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Via electronic delivery

September 7, 2012

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

Docket No. CFPB-2012-0028 or RIN 3170-AA19

Dear Ms. Jackson:

The Clearing House Association ("**The Clearing House**")[1] welcomes this opportunity to comment on the rulemaking now under way at the Consumer Financial Protection Bureau (the "**Bureau**" or "**CFPB**") to integrate the disclosures required by the Truth in Lending Act ("**TILA**") and the Real Estate Settlement Procedures Act ("**RESPA**"). We recognize that the integration of existing mortgage disclosures is a formidable undertaking and one that, we believe, will provide needed clarity to the marketplace. We appreciate the Bureau's efforts to ensure that the new disclosures are useful to consumers and operationally feasible and cost-effective for lenders.

Our comments are limited to three issues that are critically important to our members:

- the proposed adoption of an "all-in" finance charge ("**FC**") and Annual Percentage Rate ("**APR**"), which we believe to be inappropriate absent further research on the impact on

[1] Established in 1853, The Clearing House is the oldest banking association and payments company in the United States. It is owned by the world's largest commercial banks, which collectively employ over 2 million people and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the U.S. *See* The Clearing House's web page at www.theclearinghouse.org.

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coverage under the Home Ownership and Equity Protection Act ("**HOEPA**") and other laws;

- the proposed delay in the implementation of certain disclosure requirements established by Title XIV of the Dodd-Frank Act ("**DFA**"), which proposal we strongly support; and
- the interplay of this proposal with the implementation schedule for the numerous mortgage-related rulemakings and their potential impact on both lenders and consumers.

The Clearing House urges the Bureau to conduct the additional research and analysis on the "all in" FC/APR that are needed on this important issue. We are eager to work with the Bureau to provide data and insights that might assist in that analysis. We appreciate the Bureau's recent extension of the comment period for these rules and reserve the right to submit additional comments at a later date. However, we have chosen to provide our initial comments now in order to facilitate the process and to give the Bureau additional time to consider some of the issues that we raise.

1.0 Proposed Revision of the Finance Charge

As part of the new disclosures, the Bureau proposes to revise TILA's definition of "finance charge" (FC) to include many third-party closing costs and fees that have long been excluded from this calculation. The FC is the core "building block" of a host of other mortgage-disclosure metrics, starting with a borrower's annual percentage rate, or APR. The two measures are intended to represent the cost of credit as a dollar figure and an annualized rate, respectively.

FC/APR plays a prominent role in TILA's enforcement scheme.[2] It is the core metric that is used to determine statutory damages and enhanced damages under HOEPA as well as other types of violations.[3] FC/APR is also widely used to determine coverage under a number of related consumer-protection laws and regulations, including HOEPA; the newly-proposed qualified-mortgage ("**QM**") and, by association, the qualified-residential-mortgage ("**QRM**") legislation; certain Home Mortgage Disclosure Act ("**HMDA**") reporting requirements; and, under the DFA, mandatory escrows and in-person appraisals for higher-risk loans. In addition,

[2] Certain FC/APR violations trigger statutory damages and remedies, including up to $4,000 for individual actions and up to $1,000,000 for class actions and the right of rescission for up to three years after closing. *See* 15 USC §§1640 and 1635.

[3] HOEPA violations trigger the return of all fees and finance charges. Violations of ability-to-repay requirements and certain loan-originator provisions also trigger the return of all fees and finance charges, subject to a three-year cap. *See* 15 USC §1640(a)(2) and (4).

most states with high-cost-loan laws rely on the federal TILA FC/APR definitions to determine applicability.

The Bureau's proposal to redefine FC/APR raises a number of serious concerns. First, while The Clearing House believes that clear and consistent consumer disclosures are very important, numerous studies, some of which the Bureau appropriately embraces in this rulemaking, have concluded that the FC/APR disclosure is a relatively ineffective tool for assisting consumers in shopping for mortgages and in identifying loans with the most favorable terms.[4] In our view, moving to an all-in APR will do little to change this situation, making the benefits to consumers speculative at best.

