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November 6, 2012

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

Re: Docket No. CFPB-2012-0028; Comments on Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z).

Dear Ms. Jackson:

This letter represents the views of the Credit Union National Association (“CUNA”) regarding the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) proposed rule on Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z). By way of background, CUNA is the nation’s largest credit union trade organization, representing approximately 90 percent of our nation’s 7,000 state and federal credit unions, which serve about 95 million members. This letter was developed in coordination with CUNA’s Consumer Protection Subcommittee and Housing Finance Reform Task Force, CUNA Council members, State Credit Union Leagues and others. Separate letters are being filed regarding the Bureau’s proposed amendments to the finance charge and Homeowner’s Equity Protection Act provisions under Regulation Z.

CUNA supports the objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) to consolidate the mortgage disclosures currently required by the Truth in Lending Act (“TILA”) and the Real Estate Settlement Procedures Act (“RESPA”).

However, while we applaud the objective and acknowledge that the end result of streamlined disclosures is positive, credit unions are concerned that the costs and regulatory burdens to them to achieve the simpler approach will be significant. That is why we continue to have significant concerns regarding various aspects of the proposal, which are further detailed within this letter.



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CUNA's Comments In General

CUNA supports providing consumer disclosures that are meaningful and clear for borrowers to understand the important terms of a financial transaction, yet not overly burdensome for credit unions to properly complete, generate, deliver and explain to mortgage loan applicants. In that connection, we urge the CFPB to adopt CUNA's recommendations that we believe will benefit credit unions and their members; our recommendations are summarized below:

- CUNA urges the CFPB to provide for a lengthy implementation period and mandatory compliance date for credit unions;
- We urge the CFPB to consider the implementation costs for credit unions and provide exemptions from certain requirements contained within the final rule and make attempts to minimize costs for credit unions where possible;
- CUNA strongly supports the CFPB's proposal to eliminate the Total Interest Percentage and Lender Cost of Funds disclosures required by Section 1419 of the Dodd-Frank Act, as these are of questionable value to consumers;
- CUNA asks for further clarity concerning the definition of "application" under RESPA for purposes of requiring the issuance of the CFPB's proposed Loan Estimate;
- CUNA urges the CFPB to retain the existing 10% tolerance level as required by current RESPA regulations with respect to third party charges such as appraisal and title services;
- CUNA urges the CFPB to consider allowing lender flexibility as to when to involve settlement agents in the provisioning of the Closing Disclosure;
- CUNA urges the CFPB not to move forward with the proposal that would require lenders to maintain "standardized, machine-readable" electronic versions of Loan Estimates and Closing Disclosures provided to consumers; and
- CUNA urges the CFPB to provide explicit guidance as to how to handle mortgage loan transactions which are initiated under existing Regulation Z and Regulation X rules, but are not yet consummated as of the time that new rules become effective.

Delayed Compliance for Integrated TILA and RESPA Disclosure Rules

In general, CUNA supports the CFPB's proposal to combine the early TIL and the GFE into the "Loan Estimate" disclosure, and also supports the proposal to combine the final TIL and the HUD-1 settlement statement into the "Closing Disclosure." These proposed combinations will help decrease the amount of confusion that exists with the current forms among both lenders and borrowers. Further, reducing the number of TILA and RESPA disclosures, integrating the disclosure forms, and clarifying conflicting or ambiguous regulatory requirements will, in the long-term, assist in reducing the compliance burdens

on credit unions and in providing meaningful and beneficial disclosures to consumers, as well.

However, in balancing the potential benefits of integrated disclosures, CUNA urges the CFPB to remain mindful of the fact that these disclosures are prepared in many cases by third party vendors with which credit unions contract, and that most changes mandated by the CFPB to such disclosures would likely involve programming changes to the software of vendors and credit unions.

Because credit unions are not, in general, among the largest financial providers in the marketplace, their negotiating power over vendors concerning programming changes, the timing of such changes, and the costs for such changes is often limited. Nonetheless, credit unions are highly dependent on such vendors to make required regulatory disclosure changes.

In light of this reality, we urge the CFPB to allow a lengthy implementation period as well as a delayed mandatory compliance date that is at least 18-24 months after the adoption of any final rule to implement the TILA and RESPA combined disclosures.

The up-front costs and re-training of employees to implement these required changes to mortgage disclosures and systems at credit unions will be substantial. Because of these concerns, we urge the CFPB to adopt CUNA's other recommendations that will mitigate the burdens on credit unions of complying with the proposal without jeopardizing protections for credit union members.

Loan Estimate

In general, CUNA believes that the Loan Estimate is substantially improved from the existing GFE and early TIL disclosures. While we recognize that Section 1419 of the Dodd-Frank Act amends TILA to require, in the case of residential mortgage loans, "the disclosure of the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan," ("Total Interest Percentage") we support the Bureau's proposal to use its authority to eliminate this disclosure from the Loan Estimate, as we fail to see the benefit of the disclosure to a potential borrower in its current format.

