Statement of Terry K. Jones, CML

on behalf of the
Colorado Mortgage Lenders Association

House Small Business Committee
Subcommittee on Investigations, Oversight and Regulations

"Open for Business: The Impact of the CFPB on Small Business"

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Good Afternoon Chairman Coffman, Ranking Member Altmire, Congressman Tipton and members of the House Committee on Small Business Subcommittee on Investigations, Oversight and Regulations. My name is Terry Jones and I am the Chairman of the Legislative and Regulatory Affairs Committee of the Colorado Mortgage Lenders Association.

The Colorado Mortgage Lenders Association is a 56 year old organization made up of over 100 companies employing in excess of 2500 individuals involved in the Mortgage Lending Industry in Colorado. Over 75 percent of our members are small businesses that employ 25 people or less.

I have been involved in residential mortgage lending for over 42 years. In my career I have been a loan originator, a manager, an entrepreneur and a small business owner. In that time I have always been proud to be a part of an industry that helps people and families reach their dreams of home ownership. I started in the business as a loan originator in 1969 and there are few feelings as satisfying as helping a family through the complexity of the loan process and seeing the keys change hands at the closing table as one more family realizes their American dream of home ownership. I have been equally proud of the entrepreneurial spirit that has been a hallmark of the independent mortgage lender and the mortgage loan originators employed in the industry. I have seen many people start in the business as loan originators and then go on to start their own small business, first as a mortgage broker and then as a mortgage banker. These people have lived their own American dream and in doing so have served the real estate market and the buyers and borrowers of their local communities. Pride of ownership in both homes and small businesses has long been one of the key factors in building strong and prosperous local communities. I am proud to have spent my career as part of that effort.

We at CMLA recognize that there were serious excesses in mortgage lending during the recent housing boom and subsequent bust. We firmly believe that Mortgage Lenders and Mortgage Brokers alike need to take responsibility for their share of those problems.

We also believe that while much attention has been focused on the mortgage lending community, there were broad economic issues underlying the "great recession". In the decade of the 2000s, easy monetary policy, prompted in part by an effort to avoid the negative economic consequences of the stock market dot com bubble bursting in 2000, coupled with a complex financial market structure with a voracious appetite for ever more esoteric financial and loan products, fueled a housing boom and fostered an ability of mortgage lenders to offer very easy terms for the purchase and refinancing of residential real estate. This in turn allowed many consumers to purchase a home or to tap the equity in their home at the same time that easy or nonexistent documentation and underwriting policies fueled an unprecedented demand for housing and created an upward spike in home values. Our industry was at the tip of the spear of economic expansion and the housing boom and suffered the consequences of being out in front when things started to go badly. Those in the mortgage lending industry who contributed most to the lax origination and underwriting standards, the subprime lenders, have fallen by the wayside, either out of business entirely or purchased or merged into other larger institutions. The number of people employed in the mortgage lending industry has fallen by half from its peak in 2006 to today.

While we do not for a moment, ask anyone to ignore the problems of the past few years or of the housing boom and bust of the 2000s, neither the regulators, the congress or the people of the United States should overlook the success of the housing and the mortgage lending industry in the 50 years leading up to 2000 and the contributions we made to the communities of Colorado and America. That was an era of reasonable underwriting standards applied to loans, where borrower's incomes and assets were verified as part of the lending process, and the loans were typically made by a much more diverse industry comprised of smaller, more independent lenders throughout the United States as contrasted to the industry today where a few large lenders dominate the landscape.

Over the course of the past few years, many new laws have been passed by the Congress and the States. New rules and regulations have been issued by State and Federal Agencies in response to the boom and bust of the 2000s that have tremendous impact on the mortgage origination business. Most of these laws and rules seek to curb the abuses of the 2000s, but some do not seem to recognize the successes and experience of the industry in the last half of the 20th century.

