



Credit Union National Association

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July 22, 2013

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

Re: Docket No. CFPB-2013-0018; Comments on Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z)

Dear Ms. Jackson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposal to amend certain provisions of the above referenced regulations. By way of background, CUNA is the nation's largest credit union trade organization, representing the nation's state and federal credit unions, which serve nearly 97 million members.

CUNA appreciates the Bureau's efforts in clarifying and amending certain portions of the January 2013 mortgage rules to provide additional assistance to credit unions and other financial institutions in complying with the new rules. Additionally, we commend the Bureau's efforts to continue to listen to the concerns and inquiries of the credit union industry while working with CUNA, the leagues and our members in recent months as part of the Bureau's Mortgage Regulation Implementation project.

Even so, credit union mortgage lenders remain extremely concerned about the compliance responsibilities they will have to undertake to be ready for the January 2014 implementation of the various mortgage rules. We urge the agency to set up a compliance "hotline" for creditors' use for the first part of 2014 to direct questions and concerns about compliance to the CFPB. We also urge the agency to agree to review the implementation of mortgage-related rules in the summer of 2014 and in January 2015 through stakeholder meetings to determine whether further changes are needed to minimize regulatory burdens without jeopardizing the purpose of Dodd-Frank Act mortgage credit provisions.



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Regulation B “Valuation” Amendments

In order to maintain consistency between the statutory language of section 1744 of the Dodd-Frank Act and §1002.14 of Regulation B, CUNA supports the removal of the words “or opinion” from the Official Staff Commentary sections involving the definition of “valuation” to properly reflect the definition as “an estimate of the value of a dwelling developed in connection with an application for credit,” rather than an appraiser’s “estimate or opinion....”

Loss Mitigation Procedures

Under Regulation X of the mortgage servicing rules, servicers are required to review a borrower’s loss mitigation application within five days and provide a notice to the borrower acknowledging receipt and inform the borrower whether the application is complete or incomplete. If the servicer does not deem the application to be complete, the servicer’s notice must also list the missing items and direct the borrower to provide the information by the earliest remaining date of four possible timeframes.

The proposed changes would provide servicers with more flexibility regarding setting and describing the date by which borrowers should supply missing information and also set forth requirements and procedures for a servicer to follow in the event that an application is later found to be missing information or documentation necessary for the evaluation process.

CUNA supports the Bureau’s proposals in this area and believes the proposed rule regarding follow-up information on incomplete loss mitigation applications sufficiently balances the servicer’s requirements with the need for additional information to protect the borrower’s interests. No further provisions are needed to avoid the practice of dual-tracking, prolonged loss mitigation processing and denial of applications due to inadequate information.

Application Time Period Disclosures

With respect to the time-period disclosures related to receipt of a complete loss mitigation application, CUNA supports the CFPB’s proposal to replace the requirement that a servicer disclose the earliest remaining date of the four specific dates set forth in section 1024.41(b)(2)(ii) with a more flexible requirement that a servicer determine and disclose a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. If a borrower submits a loss mitigation application on the 114th day of delinquency, under the current rule, the servicer would have to inform the borrower by the 119th day that the borrower should complete the loss mitigation application by the 120th day. It seems impractical to require borrowers to assemble the missing information within one day. In light of that, CUNA supports the Bureau’s proposal to allow servicers to determine generally a reasonable date for this purpose.

Foreclosure Sale Clarification

Where a foreclosure sale has not been scheduled at the time a complete loss mitigation application is received, but one is subsequently scheduled less than 90 days after receiving the application, or if a foreclosure sale has been scheduled for less than 90 days after such application is received and is then postponed to a date that is 90 days or more after the receipt date, CUNA supports the proposal for servicers to treat such an application as if it were received at least 90 days before the foreclosure sale. The current final rule lacked clarity regarding its application to these circumstances, and credit union servicers appreciate additional details to address these situations.

Short-Term Forbearance Clarifications

Since publication of the final rule, questions have been raised about how the rule applies in situations in which a borrower merely needs and requests a short-term payment forbearance. The proposal would provide servicers more flexibility in providing short-term payment forbearance plans based on an evaluation of an incomplete loss mitigation application. Specifically, the Bureau is proposing to relax the prohibition in § 1024.41(c)(2)(i) against evading the requirement to evaluate a borrower's complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based on an evaluation of an incomplete loss mitigation application.