Moreover, we believe that including third-party closing costs in the FC/APR calculation may increase—as opposed to reduce—a lender's compliance burden and litigation risk, which could ultimately lead to higher costs for consumers. In addition, as the Bureau appropriately notes, moving to an all-in FC/APR could potentially "trip" existing HOEPA, state high-cost-loan laws, and QM triggers, particularly for small-balance loans. As a result, unless the Bureau makes certain adjustments, its proposed approach could reduce access to mortgage credit, particularly for borrowers at the lower end of the credit spectrum.

Finally, we question the extent to which the potential benefits envisioned by the original proponents of an all-in APR are still relevant given the numerous consumer protections that have been put into place since the joint-agency recommendations of the mid-1990s and early 2000s. These consumer protections include interagency guidance on nontraditional and subprime mortgages, the DFA's requirements for an ability-to-repay assessment for every mortgage loan, and restrictions on yield-spread premiums and other compensation practices that encouraged some originators to steer borrowers to costly or undesirable loans.

Given these concerns over the potential impact of moving to an all-in FC/APR, it is incumbent on the Bureau to demonstrate that the benefits of such a fundamental change will clearly outweigh its potential costs. In our view, the Bureau has yet to make a compelling case. We believe that, with a multitude of new regulations affecting the mortgage market within a relatively short period of time, introducing a new all-in FC/APR would, at a minimum, introduce added complexity and could very well lead to a reduction in consumers' access to mortgage credit.

1.1 Uncertain Consumer Benefits

As noted by the Bureau in its proposal, the all-in FC/APR is not a new idea. It was a hallmark of an effort by the U.S. Department of Housing and Urban Development ("**HUD**") and

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[4] *See* discussion in Section 1.1 below.

the Federal Reserve Board to harmonize TILA and RESPA in the mid-1990s.[5] However, since the original idea was proposed, extensive consumer testing by the Bureau, the Federal Reserve Board, and the Federal Trade Commission has shown that consumers neither understand nor use the FC or APR as a meaningful way to understand the cost of a loan offer or to compare multiple offers.[6]

For example, after 12 rounds of cognitive interviews conducted on behalf of the Federal Reserve Board, ICF Macro International concluded that the finance charge was neither useful nor important to participants' decision-making and that numerous attempts to clarify the meaning of APR were largely unsuccessful.[7] The Bureau's own research confirms the basic finding that consumers do not rely on the FC/APR calculations to shop for loans.[8] More importantly, the Bureau's testing also found that consumers were able to make appropriate choices among hypothetical loans based on the interest rate, the monthly payment and the closing costs, and to assess the affordability of a given loan without reliance on the FC/APR.[9]

Moving to an all-in FC is unlikely to change consumers' understanding or use of FC/APR, and could conceivably make things worse. The Bureau has essentially acknowledged that the FC/APR has little utility—and, often, confuses consumers—by removing the FC from the early loan estimate altogether and by moving the APR to the last page on both the loan-estimate and closing-disclosure forms. On this point, we echo the concerns raised by the Small Business Review Panel about the "usefulness of the proposed expansion of the finance charge in light of the Bureau's proposal to deemphasize the finance charge and APR in the disclosures provided to consumers."[10] We also echo the concerns of the SBA Office of Advocacy in a recent comment letter urging the Bureau to postpone a decision on using an all-in FC/APR until the

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[5] *See* "Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act," July 1998, U.S. Department of Housing and Urban Development (HUD) and Federal Reserve Board.

[6] *See*, *e.g.*, ICF Macro International, "Design and Testing of Truth in Lending Disclosures for Closed-End Mortgages," July 16, 2009, *available at* http://www.federalreserve.gov/boarddocs/meetings/2009/20090723/Full%20Macro%20CE%20Report.pdf; Lacko, J., and J. Pappalardo, "Improving Consumer Mortgage Disclosures," Federal Trade Commission, June 2007, *available at* http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf; CFPB*, Know Before You Owe; Evolution of the Integrated TILA-RESPA Disclosures*, July 2012; and Jinkook Lee and Jeanne M. Hogarth, "The Price of Money: Consumers' Understanding of APRs and Contract Interest Rates," *Journal of Public Policy and Marketing*, 18(1), Spring 1999, pp. 66-76.