For example, as required by the Dodd-Frank Act, the Federal Reserve, the OCC, the FDIC, the SEC, HUD and the FHFA have recently jointly issued a proposed rule requiring five percent risk retention by securitizers of mortgage loans. In crafting the Dodd-Frank legislation, Congress created a category of loan exempted from risk retention called the Qualified Residential Mortgage with the idea that there was a category of properly documented, properly underwritten loans, without the risky features that characterized many of the risky loans from the 2000s that could be exempted from the risk retention requirements. The regulators however, proposed a narrow QRM exemption, one that would require a 20 percent down payment from a new home purchaser (a concept that dates back to 1956 prior to the creation of the private mortgage insurance industry); one that would also require that a homeowner have 25 percent equity in their home in order to be able to refinance to get a lower interest rate; or 30 percent equity if the homeowner wanted to extract some of their equity in a cash out refinance to help send one of their children to college. Coupled with the strict debt to income ratios proposed, only a small percentage of loans outside of the programs of FHA, VA, Fannie Mae or Freddie Mac will qualify for the QRM classification. The QRM proposal does include FHA, VA, and loans that are originated to the guidelines of Fannie Mae and Freddie Mac in the QRM classification and that in many ways does recognize the way loans were made in the last half of the 20th century. The problem is that the future of Fannie Mae and Freddie Mac are uncertain, and without those programs, a very large percentage of conventional mortgage loans could be excluded from the QRM in the future. That a loan falls outside the QRM does not mean that the borrower will not be able to get a loan, but it does mean that they will almost certainly pay a higher interest rate. Estimates for the amount of the higher rate vary, but range from 35 to 175 basis points higher. CMLA believes that a good borrower taking out a non risky, traditional 30 year fixed rate conventional loan, should be able to get the best rate possible. Subjecting them to unnecessary risk retention requirements only serves to raise their interest rate and make their borrowing more costly. Those same higher rates coupled with the strict underwriting guidelines of today will mean that some borrowers may not be able to get loans at all.

The Dodd-Frank Act passed a year ago, creates a super regulator for the mortgage lending industry in the Consumer Financial Protection Bureau. This oversight is in addition to the oversight already in place by the States, FHA,VA, Fannie Mae and Freddie Mac. The CFPB is tasked with issuing 250 rules and regulations, 110 of which will be mortgage rules over the course of the next 18 months. The Risk Retention rule and the QRM mentioned above are not within the purview of the CFPB, but a similar concept does exist in the ability to repay requirements of Dodd-Frank and the Qualified Mortgage.

Two of the early Rules and Regulations we expect to see out of the CFPB over the course of the next few months that will have direct impact on our industry are (1.) Finalization of The Federal Reserve's proposed rule regarding the ability to repay and; (2.) A rule making effort (which we applaud) to combine and simplify the Good Faith Estimate disclosure form required by the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending disclosure form required by the Truth in Lending Act (TILA).

We believe that the CFPB has a historic opportunity to set the tone for the regulation of the mortgage lending industry in finalizing the Ability to Repay rule and in defining the Qualified Mortgage as a safe harbor characterized by traditional well underwritten properly documented loans, without the risky features that characterized many of the loan products introduced in the decade of the 2000s. By pursuing such a course, the CFPB can help to preserve the best of the practices and products of the last half of the 20th century and still curb the abuses of the 2000s. If the CFPB takes this approach, it will be of great benefit to small business mortgage lenders because it will create a broad safe harbor for traditional mortgages that they can rely on when making loans. CMLA believes such a safe harbor will define the arena in which most loans will be made since we believe that the risks to smaller businesses will be too great for most of them to venture outside the Qualified Mortgage parameters.

The CFPB is also assuming responsibility for the rules and regulations and enforcement of the SAFE Act. CMLA is hopeful that they will listen to the concerns of Mortgage Brokers and Mortgage Lenders who are predominately small businesses whose employees are required to be licensed by the SAFE Act to provide a transitional license to allow loan originators to move freely from depository institutions to the State Licensed environment and helping to level an already unlevel playing field that is tilted in the favor of the depository institutions. We also hope that the CFPB will provide clarity regarding the already adopted loan originator compensation rule under the Truth in Lending Act and reconsider some of the more rigid requirements that have been imposed on the ability of a small business to pay its employees in a manner consistent with the profitability of the loan products they produce.

We respectfully urge Congress and this subcommittee to carefully monitor all of these new rules to make certain that they do not unwittingly harm American families, small business, the housing and mortgage market or the nation's economic recovery.