CUNA agrees that the Bureau's proposed definition of a short-term forbearance program, which would allow the forbearance of payments due over periods of no more than two months, is reasonable. CUNA also supports the view that such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments, so that lenders may tailor different forbearance programs depending on borrower needs. For example, programs may have the borrower make up the payments at the end of the forbearance period, spread over a certain period of time (for example, over the next 12 payments) or may make the forgone payments due when the loan matures. CUNA does however recommend that additional definitions be added that address specific situations, such as programs offered to victims of natural disasters and unemployment situations. The proposed rules regarding short-term forbearance programs are helpful, and they will appropriately allow credit union servicers to offer short-term forbearance plans pending receipt and evaluation of complete loss mitigation applications.

Reasonable Expectation of Completeness

The Bureau is also proposing to define what constitutes the creation of a reasonable expectation that a loss mitigation application is complete. CUNA agrees with the proposed approach which would clarify that a servicer creates a reasonable expectation that a loss mitigation application is complete when the servicer notifies the borrower in the § 1024.41(b)(2)(i)(B) notice that an application is complete or when, in the same notice, the servicer notifies the borrower that

certain items are missing and the borrower provides all the missing documents and information. However, CUNA strongly urges the Bureau to adopt in the final rule a provision that the application should be considered complete not as of the date the borrower was given a reasonable belief it was complete, but as of the date it was actually completed.

Pre-Foreclosure Review Period Clarifications

The Bureau is proposing to clarify what servicer actions are prohibited during the pre-foreclosure review period. Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless a borrower's mortgage loan is more than 120 days delinquent. A servicer is also prohibited from making such a notice or filing while a borrower's complete loss mitigation application is being evaluated.

CUNA supports the proposed comment which would state that whether a document is considered the first notice or filing should be determined by State law. Additionally, a document used as evidence of compliance with foreclosure practices required pursuant to State law would be considered the first notice or filing, and a servicer would be prohibited from filing such a document during the pre-foreclosure review period. CUNA appreciates the fact that this proposed comment would not prohibit a credit union servicer from attempting to collect the debt, sending periodic statements, sending breach letters, or any other activity during the pre-foreclosure period, so long as such documents would not be used as evidence of the creditor's compliance with requirements applicable under State law in connection with a foreclosure process, and are not banned by other applicable law.

120-Day Foreclosure Period

CUNA also supports the Bureau's proposal to provide an exemption to the 120-day foreclosure ban when a foreclosure is based on a borrower's violation of a due-on-sale clause or when the servicer is joining the foreclosure action of a subordinate lienholder.

However, CUNA urges that two additional exceptions be permitted. Borrowers who violate a "Preservation, Maintenance & Protection of Property" covenant in a security instrument could remain current on their mortgage (or less than 120 days delinquent) while the property continues to deteriorate. This could be evidenced by unused insurance damage proceeds, notices of code violations from local authorities, cancellation of homeowner insurance policies due to condition of the property, etc. If the servicer is unable to initiate foreclosure prior to the loan becoming 120 days delinquent, the condition of the property could worsen and cause further losses to the creditor.

Additionally, an exception to the pre-foreclosure review period should be allowed when borrowers decide to voluntarily default or walk away from the home and have advised the servicer that they no longer wish to be considered for loss

mitigation efforts. This typically results in the home being left vacant and susceptible to vandalism, theft and increased risk of damage from the elements. If the servicer can obtain reliable validation from the borrower that there is no further interest in loss mitigation and the home is being abandoned, the servicer should be able to proceed with the foreclosure prior to the loan becoming 120 days delinquent.

Finally, CUNA continues to urge the Bureau to do more to exempt credit unions from the general 120-day foreclosure ban, as credit unions work closely with their members so that foreclosure is an absolute last option, and is of no surprise to the borrower after all other loss mitigation efforts have failed.