[7] ICF Macro, op. cit., p. v.

[8] CFPB, op. cit., p. xxvii.

[9] CFPB, op. cit., p. xxiv.

[10] CFPB, Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z); Proposed Rule ("**NPR**") 77 Fed. Reg. 51115, 51144 (August 23, 2012).

agency "has sufficient economic data on the impact and until it has made the decisions on other regulatory proposals involving a more inclusive definition of APR."[11]

While the Bureau has indicated that it intends to take steps to educate consumers on the meaning and use of the all-in FC, whether such efforts will be effective is largely unknown. Existing consumer-education materials provide information on the utility of FC/APR, including how the APR should be used in comparing loan terms.[12] However, consumer testing indicates that consumers use other information on the proposed disclosure forms—interest rates, monthly payments, and settlement costs—to successfully evaluate loan costs and options. As a result, even if consumers eventually gain a better understanding of the APR, adding additional elements to the calculation of FC is unlikely to enhance meaningfully their ability to shop for mortgages.

Finally, the Bureau has also indicated that an all-in FC would reduce the use of so-called "junk fees" and the reliance on third-party service providers in order to avoid a higher APR. However, upfront fee-rate trade-offs are largely determined in the capital markets and are independent of APR considerations. Similarly, the use of third-party service providers has little, if anything, to do with concerns over APR. In fact, the inclusion in FC/APR of large third-party fees such as title insurance might actually result in the addition of smaller fees of questionable value because they will have only a minimal impact on the calculated FC and APR and could conceivably go unnoticed. As noted, the Bureau's testing found that, with improved disclosures, consumers can identify and evaluate the choices between paying more up front or paying more over the term of the loan without relying on APR.[13]

1.2 Benefits to Lenders To Be Weighed Against Potential Costs

The Bureau also asserts that a more inclusive FC/APR will benefit lenders by reducing compliance burden and litigation risk. In our view, the opposite will be the case, particularly when comparing any potential benefits to the costs of implementing this requirement.

Existing APR regulations are admittedly somewhat unclear regarding the specific types of charges that must be included in the calculation. However, the industry has a long history of complying with these standards and has the systems in place to support them. Changing those systems will involve expenses and operational challenges that simply are unwarranted when requirements from so many other regulations will need to be implemented. Moreover,

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[11] Letter from Winslow Sargeant, Ph.D, Chief Counsel for Advocacy, SBA Office of Advocacy, dated August 30, 2012.

[12] *See, e.g.,* Federal Trade Commission, *Shop, Compare, Negotiate; available at* http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea09.shtm.

[13] *See* CFPB, *Know Before You Owe; Evolution of the Integrated TILA-RESPA Disclosures*, July 2012, p. xxiv.

experience has shown that inaccurate disclosures often result from third-party fees that the lender does not control; for example, fees imposed by the settlement agent at closing that were unknown to the lender when the disclosures were made. An all-in FC/APR does not address this issue.

After assessing and comparing the benefits and costs of an all-in FC/APR, we do not hold the Bureau's view that a revised FC/APR will reduce lenders' compliance burden and litigation risk. On the contrary, given the limited tolerances for understatement of the finance charge—particularly for borrowers attempting to rescind while in foreclosure—moving to an all-in FC/APR calculation may have the opposite effect unless the tolerance levels in the FC and APR calculations are adjusted significantly. In the event that the Bureau elects to proceed with implementing an all-in FC/APR at this time, it should increase existing tolerance levels, particularly those applying to borrowers in foreclosure attempting to rescind.

1.3 Complex and Uncertain Interaction with Other Statutes and Regulations

The proposal's interaction with other statutes and regulations would further complicate compliance and potentially reduce consumers' access to mortgage credit.