This disclosure may have been included to illustrate to potential borrowers the relationship between the length of the loan term and the total amount of interest charged. However, the disclosure in its current format would confuse consumers and provide no benefit to them.

If the Bureau is unable to eliminate this disclosure, CUNA urges additional clarification be provided to this required disclosure that would be more readily understandable and beneficial to consumers. We also urge the CFPB to consider an alternative to its currently proposed placement on the Loan

Estimate, so that consumers are not further confused by this disclosure. For example, to have this proposed disclosure appear adjacent to the Annual Percentage Rate (“APR”) disclosure on page 3 of the Loan Estimate could possibly further confuse the consumer, especially when the APR is representing “your costs over the loan term.”

Under the proposal, creditors would be required to deliver the Loan Estimate not later than the third business day after the creditor receives the consumer’s application, and must also deliver these disclosures not later than the seventh business day before consummation of the transaction. In general, CUNA supports these proposals, with the specific exceptions contained within proposed § 1026.19. However, CUNA is concerned that the proposed waiver of the seven-business-day waiting period for “bona fide personal financial emergencies” is too narrow, and will not provide consumers with adequate relief for purposes of the proposed waiver.

CUNA urges the Bureau to provide lenders and consumers alike with more flexibility when it comes to exercising this proposed waiver, and provide additional examples of when waivers of this nature may be extended by creditors and exercised by consumers. The imminent sale of the consumer’s home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is too onerous a standard to provide meaningful relief under the proposed waiver. CUNA urges the Bureau to take this into consideration as it finalizes the rule.

CUNA urges the Bureau to leave to the borrower’s discretion whether or not a bona fide personal financial emergency exists, rather than create an additional unnecessary compliance burden for creditors. Only the borrower truly knows the totality of the circumstances surrounding his or her personal financial situation, and CUNA believes that borrowers should be permitted to instruct lenders as to when circumstances require this waiver to be initiated for the consumer’s benefit.

In connection with the provision of the proposed Loan Estimate, CUNA also supports the Bureau’s proposal to include within the final rule more detailed requirements for the written list of providers as well as guidance regarding the content and format of the provider list under proposed § 1026.19(e)(1), where a lender permits a borrower to shop for third party settlement services.

Closing Disclosure

CUNA also supports the Bureau’s proposal to remove the Total Interest Percentage disclosure from the proposed Closing Disclosure, for the same reasons as set forth above. Alternatively, we would urge the Bureau to consider providing additional clarification relating to this disclosure that would be more readily understandable and beneficial for consumers, and to consider a different placement of the disclosure within the Closing Disclosure, to better inform the consumer of this information.

Section 1419 of the Dodd-Frank Act amends TILA to require the disclosure of the “approximate amount of the wholesale rate of funds in connection with the loan,” in the case of residential mortgage loans, and this proposed disclosure appears as the “Approximate Cost of Funds (ACF)” on the Closing Disclosure. CUNA strongly supports the Bureau’s approach to use its authority to eliminate this disclosure in its entirety. For those credit unions that intend to sell mortgage originations to the secondary market, this disclosure provides absolutely no benefit or value to the consumer, as we believe it is the investor’s cost of funds rather than the lender’s cost of funds that should be measured. Second, for those credit unions that intend to portfolio their mortgage originations, a more appropriate measure of the cost of funds in this context would be the credit union’s cost of funds as measured over the life of the loan, rather than solely at the point of origination. CUNA has seen no evidence that this disclosure is beneficial to the consumer. For example, if a consumer were to use this cost of funds disclosure as the sole basis for his/her loan comparison shopping, then it is possible that the consumer could well choose a loan with a higher APR but possessing a lower cost of funds, as opposed to a loan with a lower APR that might be a better choice for the consumer overall.

If the Bureau determines it must proceed with this disclosure, CUNA urges the CFPB to consider providing additional clarification so that the consumer is able to fully understand the information in the context of the mortgage lending process, including what the impact to the consumer is for his/her particular loan.

Definition of “Application”

Under the current regulations, the receipt of the following information by the lender or mortgage broker constitutes receipt of an “application,” which receipt requires the lender or the mortgage broker to generate a Good Faith Estimate: (1) borrower’s name; (2) monthly income; (3) Social Security number to obtain a credit report; (4) the property address; (5) an estimate of the value of the property; (6) loan amount sought; and (7) any other information deemed necessary by the lender.

Under the proposal, the CFPB is considering the removal of the seventh item, listed above, from the definition of “application,” as it is the Bureau’s belief that this prong of the definition could allow lenders and mortgage brokers to delay providing the early TIL and GFE until relatively late in the loan process by delaying collection of information deemed “necessary.”