Clarification of Points & Fees

The Bureau is proposing to clarify the treatment of charges imposed in connection with a closed-end credit transaction that are paid by a party to the transaction other than the consumer, for purposes of determining whether that charge is to be included in points and fees for HOEPA purposes. The proposal would provide that charges paid by third parties are included in points and fees. Additionally, the proposed comment would provide that seller's points and fees are excluded from the finance charge and thus are not included in points and fees under § 1025.32(b)(1)(i), but charges paid by the seller may be included in points and fees if the charges are for items contained within § 1026.32(b)(1)(ii) through (vi).

CUNA supports these additional clarifications for purposes of determining what constitutes points and fees, and believes that these additional details will assist servicers to comply with the rule.

Rural & Underserved Exception

In light of the fact that the CFPB is re-examining the definitions of "rural" and "underserved" over the next two years, the Bureau is proposing to revise the current exception to the prohibition on balloon payments for high-cost mortgages for mortgages made by small creditors operating predominantly in "rural or underserved areas," making more than 50% of their total covered transactions secured by a first lien on properties to allow other small creditors to make these loans so that they may qualify for qualified mortgage status under the Ability-to-Repay final rule. CUNA agrees with the Bureau that the proposed exemption is in the interest of the borrowing public and that it will apply to products that maintain and strengthen homeownership and equity protections. This will allow small creditors operating in areas that do not qualify as "rural" or "underserved" to continue to originate high-cost mortgages with balloon payments. CUNA supports the proposal to extend the exception to bans on high-cost mortgages featuring balloon payments to small creditors that do not operate predominantly in rural or underserved counties, as long as the loans meet certain other restrictions, such as being held in portfolio.

Escrow Exception

In this same vein, the Bureau is proposing to amend the exemption to the general requirement that creditors maintain an escrow account for first-lien higher-priced mortgage loans where a small creditor operates predominantly in rural or underserved areas to small creditors that have extended more than 50% of their total covered transactions secured by a first lien on properties located in “rural” or “underserved” counties during any of the preceding three calendar years.

CUNA supports the Bureau’s planned extension of the exemption from maintaining escrow accounts on certain higher-priced mortgage loans to small creditors who operate predominantly in rural or underserved areas to those small creditors that qualified in any of the previous three calendar years to prevent these creditors from losing eligibility for the exemption in 2014, due to changes in which counties are defined as rural. However, we also urge the CFPB to extend the exception to loans that are made to low-income or underserved borrowers, whether or not they live in rural or underserved areas.

Loan Originator Clarifications

CUNA supports the additional clarifications the Bureau is proposing regarding the definition of “loan originator” under the mortgage loan originator final rule, and encourages the Bureau to do all it can to ensure that tellers and other administrative personnel at credit unions are not subject to the loan originator qualification requirements or additions to the Official Staff Commentary. CUNA appreciates and fully supports the Bureau’s proposal to clarify the meaning of “credit terms,” to explain that any such activity by a person must relate to “particular credit terms that are or may be available from a creditor to a particular consumer based on the consumer’s financial characteristics” for such activity for that person to be considered a “loan originator” under the rule. CUNA agrees that a person who merely states general information such as “we offer rates as low as 3% to qualified consumers” should not be considered a loan originator, as the person is not offering particular credit terms that are or may be available to that consumer based on his or her financial characteristics.

Similarly, CUNA supports the additional Official Staff Commentary that would provide that the definition of a loan originator does not include a person who, acting in his or her capacity as an employee (or agent or contractor), provides a credit application form from the entity for whom the person works to the consumer for him or her to complete. Purely administrative tasks such as this should be excluded from the rule’s coverage, and CUNA appreciates the Bureau recognizing these operational issues that are important to credit unions.

Prohibition on Financing of Credit Insurance Premiums or Fees

CUNA fully recognizes and supports the prohibition under Section 1414 of the Dodd-Frank Act regarding the financing of *actual* single-premium credit insurance. However, CUNA does not support the Bureau’s proposal to strike the words

“Single Premium” from the heading of section 1026.36(i). The statutory heading of section 1414 of the Dodd-Frank Act specifically contains these words and to remove them would detract from Congress’ intent to have this provision relate solely to single-premium credit insurance, as opposed to insurance premiums which are calculated and paid in full on a monthly basis, separate and apart from insurance premiums paid at loan consummation.