Let me begin my more detailed discussion of the rules we expect to see from the CFPB with the proposed rule that we believe can set the tone for all of the rules and regulations to follow and perhaps even influence the agencies who proposed the risk retention rule to reconsider their approach to the QRM and follow suit with a broad QRM much like the safe harbor version of the QM. .

Ability to Repay and the Qualified Mortgage

The Federal Reserve Board proposed the ability to repay rule (which is to be finalized by the CFPB) on April 19, 2011 and published it in the Federal Register on May 11, 2011. This rule is likely the most significant change that small mortgage lender will have to deal with from the CFPB in its early days and it is this proposed rule which is of paramount importance to the small business community in our industry.

The proposed rule and its attendant commentary, 474 pages in length, deals with the requirements established by the Dodd-Frank Act that prohibit a creditor from making a mortgage loan unless the originator makes a reasonable determination, in good faith, based on verified and documented information at the time the loan is consummated, that the consumer has the ability to repay the loan, including any taxes and insurance associated with the property.

Dodd-Frank amended the Truth in Lending Act to increase the penalties for violation, including violations of the ability to repay standard and anti- steering provisions. These penalties are applicable to creditors and loan originators alike, and allow consumers who bring timely action against a creditor for a violation of the ability to pay requirements to recover special statutory damages equal to the sum of all finance and fees paid by the consumer unless the creditor demonstrates that the failure to comply is not material. Further the consumer may set off damages in a foreclosure action with no time limit on when such a private action need be filed.

The proposed rule includes the standards that will be used to determine compliance with the ability-to-repay requirement, and these standards include the making of a "qualified mortgage" (QM). Congress included language in the Dodd-Frank Act that is designed to provide some certainty and protection from liability for a lender who makes a QM. This language will benefit consumers by helping to ensure an adequate supply of affordable and high quality mortgages. However, the Federal Reserve states in the proposed rule that it is unclear from the statutory language in the Dodd-Frank Act whether Congress intended that the QM provide a "safe harbor" or merely the presumption of compliance with the ability-to-repay requirement. The proposed rule therefore outlines each of the two options and asks for comments on both.

Alternative 1 in the proposed rule provides for the "safe harbor" QM. In order to qualify for Alternative 1, the "qualified mortgage" must provide for regular periodic payments that do not result in an increase of the principal balance (negative amortization); allow the consumer to defer payment of principal (interest-only payments); or result in a balloon payment; the loan term cannot exceed 30 years; total points and fees payable in connection with the loan generally cannot exceed 3 percent of the loan amount; the loan is underwritten in a manner that includes full amortization and takes account of all mortgage related obligations that are to be paid by the borrower; and the lender considers and verifies the borrower's current or reasonably expected income or assets. Alternative 1 provides both lenders and consumers with a bright line that includes clear standards that must be met in order to make a QM and qualify for the legal safe harbor for compliance with the ability-to-repay requirement. It is worthy of note, that with the exception of the limit on points and fees, this alternative is a very good description of the traditional approach to residential lending that was taken by the vast majority of the industry prior to the boom and bust of the 2000s.

Alternative 2 in the proposed rule provides that a QM must meet the requirements of Alternative 1, as well as additional ability-to-repay requirements. The lender would be required to consider the borrower's employment status, any simultaneous loans, current debt obligations, and the borrower's credit history. If these requirements are met, the creditor is presumed to have complied with the ability-to-repay requirement. Alternative 2 however, provides merely a "rebuttable presumption" of compliance.

CMLA believes that Alternative 1 is essential for both consumers and lenders, especially small lenders, and strongly urged the Consumer Financial Protection Bureau in our comment letter of July 22nd to adopt this approach when finalizing the proposed rule.

There are a number of reasons why a safe harbor is necessary. First, the penalties for non-compliance with the ability-to-pay requirements are severe. If lenders do not have a clear safe harbor, consumers will suffer because lenders will inevitably become much more cautious and risk averse. There is already a great deal of uncertainty and litigation in the mortgage market, anything short of a safe harbor will invite more of both. The legal reality is that a rebuttable presumption can be overcome by any evidence of a potential failure to comply with the ability-to-repay standard. The lender is then faced with litigation in order to demonstrate compliance. Widespread litigation will invariably increase costs for consumers and may prove to be unbearable for many small businesses.