The Bureau acknowledges that the changes it has proposed could conflict with numerous regulations and legal regimes, including HOEPA and the high-cost lending laws that have been adopted in 29 states and the District of Columbia.[14] For example, the Bureau proposes to create a "Transaction Coverage Rate" (TCR), to be used solely for regulatory-compliance purposes. However, while the Bureau may have the discretion to impose this alternative metric for determining whether loans are HOEPA loans, switching to a TCR would most likely require many states to take legislative action, as their existing laws are typically based on APR or "points and fees," the latter of which includes the FC.

Unless existing laws are changed, moving to an all-in FC/APR would effectively expand coverage of state "high cost" loan laws. Since the GSEs are unwilling to purchase high-cost mortgages—and since the great majority of lenders are unwilling to assume the legal liability that such loans entail—this outcome could reduce the availability of mortgage credit, especially for low- and moderate-income borrowers residing in states where closing and title costs are relatively high. Some preliminary estimates of the likely impact of including title costs and third-party fees on the calculated APR are presented in Appendix A.

Other regulatory designations would be affected as well. As the Bureau acknowledges in its proposed regulations, unless an alternative compliance metric is adopted or higher

[14] *See* Anthony F. Geraci, "What to Know About High-Cost Laws," scotsmanguide.com, October 2007, *available at* http://www.geracilawfirm.com/documents/Articles/WhatKnowHighCostLaws%28RES1007%29.pdf.

thresholds established, moving to an all-in FC/APR would also affect the number of loans that meet the points-and-fees restrictions associated with QMs and other important regulations governing closed-end residential mortgages. For example, depending on the definition of "points and fees" that is ultimately adopted by the Bureau, we estimate that between 73 and 84 percent of loans at or below $75,000 would be ineligible for QM status if third-party closing costs were included in the definition of "finance charge" without some adjustment.[15] While by no means definitive, such findings underscore the need to adopt an additional metric such as the TCR or to increase the associated thresholds in order to maintain the supply of affordable mortgage credit for the very populations that HOEPA and other high-cost-lending laws are designed to protect. Due to the higher litigation risks, loans that are found to exceed HOEPA limits, or that are non-QMs, are unlikely to be made.

The Bureau could conceivably mitigate some of these potentially negative impacts by excluding third-party closing costs from the QM definition of points and fees and by basing HOEPA and other related federal statutes on an alternative metric—e.g., the TCR—or by increasing the threshold. However, this would not solve the problems that would inevitably arise in states with high-cost-lending laws.

Migrating to an all-in FC/APR and then applying a TCR for regulatory-compliance purposes would add even more complexity for consumers and lenders and significantly more implementation and operational costs. Since the benefits to consumers are limited at best, we believe that moving to an all-in finance charge in conjunction with the other Dodd-Frank-related changes is unwarranted without further research and analysis.

2.0 Proposed Delay of Certain Disclosure Requirements Established by Title XIV of the Dodd-Frank Act

In addition to the integrated disclosure requirements contained in Title X of the DFA, various provisions of Title XIV amend TILA, RESPA, and other laws to impose new disclosure requirements that are currently scheduled to go into effect on January 21, 2013 (referred to by the Bureau in the proposal as "Affected Title XIV Disclosures"). We strongly support the Bureau's proposal to use its exemption authority to delay implementation of the Affected Title XIV Disclosures until the final rule implementing the integrated TILA-RESPA authority goes into effect. As the Bureau notes in its proposal, integrating these overlapping sets of disclosures into a single form will avoid the unnecessary costs and regulatory burden that would otherwise arise if the industry were forced to revise its systems and practices multiple times. Indeed, this is the kind of thoughtful approach that we believe should be taken for other regulatory changes facing the mortgage industry.

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[15] *See* Appendix B.

At the same time, to ensure that the record in support of the Bureau's position is fully developed, we urge the Bureau to make clear in the final rule the reasoning behind (1) its authority to issue the exemption under TILA, RESPA, and the DFA and (2) its position that the final exemption rule satisfies subsections 1400(c)(1) and (c)(3) of the DFA so that the statutory requirements of the Affected Title XIV Disclosures do not become effective on January 21, 2013.

