



CUNA

Credit Union National Association

cuna.org

DANIEL A. MICA
PRESIDENT & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734

April 23, 2009

The Honorable Barney Frank
Chairman
Committee on Financial Services
United States House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
United States House of Representatives
2246 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank and Ranking Member Bachus:

On behalf of the Credit Union National Association (CUNA), I am writing regarding H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, and request that my letter be made part of the full committee hearing record on this bill. CUNA represents more than 90% of America's 8,000 credit unions and 92 million credit union members.

Given that credit unions are member-owned, not-for-profit organizations, it is not surprising that CUNA supports efforts to eliminate predatory mortgage lending practices. H.R. 1728 is similar to many of the provisions of H.R. 3915, introduced in the 110th Congress. Since then, the federal financial regulators have been moving forward with key regulatory revisions that will impact mortgage lending practices – by restricting questionable practices and by providing better disclosures to borrowers. Therefore, we urge you to continue to work closely with the regulators regarding the implementation and enforcement of mortgage lending laws, rather than pressing for the enactment of additional laws before everyone – legislators, regulators, financial institutions and consumers – can assess the effectiveness of the regulations being implemented.

Since the end of 2007, the following regulatory actions are underway to address mortgage lending problems and concerns:

- The Department of Housing and Urban Development has finalized extensive changes to the regulations implementing the Real Estate Settlement Procedures Act (RESPA). Notable revisions to the good faith estimate requirements and the HUD-1 settlement statement information are effective January 1, 2010.
- The federal financial regulators are currently designing rules to implement the mortgage registration requirements of the S.A.F.E. Mortgage Licensing Act (Title V of the Housing and Economic Recovery Act of 2008), and states are addressing the licensing requirements for mortgage brokers. We are advising credit unions that they should expect to have to register their staff in the second half of 2009. Mortgage licensing provisions first appeared in H.R. 3915.



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CREDIT UNIONS®

PO Box 431 | Madison, WI 53701-0431 | 5710 Mineral Point Road | Madison, WI 53705-4454 | **PHONE:** 608-231-4000

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- The Federal Reserve Board finalized amendments to Regulation Z that will establish new protections for consumers from unfair or deceptive home mortgage lending and advertising practices under its authority in the Home Ownership Equity Protection Act (HOEPA). For a new category of “higher-priced mortgages,” which should include nearly all subprime loans, the regulations will require lenders to consider the borrower’s ability to repay the loan, require verification of income and assets, impose limits on prepayment penalties, and require escrow accounts for taxes and insurance. Most of these new regulatory requirements become effective October 1, 2009. The Board was certainly encouraged by members of Congress – rather than directed by the enactment of any legislation -- to use its HOEPA authority to develop these regulations.
- The Federal Reserve Board is currently reviewing its closed-end lending rules and its home equity lending rules under Regulation Z, which implements the Truth in Lending Act. This is a major undertaking, and we anticipate a proposed regulation to be publicly circulated later in 2009. The Board’s action follows its review of the open-end Regulation Z rules, which were finalized at the end of 2008 and which were certainly shaped by concerns expressed by members of Congress, especially comments about unfair and deceptive credit card practices.
- The Treasury Department issued guidelines on March 4, 2009 to implement the Administration’s “Home Affordable Modification Program,” although many details still need to be addressed.

All these requirements, which are in various stages of development and implementation, will have major impact on financial institutions’ mortgage lending programs and require tremendous investments in data processing reprogramming, new forms and disclosures and staff training. As the Committee proceeds with consideration of H.R. 1728, CUNA urges consideration of only those statutory changes which are absolutely essential.

With respect to the legislation that is under consideration at today’s hearing, most of the provisions were included in H.R. 3915 (110th Congress). However, there is one provision of H.R. 1728 and not in H.R. 3915 which is garnering a lot of attention: Section 213 on “credit risk retention.” Section 213 would apply to any residential mortgage loan that is not a “qualified mortgage.” When a lender makes a mortgage loan that does not meet the definition of a “qualified mortgage,” it would have to retain at least 5% of the mortgage balance – so the lender would retain a 5% investment and assumedly be less willing to originate poorly underwritten mortgage loans.

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A qualified mortgage would be defined as a residential mortgage loan:

- with an APR that does not exceed the limits set for higher-priced loans under Regulation Z (1.5% or more for a first lien loan and 3.5% or more for a subordinate lien loan);
- where the income and financial resources of the borrower are verified and documented;
- where the underwriting process is based on the fully indexed rate and takes into account escrow items;
- does not cause the borrower's debts to exceed a currently undefined ratio or limit (to be determined by regulation); and
- is for a 30-year term.

In our limited discussion with credit unions on this new provision, we believe that it would not have a major impact on their operations, since they are depository institutions. However, this is not to suggest that this provision will have no impact on credit union mortgage lending. While we assume that the secondary market would adapt to this provision, were it law, we also expect that refinancing would become more complicated, and there undoubtedly would be some unintended consequences of the proposal, such as standardizing mortgages to a 30-year term and, to a small degree, limiting the ability of mortgage lenders to make more mortgages, since they would be retaining 5% of their originations on their books.

We do have a number of practical questions or concerns with the bill as introduced. For example:

- In Section 209 and in other sections, the effective dates are just not workable, factoring in the compliance involved. We would encourage the Committee to consider an effective date of at least 12 months after issuance of a final rule or 24 months after the date of enactment.
- In Section 304 which addresses the correction of errors to avoid liability, the time period is far too short; it is very unlikely that a lender would even discover any noncompliance within 30 days after a loan closing. We would encourage the Committee to give lenders no less than 180 days after loan closing to discover any failure to comply.
- In Section 503 on proposed RESPA amendments, the lender is to send two notices and wait at least 45 days before imposing forced-placed hazard insurance. We are concerned that the lender's security could be destroyed during this period.
- We note that a number of provisions in the bill already seem to be required by regulation. For instance, Section 605, which would amend the Equal Credit Opportunity Act to require that the applicant gets a copy of the appraisal, is already required by the Federal Reserve Board's implementing rules, Regulation B.

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Finally, we have a major concern involving the new standards the legislation proposes. The Truth in Lending Act has been the subject of innumerable lawsuits over the last 40 years, so lenders are understandably concerned about the establishment of some new standards in the bill which would trigger many new lawsuits, such as a "duty of care" in Section 102, the "reasonable and good faith determination" of the applicant's ability to repay in Section 201, the "net tangible benefit" in Section 202, and the "rebuttable presumption" in Section 203. The new HOEPA regulations that go into effect this fall hopefully will address many of the concerns of the sponsors of this legislation.

On behalf of America's credit unions, thank you for considering our views on H.R. 1728. We look forward to continuing to work with the Committee to eliminate predatory mortgage lending practices.

Sincerely,

A handwritten signature in black ink that reads "Daniel A. Mica". The signature is written in a cursive style with a large, looping initial "D".

Daniel A. Mica
President and CEO