The new HMDA rule requires reporting on 48 data fields-adding 25 new data fields to the current 23-but also modifying 20 of the existing fields. The new data fields include those mandated by the Dodd-Frank Act, as well as fields required by the CFPB under its discretionary authority. In April, 2017, the CFPB issued a proposed clean-up rule to correct and clarify the 2015 rule. Expansion of the HMDA reporting requirements has been raised by MBA members as an issue of significant concern.

Banker Comments: *HMDA has become a multi person job which has led to fewer resources available for lending.*

Recommended Changes:

- Our members frequently cite the data field expansion of HMDA reporting to areas not related to mortgage lending as a top concern. The regulatory implications of even a minor clerical mistake in reporting are significant. Community banks have had to expand their staff and third party resources to ensure HMDA reporting accuracy in an already complicated reporting system. Adding to that regulatory pressure with numerous new fields of information is untenable.

Reform Truth in Lending Act/Real Estate Settlement Procedures Act (TRID) and Loan Servicing Rules

The Dodd-Frank Act required the CFPB to propose a rule that combines and integrates the disclosures under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). The TILA-RESPA Integrated Disclosure (TRID) rule became effective on October 3, 2015. A proposed rule to make corrections and offer additional clarity has not yet been finalized. TRID's implementation remains a great challenge to the real estate finance industry.

Banker Comments: *TRID disclosure formats are an improvement over the old format, but the time requirements for issuing these disclosures can prove onerous to smaller community banks. As with so many added regulations, it adds cost to the process in the form of additional staff. This bank has been reluctant to expand our residential mortgage outreach because of these added costs. Other banks have discontinued offering mortgage products due to TRID.*

Residential mortgage specific comments: *We no longer have a mortgage department and don't make mortgage loans because of over regulation including TRID and others.*

Construction/permanent mortgage specific comments: *We no longer offer construction/permanent mortgages due to the complexity of TRID disclosures.*

Construction Loans are very difficult as TRID does not address these fully. Smaller law firms have stopped doing consumer R/E settlements and that has not helped the consumer. It has actually made the charges go up in my experience.

TRID Changes = Increased Costs and Increased Processing Time Comments: *Title companies have had to increase their charges in order to maintain staff to accommodate TRID timing requirements and educate staff. When the small law firms have to broker the settlements out, in my experience the fees to consumers are more than doubled.*

The extreme timing, stricter tolerances and additional items to be disclosed that were put into place with TRID are extremely cumbersome, especially for small banks with minimal resources and staff to manually prepare the required documents. The average time spent for a basic transaction is more than 6 hours; for a more complex transaction – 10 hours.

Small Banks cannot afford extra staff to process multiple "applications" based on the new definition. There are multiple applications that require a Loan Estimate but the Bank does not end up processing the loan.

It is challenging for the Bank, Title Company/Attorney, Buyer & Seller to coordinate settlement due to the timing constraints. If anything out of the ordinary shows up we have to start the clock over and there are lots of those items that are out of our control. It is hard to time the obtaining of payoffs and setting the settlement date. If they do not arrive in time, the settlement date has to be re-scheduled and then the whole process starts again.

General Comments: *Being a small community bank the majority of our transactions are complex because we can do some things that lenders cannot do on the secondary market. That is our niche. Loans where multiple properties are taken as collateral are extremely difficult to work with.*

Recommended changes:

- Urge the CFPB to continue working with the industry to improve clarity and compliance with TRID.
- Remove the requirement for TRID disclosures for lot loans and construction loans, because they are confusing to borrowers and the collateral is not owner occupied
- TRID - RESPA currently states that real property containing 25 acres or more is exempt from RESPA—regardless of residence status. This exemption should apply to TRID as well, yet it does not.