The Bureau states in the proposed rule that implementing a single, consolidated disclosure will benefit consumers and facilitate compliance with TILA and RESPA; by contrast, piecemeal implementation would create varying approaches to compliance and confuse consumers.[16] The Clearing House agrees that the purpose of the exemption and delayed implementation—clear and comprehensive disclosures for consumers—is consistent with the purposes underlying TILA, RESPA, and the DFA. We urge the Bureau clearly to set forth and reaffirm its rationale in the final rule.

3.0 The Importance of Strategic and Coordinated Implementation

As the Bureau recognizes, the mortgage industry is facing a virtual avalanche of new regulations that will go into effect in the next few years.[17] Since most of the rules have yet to be finalized—and since the potential relationship among the various rules is complex and not yet fully understood—it is difficult to assess the impact of a given proposal, let alone the combined effects of such rules, on the cost and availability of mortgage credit. There are simply too many moving pieces at this time.

The scope of change embedded in these new regulatory proposals is unprecedented. In setting compliance dates, it is critical that the Bureau carefully consider the interplay among all the various mortgage-related rules that it and other agencies are issuing in order to ensure a smooth transition, avoid unintended negative consequences for consumers, and minimize operational risk for lenders. In addition to the combined disclosure regulations and HOEPA, the proposed FC/APR rule will have to be implemented alongside other outstanding regulations that the Bureau is now considering, including:

- Ability-to-Repay/QM definition;
- appraisals;
- mortgage-loan-originator ("**MLO**") compensation;
- servicing standards; and

[16] NPR at 51135-36.
[17] A summary of these regulations is provided in Appendix C.

- escrow.

The proposed FC/APR rule will also affect the pending risk-retention/QRM definition as well as HMDA's reporting requirements.

In light of the complexity of the task, we urge the Bureau to analyze carefully not only the benefits that will accrue to consumers upon implementation, but also the potential costs from heightened operational risk that would result from limited implementation periods. A limited implementation period has the potential to increase operational risk to such a degree that market participants respond by limiting credit availability or exiting the market entirely until complex interactions among regulations are sorted out.

Such an analysis would consider the scope of changes that lending institutions would have to make to meet the new requirements, starting with changing their business models. Regulatory changes will affect the lending business from end to end. Models for costing, pricing, delivery, compensation, and risk management, for both origination and servicing, will need to be changed. Lenders also will need to set lending policies for higher-risk loans, such as HOEPA, higher-priced mortgage loans, and non-QM loans. These decisions are complex and not entered into lightly; lenders need the maximum amount of information available before making significant changes to their business models. It will not benefit lenders or consumers if lenders have to make the changes on a piecemeal basis.

We are concerned that too many changes implemented too quickly—without adequate time for thoughtful planning, testing, and training—could create operational bottlenecks, credit shortages, and heightened lender risk, none of which would benefit consumers. To ensure a smooth transition, we therefore urge the Bureau to publish an implementation schedule for the wide array of new regulations—including those related to the MLO rules, HOEPA/Finance Charge changes, servicing rules, QM (points and fees calculation), the integration of TILA-RESPA disclosure forms, appraisal standards and requirements, and the new escrow regulations —and submit the schedule for public comment.

Without a fuller understanding of what the Bureau is currently contemplating with respect to the timing and sequencing of these various rules—and, in some instances, what those rules will ultimately contain—it is difficult to comment on the compliance burden and probable impact of any given rule. Publishing the Bureau's anticipated schedule will give the industry an opportunity to provide input on the Bureau's plan and make its planning and implementation efforts more efficient and effective.

4.0 Conclusions and Recommendations

The Clearing House appreciates the opportunity to comment on the Bureau's proposed consumer disclosures and the all-in FC/APR. Ideally, disclosures should do just that: disclose key information to consumers to inform their decision-making. Other things being equal, a more-inclusive disclosure is better than a less-inclusive one. However, in this case, we believe that additional research and analysis on the rule's potential interaction with HOEPA and other laws and regulations is required before moving to an all-in FC/APR.