Second, the legal standards associated with a rebuttable presumption will vary from one court to another and from one jurisdiction to another. The result is likely to be confusion and a significant increase in compliance costs. Again, this will ultimately harm both small business and consumers by making credit scarcer and more costly.

Third, vague regulations can help create an environment where marginal creditors and mortgage loan originators flourish. Reputable creditors and mortgage loan originators strive to operate in compliance, their less reputable counterparts ignore the rules and move to capture temporary market share. Obviously, this is harmful to consumers and to our industry.

Fourth, a bright line safe harbor will encourage use of the Qualified Mortgage, and we believe this will be the primary arena where small businesses without the budget to move outside the safe harbor will focus the bulk of their lending efforts. This in turn will result in increased competition in our industry and an increased supply of affordable and high quality mortgages for consumers. The weak state of the economy has much to do with the lack of a housing recovery. This is no time to make it more difficult for lenders to make quality loans. Rather, this is a time to encourage responsible lending through greater use of Qualified Mortgages.

Fifth, a safe harbor would still permit focused litigation. This type of litigation would deal with whether the lender has met the safe harbor requirements. This degree of litigation is manageable, and reputable lenders will know that they can rely on the "rules of the road" for protection from frivolous and endless litigation.

It is clear to the members of the CMLA that a safe harbor provides the best means to ensure compliance with the ability-to-repay requirements of the Dodd-Frank Act. A safe harbor will help to maintain a steady flow of affordable and high quality mortgages to the largest number of qualified borrowers and at the same time permit small lenders to continue to compete in the arena of the highest quality loans without the higher costs of dealing with a rebuttable presumption approach.

There are aspects of the safe harbor in the proposed rule that CMLA believes need to be clarified and modified. We have expressed these concerns in our comment letter to the Federal Reserve/CFPB but these concerns are indicative of the challenges of interpreting and complying with the complex regulations that face small business today.

The rule as proposed sets a 3 point cap on points and fees for loans within the Qualified Mortgage definition. We recommended that loan originator compensation paid to a loan originator by a creditor, mortgage lender or a mortgage broker should be clearly excluded from this calculation of points and fees to determine compliance with the 3 point cap. The reason for this is simple. The calculation of points and fees already includes the origination fees paid to the creditor, broker or lender in a transaction. Those origination fees are the source of revenue used by the creditor, broker or lender to compensate the loan originator. Including both the origination fees paid to the creditor, broker or lender, and also including the loan originator's compensation paid from those fees, results in double counting the loan originator's compensation.

Second, we recommended that the dollar amount of the smaller loan definition be increased from the $75,000 proposed in the rule. The proposed rule recognizes that the point and fees cap could work to the detriment of borrowers on lower balance loans. Many of the costs that lenders incur on a loan are costs for processing, underwriting, closing and perfecting the final documentation for a loan. These costs may fluctuate with the volume of originations but they are hard costs that must be incurred on every loan and they are not for the most part dependent on the size of the loan. These costs involve salaried employees with their attendant benefit programs, office space, equipment and office supplies and all of the attendant costs of running any business. This translates into a component of the cost of loan origination that is relatively fixed. As the loan amount gets smaller and smaller, that fixed cost becomes a larger and larger percentage of the loan amount, and will eventually reach the point where the origination of the loan becomes economically unfeasible. Since small, locally owned lenders make many of the small loans needed in their community, we feel this increase in the small loan definition is particularly important to small lending businesses.

The average loan for the purchase of a home in Colorado based on the 2009 HUDA data (the most recent year for which HMDA data is available) was $216,600. Our suggestion would be to increase the smaller loan definition to $100,000 with the 3.5 to 5.0 fee scale suggested in Alternative 1 adjusted accordingly.

Third, we believe that fees paid to affiliates for loan services and products should be excluded from the calculation of fees and points so long as they represent charges (such as title insurance charges) that are regulated by or filed with State, Local or Federal governmental agencies or do not exceed an average fee for similar services based on a survey of the local market. It is an accepted practice, permitted under RESPA for lenders to be part of affiliated business relationships that offer "one stop" shopping opportunities to consumers. Those businesses are entities unto themselves and are often small businesses that have their own risks and opportunities for profit. As long as the fees for those products and services do not exceed the averages for the market or those filed with the appropriate regulators, CMLA does not believe those charges should be included in the 3 point limit.