CUNA supports the Bureau’s proposal to define the term “finances” to cover when a creditor “provides a consumer the right to defer payment of a premium or fee owed by the consumer.” Where creditors are adding a monthly credit insurance premium to the principal balance of the loan, but subtracting the premium from the principal balance immediately or as soon as the premium or fee is paid, CUNA does not believe that the consumer has been given the right to defer the payment of such premium which is then due and payable. Monthly credit insurance premiums or fees offered by credit unions are due in the same month that they are posted to the consumer’s account. The consumer is not liable for the monthly credit insurance premium or fee unless he or she misses the payment due date.

CUNA also urges the Bureau to clarify that in instances where the creditor is adding the credit insurance or fee to the consumer’s principal loan balance, and the consumer is contractually obligated to remit the credit insurance or premium amount in the same period or month in which it is posted to the consumer’s account, that these situations do not constitute financing for purposes of the prohibition in § 1026.36(i). CUNA believes that this approach is consistent with the definition of “credit” under § 1026.2(a)(14) of Regulation Z and the Truth in Lending Act.

We encourage the Bureau to clarify that where a creditor agrees to modify or extend the mortgage loan payment subsequent to consummation of the loan due to, among other things, forbearances, skipped payments, loan modifications or other payment due-date allowances, that these items would also not constitute financing for purposes of the § 1026.36(i) prohibition.

In this light, CUNA urges the Bureau to drop the alternative definition of “finances” as that definition contradicts the express exemption in the Dodd-Frank Act for premiums that are “calculated and paid in full on a monthly basis.” While “finance charge” is a measure of the cost of consumer credit represented in dollars and cents under the Truth in Lending Act, the finance charge does not necessarily include all costs associated with obtaining consumer credit, as you know. For example, credit insurance and debt cancellation product fees are excluded when certain disclosures are given. Similarly, certain real-estate related charges are excluded from the finance charge under Regulation Z. Using a finance charge definition for the term “finances” within the context of the prohibition contained in § 1026.36(i) could create confusion for consumers and creditors, alike.

CUNA supports the CFPB’s clarification that credit insurance is “calculated and fully paid on a monthly basis” if its premium or fee declines as the consumer pays down the outstanding principal balance of the loan, but does not agree that these

premium amounts cannot be added to the principal balance of the loan. So long as the creditor is not providing the consumer the right to defer payment of a premium or fee owed by the consumer and the monthly credit insurance premiums or fees offered by the creditor are due in the same month that they are posted to the consumer's account, the addition of such amounts to loan principal should be permissible.

CUNA does not support adjusting the effective date of January 10, 2014 for the ban on financing credit insurance premiums. Changing this mandatory compliance date to a date earlier than January 10, 2014 would be detrimental to credit unions offering these credit insurance products, as affected credit unions would not have sufficient time to adjust their billing practices to comply with a final rule on this point. Credit unions need to be afforded as much time as possible to work with system vendors and information technology providers to make any necessary required amendments to their systems to comply with a final rule.

Effective Date for Other Provisions of the Mortgage Loan Originator Compensation Rule

Given the current effective date of this rule, the Bureau notes the complexities involved in undertaking a separate accounting which would likely be required for creditors to undertake for the period of January 1 through January 9, 2014 with respect to compensation paid to loan originators under a non-deferred profits-based compensation plan. Additionally, many other sections of the rule are also focused on compensation plan structures, registration and licensing, and hiring and training requirements that are often structured on an annual basis and typically do not vary from transaction to transaction.

CUNA supports the change in the proposed effective date from January 10, 2014 to January 1, 2014 for portions of the loan originator compensation rule covering definitions, scope, anti-steering provisions, loan originator qualification requirements, compliance policies and procedures, and record retention requirements. While the implementation period for credit unions would be 9 days less than provided for in the original final rule, CUNA supports a cleaner transition period that more closely aligns with changes to employer's annual compensation structures and registration, licensing, and training requirements, which would likely be afforded by altering the effective date to reflect the beginning of the calendar year.

Conclusion

Thank you for the opportunity to comment on the on the Bureau's amendments to the 2013 mortgage rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z). If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6732.

Sincerely,



Jared Ihrig

Associate General Counsel