More generally, we believe that (1) final regulations should not be promulgated until their impact is thoroughly analyzed and understood and (2) the compliance dates for such rules must be coordinated and allow sufficient time to implement the rules in an orderly manner that will not disrupt the market.

To this end, we are requesting that the Bureau prepare a detailed compliance schedule for all of the regulatory actions that are currently facing the mortgage industry and submit it for public comment. Such information will give the industry an opportunity to provide input on the Bureau's contemplated plan and the operational challenges that might arise. A clearer understanding of the timing and sequencing of the different regulations will also improve the industry's ability to plan for the necessary changes, minimize compliance burdens and operational risk and, ultimately, help to avoid unnecessary disruptions that would be harmful to consumers.

We would welcome the opportunity to assist the Bureau in its efforts to gain a better understanding of how these regulations are likely to interact and impact the cost and availability of mortgage credit.

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Please feel free to contact me at 212-613-9812 or Mark.Zingale@TheClearingHouse.org if you have any questions about these comments or if you would like to discuss these issues further.

Sincerely,

Mark Zingale

Mark Zingale
Senior Vice President and
Associate General Counsel
The Clearing House Association

cc: *Paul Saltzman*
President, The Clearing House Association
EVP and General Counsel, The Clearing House Payments Company

The Clearing House Mortgage-Lending Reform Committee

The Clearing House Mortgage-Regulatory Advisory Group

The Clearing House Mortgage-Executives Advisory Group

The Clearing House Bank Regulatory Committee

The Clearing House Government and Legislative Affairs Committee

Appendix A: Impact of Including Closing Costs on APR in Selected States

Table 1 presents the estimated impact, based on 2012 Bankrate data, of including closing costs on the APRs of different sizes of loans.[18] In addition to presenting estimates for the median state, we also show the estimated impact in the five states with the highest average closing costs. Note that each of these states has some form of a high-cost-mortgage law in place.[19]

According to our estimates, moving to an all-in finance charge could add about 0.13 to 0.17 percent to the APR on a $200,000 mortgage in the five states with the highest closing costs. For the median state, the APR would increase by about 0.10 percent. The estimated impacts are higher for smaller-balance loans. For example, on a $50,000 mortgage, we estimate that the increase in APR could range from 0.21 to 0.29 in the high-cost states and be about 0.19 percent for the median state.

Table 1: Estimated Increase in APR by Loan Size for Selected States

	Estimated Title and Closing Costs			Estimated Increase in APR		
	$50,000	$75,000	$200,000	$50,000	$75,000	$200,000
New York	$1516	$1867	$3622	0.289	0.236	0.172
Texas	$1279	$1552	$2918	0.244	0.196	0.138
Pennsylvania	$1196	$1459	$2751	0.227	0.185	0.130
Florida	$1086	$1364	$2772	0.206	0.172	0.131
Oklahoma	$1136	$1404	$2748	0.216	0.178	0.130
Median State	$1019	$1201	$2099	0.193	0.151	0.098

Source: Bankrate.com, The Clearing House

While we have not attempted to estimate the number of mortgages that would be affected, the impact on low-income families could be significant, particularly in states such as New York and Texas, where closing costs are roughly 30 to 50 percent above the national median. As noted by the Bureau,[20] the Federal Reserve Board, in its 2009 Closed-End Proposal, estimated that the use of an all-in finance charge would increase the share of first-lien

[18] Bankrate.com surveyed up to 10 lenders in each state in June 2012 and obtained good-faith estimates online for a $200,000 mortgage to buy a single-family home with a 20 percent down payment in the state's largest city. Costs include fees charged by lenders as well as third-party fees for services such as appraisals and title insurance. APR calculations assume a 30-year fixed-rate mortgage with a 6 percent interest rate. Estimates for other loan sizes assume that title charges are a fixed percentage of the loan amount and that all other closing costs are fixed. As smaller loans most likely have proportionally higher title search and insurance costs, our estimates are conservative.

[19] Geraci, op. cit.

[20] NPR at 51148-49.

refinance and home improvement loans that are subject to HOEPA by 0.6 percent.[21] However, while the Board acknowledged that the impact would be higher for smaller loans and in states where closing costs were relatively high,[22] it did not present estimates of the potential magnitude of these effects.