Finally, the proposed regulations in the definition of a "bona fide discount point" contain a requirement that creditors include in the points and fees calculation, an amount the creditor might expect to receive from the sale of the loan to secondary market mortgage investors. There appears to be a presumption that such an amount would be a positive number. Given the actual experience of the market, that presumption is not necessarily true. The ultimate sale of a loan can result in either a profit or a loss depending on the success of the hedging strategy employed by the creditor. Gain or loss on sale of the loan is generally unknown at the time of origination and likely not even known at closing of the loan.

Introducing estimates that could be a positive or a negative number like these, into the calculation of the 3 point cap serves only to detract from its usefulness in the QM regulation. By introducing uncertainty into the calculation it makes it all the more likely that the lenders who are really trying to comply with the regulation will err on the side of caution, while less scrupulous lenders may exploit the lack of clarity to their benefit and to the detriment of consumers.

SAFE Act and Transitional Licensing

The CFPB assumed responsibility for the SAFE Act last Thursday, July 21, 2011. HUD issued a final rule on the SAFE Act on June 30, 2011. The SAFE Act and its rules create a serious imbalance between State Licensed Mortgage Loan Originators and the companies who employ them and the Registered Mortgage Loan Originators who work for depository institutions.

The way the rules are currently structured, a depository institution can hire a Mortgage Loan Originator from a Company employing state licensed mortgage loan originators and that individual mortgage loan originator can begin working and serving customers at their new depository based employer literally the next day. However, should a company which employs state licensed mortgage loan originators (a large number of which are small businesses) attempt to hire an experienced loan originator from a depository institution, that individual, regardless of how experienced or competent, must first comply with the educational and testing requirements for state licensing and go through the process of obtaining a state license before they can originate or work on a mortgage loan in service to their customer base. This process can easily take several weeks or longer. You can imagine that many loan originators (a position which is in many cases a straight commission job) are reluctant to make such a move and suffer the resultant interruption of their income. The net result is an unlevel playing field tilted in favor of the depositories at the expense of those who employ state licensed originators.

Colorado was a late comer to the State Mortgage Licensing Arena. A result of this is that Colorado is one of the first states in the country to license individual mortgage loan originators and as such foreshadowed the SAFE Act which takes the same approach of licensing individual mortgage loan originators. In the process of developing the initial registration and licensing process for individual mortgage loan originators in Colorado, great care was given to trying to create a workable system of licensing that would promote individual responsibility and proven knowledge and competency but not create an even more unlevel playing field by limiting the employment mobility of Bank and Credit Union Loan Officers who were exempt from the licensing requirements of the state.

We in Colorado recognized that requiring non depository based mortgage loan originators to be licensed, while at the same time exempting depository based mortgage loan originators from those licensing and educational requirements would create an imbalance between the two segments of the mortgage loan origination industry in terms of hiring practices that, left unaddressed, would severely limit the mobility of individual mortgage loan originators that worked for depository institutions. Those originators would be unable to seek employment in the non depository based side of the industry without a substantial interruption of their mortgage loan origination business while they underwent the fingerprinting, background check, education and testing requirements necessary to obtain their Mortgage Loan Originator License. Furthermore, because the public nature of the application process for Mortgage Loan Originator Licenses, their current depository based institutional employer would have access to public records identifying new applicants for licenses which would discourage depository based mortgage loan originators from applying for licenses and thus inviting the scrutiny of their current depository based employers and possible repercussions. We also considered that it would be unethical and violate the employee's duty of loyalty were an employee of a depository institution to seek employment at a non depository institution, and remain working for their original depository based employer for the four months or so necessary to complete all of the requirements of obtaining a license.

Our solution in Colorado was to create a temporary license structure allowing a temporary license holder to work under the direct supervision of a licensed mortgage loan originator during the time that he or she was completing the process of obtaining a Mortgage Loan Originator License.

It seems to us that structuring the SAFE Act rules to permit a transitional license under much the same terms as the original Colorado program would serve the interests of consumers and industry participants as well. The SAFE Act requires all mortgage loan originators to undergo background checks, be fingerprinted and then be either registered with the NMLS&R or licensed by their state and registered with the NMLS&R. The SAFE Act imposes educational and testing requirements on licensed mortgage loan originators yet does not make those requirements of registered mortgage loan originators who are employed by depository institutions. By this structure, the SAFE Act equates employment at a depository based institution with the education and testing requirements necessary for licensed mortgage loan originators. By that same logic, it seems reasonable to grant a transitional license to a practicing registered mortgage loan originator that would allow him or her to accept employment at a non depository institution and then go through the process of obtaining a license while employed by that non depository institution and not interrupting their income stream from employment in their profession. Those registered loan officers will be no less competent when employed by a non depository institution than they were when employed by a depository institution.

It is our hope, and we will petition the CFPB to consider this question, that the CFPB will consider modifying the SAFE Act Rules to permit transitional licensing for registered mortgage loan originators who wish to transition to a state licensed status.

Loan Officer Compensation

In August of 2010, the Federal Reserve adopted a final rule that placed restrictions on how mortgage lenders and mortgage brokers may compensate their loan originators. The original proposed rule began in 2009 as a part of revising the Truth in Lending Act's disclosure rules to prohibit unfair and deceptive acts and practices. The Federal Reserve finalized the rule regarding loan officer compensation knowing that additional rulemaking would be needed under Dodd-Frank, but declined to move forward with the overhaul of disclosures at that time.

The Federal Reserve Rule forced a significant change in the compensation practices of virtually every mortgage lender and mortgage broker in Colorado and for that matter, in the country. The Federal Reserve Rule prohibits basing compensation to a loan originator on a loan's terms or conditions, subject to an exception for loan amount. It further prohibits compensation to a loan originator from both the consumer and a party other than the consumer for the same transaction. It also prohibits, and rightly so, the originator from recommending a loan product to a borrower merely to receive greater compensation.

The practical effect of these restrictions has been a significant lessening of the ability of the loan originator to meet their borrowers needs when it comes to negotiating interest rates and fees. Under the current rule the loan originator's compensation program must be the same on every loan regardless of the differences in the loan product. This is particularly troublesome when dealing with some of the programs that serve low to moderate income borrowers and borrowers in rural areas.

Most States and many localities have programs designed to encourage home ownership for low and moderate income borrowers that are funded by issuing tax exempt revenue bonds. In some rural areas of Colorado these programs are the only programs available to low and moderate income borrowers. These types of programs typically have not only income restrictions on the borrowers but they also restrict the fees lenders may charge the borrowers. In the past loan originators and companies, be they lenders or brokers, typically received less compensation for the origination of this type of loan (which was known to all participants going into the transaction), but did so in an effort to serve low to moderate income borrowers and their communities. Under the Federal Reserve's loan officer compensation rule, loan originators must receive the same compensation on these "bond" loans as they do on any other loan they originate. Since the fees that can be collected are limited compared to non "bond" loans, but loan officer compensation cannot be proportionately limited, such loans can easily result in a loss to the company who employs the originator.

The result is that some companies and their loan originators will no longer offer these programs. An alternative approach for a large lender is to assign all "bond" loans to a loan originator who does not originate any other type of loan program. While this approach may work acceptably for a larger lender, this is a particularly heavy burden on the small lender who does not employ a large force of loan originators. Small lenders are faced with the choice of either originating the loans at a loss or refusing to participate in the program and thus lessening the competitive nature of their loan originators and not supporting low to moderate income lending in their community.

It is difficult to exaggerate the effect of this restriction on permitted compensation structures on the mortgage lending community. Once again it is particularly hard on small companies who do not have the budget to staff up legal and compliance departments to comply or interpret a program where the Federal Reserve itself provides verbal responses to some questions, while making it clear that only written commentary could be relied upon, and then declined to provide requested clarifications prior to the effective date of the rule. Small companies who care about doing a good job and following the rules find doing so with this rule very difficult. If rules are to be issued, small companies need clear and unambiguous rules to follow. We at the CMLA hope that the CFPB will be more clear and deliberate in issuing further rules on loan originator compensation. Further we hope the Congress and this subcommittee will monitor the progress in this area. Small lenders need clear and well defined regulation in order to be able to comply effectively. Small lenders cannot afford to absorb the risk of interpreting rules based on less than clear guidance only to find out later that their interpretation based on further rulings from the agency was incorrect.