[21] 74 Fed. Reg. 43428 (August 26, 2009).
[22] *Id*.

Appendix B: Impact of All-in APR on QM Qualification

In a December 7, 2011, presentation to the Bureau,[23] The Clearing House presented estimates of the share of conventional retail mortgages that would exceed the proposed 3 percent cap on points and fees for QM loans under different assumptions regarding the specific items that were subject to the cap, including closing costs[24] and loan-officer compensation.[25] Due to uncertainties regarding the definition of "bona fide" discount points, which are excluded from the QM cap if they are less than 2 percent, we also estimated the impact of the cap with and without all reported discount points.

The results are presented Table 2.[26] As shown in the chart, depending on the definition of "points and fees" that is ultimately adopted by the Bureau, the impact on the smaller mortgages is likely to be significant unless there is an alternative metric used for compliance purposes. For example, if the Bureau includes both loan officer compensation and closing costs in its definition of points and fees, 84 percent of loans at or below $75,000 would fail to meet the QM threshold. Even if LOC were, in our view, appropriately excluded,[27] including closing costs in the definition of finance charge would exclude 73 percent of loans below $75,000 and roughly a quarter of all loans between $75,000 and $150,000.

[23] "Defining a Qualified Mortgage: Challenges and Opportunities," presented to the Bureau by TCH, December 7, 2011; *available at* http://www.theclearinghouse.org/index.html?f=073274.

[24] Closing costs were restricted to credit reports, appraisal, and title.

[25] Loan-officer compensation (LOC) was estimated based on averages that were appropriate to each institution.

[26] Estimates are based on 2011 origination data from TCH member banks. In order to protect the confidentiality of the data, data from each participant were sent to a third-party aggregator and subsequently merged. The estimates in the chart are simple averages of the results provided by different institutions. Data for individual banks were treated as confidential and were not made available to TCH members.

[27] *See* Letter from The Clearing House to CFPB, "Response to CFPB Outline of Proposals under Consideration and Alternatives Considered," July 18, 2012, *available at* http://www.theclearinghouse.org/index.html?f=074133.

Percent of Loans That Exceed 3% QM Cap: Conventional Retail Mortgages

Loan Size	Scenario 1	Scenario 2	Scenario 3	Scenario 4
≤ $75,000	82.0%	73.5%	27.4%	19.5%
$75,001 - $149,999	33.0%	23.5%	7.7%	2.5%
≥ $150,000	8.2%	5.9%	3.1%	0.4%
All Loans	21.3%	16.4%	6.5%	2.6%
Treatment under Cap	**Scenario 1**	**Scenario 2**	**Scenario 3**	**Scenario 4**
• LOC	Included	Excluded	Excluded	Excluded
• Closing Costs	Included	Included	Excluded	Excluded
• Points	Included	Included	Included	Excluded

Source: The Clearing House

Appendix C: Summary of Impending Mortgage Regulations

Agency	Rule-Making	Topic Area	Description	Issue Date	Comment Due	Final Action Expected
FRB	Open	Regulatory Capital/ Basel III	• Regulatory deductions: MSAs limited to 10% of common equity Tier 1 capital. Portions above threshold not deducted are risk-weighted at 250%.	6/7/12	9/7/12	
FRB	Open	Standardized Approach for Risk-Weights	• For non-government-guaranteed mortgages, imposes higher risk-weights for higher-risk Category 2 mortgages with non-traditional terms, as well as for loans with high LTVs in both Categories 1 (lower credit risk) and 2. Also imposes higher risk-weights on junior liens in certain circumstances.	6/7/12	9/7/12	
CFPB	Open	TILA-RESPA Integration	Rules and forms combining TILA mortgage-loan disclosures with GFE and settlement statement required under RESPA, plus • Limits on closing-cost increases for settlement services • New "all in" APR	7/9/12	11/6/12	
CFPB	Open	High-Cost Loans and Homeownership Counseling	• Expands coverage of, and protections for, high-cost loans, including new servicing requirements for payoff statements, late fees, prepayment penalties, other. • Requires certification of pre-loan counseling with protections against steering, unreasonable fees and conflicts of interest.	7/9/12	11/6/12	By 1/21/13
CFPB	Open	Mortgage-Servicing Proposal	• Monthly statements with required elements and format • ARM interest-rate-adjustment notices (60-120 days before adjustment that increases the payment; 210-240 days before first adjustment) • Notices and procedures for force-placing hazard insurance • Early intervention with delinquent borrowers (40 days delinquent) • Dedicated contact personnel with delinquent borrowers • Reasonable information-management policies and procedures • Loss-mitigation procedures (completed loss-mitigation applications must be reasonably evaluated before proceeding with foreclosure). • Error-resolution requirements (must correct/investigate within 30 days)	8/10/12	10/9/12	By 1/21/13