CFPB and the States, Enforcement Coordination:

The Dodd-Frank Act grants the CFPB authority to license and supervise non-bank lenders. As written, the scope of the CFPB's Authority overlaps considerably with State Regulators. This creates the possibility of duplicative regulation which could lead to not only confusion but conflicting rules and regulations from both State and Federal Regulators.

The states have been working on rules and regulations governing non bank mortgage lenders for the past several years. Colorado, last year added sections to its Licensing and Registration Law to bring non bank mortgage companies under the umbrella of the Division of Real Estate and the Board of Mortgage Loan Originators. Throughout the country lenders have been working hard to comply with this increased level of regulation and the industry has been urging the state regulators to coordinate their activities so that companies will not be faced with duplicative or contradictory requirements from each state they do business in.

CMLA believes that the CFPB should treat its power to supervise and regulate non bank mortgage companies as a backup authority, to be used only in the event that states do not enforce their own laws. The regulatory landscape for non bank mortgage lenders has changed dramatically in the last six years. The CFPB adding an additional layer of federal regulations will only add to lender's costs, and likely not creating any additional benefit to consumers. The costs of the additional regulation will ultimately be reflected in the lenders cost of doing business and the consumers cost of obtaining mortgage credit.

As I have said before, to the extent that small business is to be regulated, it is imperative that such regulations be clear and easily interpreted. Otherwise such regulations will raise the cost of doing business, and ultimately the consumer's price of obtaining a loan. Our hope is that the CFPB will leave the bulk of the rule making and enforcement to the State regulatory agencies that are much closer to the local market, its participants and local consumers.

Good Faith/TIL combined disclosure

The Dodd-Frank Act requires that the CFPB, no later than one year after the transfer date, issue a proposed regulation to integrate and combine the Truth in Lending and Real Estate Settlement Procedures Acts required disclosures. CMLA applauds this effort and we agree that it is long overdue. We are pleased to see that Treasury Secretary Geithner and Special Advisor to the President Warren have made this a high priority of the CFPB. We agree that a uniform, simplified disclosure form at both application and settlement will be good for consumers. It is also our belief that a combined, unified, simplified disclosure will be good for small business as well by making compliance with the disclosure rules a much more straightforward process.

Conclusion:

We at CMLA are hopeful that the CFPB, as it begins its task of assuming responsibility for consumer protection in the financial markets will be particularly sensitive to the needs of small business. Small businesses all over the country and certainly in Colorado are one of the prime sources of new jobs and new opportunities in their communities. Small business is a dynamic engine for economic growth. CFPB has a unique opportunity to set the tone for the future regulation of the mortgage lending industry by recognizing and codifying the best practices of traditional mortgage lending in a broad Qualified Mortgage safe harbor. Such a rule will encourage and support the myriad of small businesses that make up a large part of the mortgage lending industry in the communities across America. They will in turn provide the competition and the entrepreneurial spirit that will provide well underwritten, well documented and well priced loans to the borrowers of their communities.

As the CFPB moves to embrace the responsibility for enforcing many of the laws that govern our industry such as Truth in Lending, the Real Estate Settlement Procedures Act, the SAFE Act etc. it is particularly important for the CFPB to develop an orderly process for its rulemaking initiatives; not only to ensure meaningful input from the industry and other stakeholders, but to develop well conceived and clear rules and a process for providing timely, reliable guidance to the industry well prior to implementation. This is especially important to small businesses.

We appreciate the efforts of this subcommittee to examine the implications and the effects of the CFPB on small businesses in the mortgage lending industry in Colorado. No matter how well intentioned rules may be, they must not be allowed to harm the very consumers they set out to protect or jeopardize the housing recovery or the nation's economic recovery.

I thank you for the opportunity to testify before you today. I will do my best to respond to any questions you may have of me.