CFPB	Open	Appraisal Standards – all loans (Equal Credit Opportunity Act amendment enacted by DFA)	• Creditors to provide free copies of all written appraisals and valuations developed in connection with the loan application • Creditors to notify applicants in writing of the right to receive a copy of each written appraisal or valuation at no additional cost	8/15/12	10/15/12	
FRB CFPB FDIC FHFA NCUA OCC	Open	Appraisal standards for higher-risk loans (TILA amendments enacted by DFA)	• Creditor must use licensed or certified appraiser who prepares written report based on physical inspection of the interior of the property • Disclose to applicants information about the purpose of the appraisal and provide consumers with a free copy of any appraisal report • Obtain additional appraisal at no cost to the consumer for a home-purchase, higher-risk mortgage loan if the seller acquired the property for a lower price during the past six months (addresses fraudulent property flipping)	8/15/12	10/15/12	
CFPB	Open	Loan-Originator Compensation (TILA, Reg Z)	• Requires lenders to make “zero-zero” loan available to consumers likely to qualify for them; lenders also to provide interest-rate reduction when consumers elect to pay points/fees upfront • Requirements concerning qualification and registration/licensing for MLOs • Restrictions on mandatory arbitration and financing of credit insurance • Additional guidance/clarification restricting loan-originator-compensation practices, including application of those provisions to certain profit-sharing plans and appropriate analysis of payments to MLOs based on factors that may act as proxies for a transaction’s terms. • Anti-steering restrictions and qualifications for safe harbor	8/17/12	10/16/12	
CFPB	Future	HMDA Reporting	Expands HMDA to include points and fees, difference between a loan’s APR and a benchmark rate, term of any prepayment penalty, value of any real property serving as collateral, mortgage term and applicant age	4/13		No deadline
CFPB	Future	Anti-Steering	DFA requires the Bureau to implement various anti-steering provisions, including prohibition on steering to a non-QM loan or to loans that result in discriminatory impacts	--	--	None
FRB	Closed	Risk-Retention (QRM)	ABS “sponsors” must retain at least 5% of the underlying mortgage credit risk. Exempts government-guaranteed ABS and securities backed by higher quality residential mortgages (QRM) based on relevant underwriting criteria.	3/19/11	6/11	

CFPB	Closed	Ability to Repay (QM)	Original rule proposed standards for ATR and QM, including levels of legal protection (safe harbor v. rebuttable presumption). Reopened for questions of delinquency data, estimated litigation costs and other purposes.	4/19/115/31/12	7/9/12	By 1/21/13
CFPB	Closed	Escrows	Requires escrow-account disclosures and expands escrows requirement to 5 years from 1 year for higher-priced mortgage loans (exempts certain small creditors from escrows rule)	3/2/11	5/2/11	By 1/31/12

Note: In its semiannual rule-making agenda, the Bureau indicated additional future rulemakings, including comprehensive revision of HELOC disclosures, right of rescission for non-home-purchase loans, comprehensive revisions to reverse mortgage disclosures and new substantive protections. The Federal Reserve Board issued Notices of Proposed Rulemakings in August 2009 and September 2010 on these subjects. The Bureau is considering when and how to finalize them, but no deadlines are indicated.