CUNA believes that the elimination of this seventh prong of the definition may result in confusion for borrowers. Institutions such as credit unions have specific application requirements which do not delay providing early disclosures to consumers, but allow lenders to focus on providing information that best fits a consumer’s needs. For example, loan applicants at a credit union must generally have an open membership account. If the CFPB eliminates the

ability for creditors to maintain the seventh application requirement and applicants do not meet this requirement, then credit unions may have to process a loan denial letter simply because the borrower lacks a membership account.

Additionally, some lenders have additional requirements for information that is relevant to the consumer's loan request and that reduces the need for subsequent redisclosure. Consumers may be confused when loans must be redisclosed multiple times. Also, consumers benefit when they are able to obtain important information at application that will not have to be re-disclosed, avoiding a delay in their application. An example would be if a lender requests different loan terms depending on the proposed property occupancy status (primary, second home or investment property) or type of property (traditional build, condominium or manufactured home). If the regulation continues to allow creditors to include these types of requirements in the definition of application, then credit unions will be able to address consumers' requests more efficiently.

In the event the CFPB decides to eliminate this aspect of the definition, CUNA urges the CFPB to replace it with an item which will allow lenders to require the specific loan product and loan term, as well as the down payment amount to meet this definition. In order for lenders to provide an accurate proposed Loan Estimate, these items are essential to have in advance of being required to issue such an estimate of applicable costs for a particular mortgage transaction.

If the CFPB concludes that the definition of "application" needs no amendment, then CUNA urges the CFPB to provide more detail concerning what does and does not constitute "any other information deemed necessary by the lender," so that credit unions have a clear understanding of the types of information that they may obtain in advance of issuing a Loan Estimate to a potential borrower.

Credit unions need to be able to price their loans to be competitive in the marketplace, yet provide accurate and timely required disclosures for consumers. Without being able to determine accurately what information is and is not allowed to be collected prior to a lender's legal obligation being triggered to generate and deliver a Loan Estimate to an applicant, this task would be impossible to accomplish. The specific loan product, loan term, and an applicant's down payment amount are critical to being able to provide accurate Loan Estimates to consumers.

"Preapplication Estimates"

CUNA generally supports the CFPB's plans to provide a brief, standard statement for use by lenders and brokers, for preliminary estimates of loan terms and settlement costs that are not explicitly regulated by TILA or RESPA, as long as such statement does not require significant redesign of existing estimate materials or require additional pages for such a disclosure.

Proposed Expansion of “Zero” Tolerance

HUD’s 2008 RESPA rule limits the circumstances in which a lender can charge the consumer more at closing than the lender estimated in the GFE provided to the consumer three business days after application. The lender’s charges for its own services generally cannot exceed the lender’s estimates. This limitation is referred to in this letter as a “zero tolerance.” Charges for settlement services provided by third parties such as appraisals and title work (“third party charges”) generally cannot exceed the amounts estimated in the GFE by more than 10% in total. This limitation is referred to in this letter as a “10% tolerance.”

Under the proposal, the zero tolerance would be applied to a larger range of charges when costs for services that are provided by a company that is owned by or affiliated with the lender prove to be higher than estimated in the GFE. Additionally, the proposal would apply the zero tolerance and require the lender to show that an exception applies whenever a cost for a service provided by a company selected by the lender proves to be higher than estimated in the GFE, and that a company would be considered selected by the lender if consumers are required to choose only from a list of service providers prepared by the lender (i.e., if consumers are not permitted to shop for their own provider).

CUNA urges the CFPB to drop these requirements concerning the expansion of the zero tolerance. Credit union lenders have had to adapt over the last few years to accommodate the 2008 RESPA tolerance rules, and have expended many resources, in time and money to train staff, obtain legal advice, and develop processes and procedures to ensure compliance with the revised rules. Additionally, credit unions do not always have direct control over the third party, and it is very difficult for a lender to estimate these third party costs.

To require additional changes to either the zero tolerance rules or the 10% tolerance rules in this current regulatory and economic environment would, in our opinion, cause further confusion and multiply compliance costs for credit unions, in general.

Under existing regulations, even a small increase in these charges can result in lenders being outside of the permissible tolerance levels, especially when the mortgage loan amount sought is small. To change these provisions now would cause further confusion not only to lenders, but also to consumers. CUNA urges the CFPB to retain the existing tolerance levels for these third party charges.

Provision of the Closing Disclosure

As part of the TILA and RESPA reconciliation, the proposal would require delivery of the integrated Closing Disclosure three business days before closing. In order to prevent unnecessary closing delays, limited changes would

be permitted after providing the Closing Disclosure to the consumer, to reflect common adjustments such as changes to recording fees.

For the same reasons as articulated above, CUNA urges the Bureau to further expand and clarify the bona fide personal financial emergency waiver for purposes of waiving the three-business-day waiting period required under proposed § 1026.19(f)(1). The proposed waiver under this section will not be as meaningful to the consumer as it could otherwise be, and we urge the Bureau to provide additional flexibility for both consumers and lenders, alike.

Settlement agents often do not complete the final edits to an existing HUD-1 settlement statement until the night before or the day of loan consummation. On a regular basis, credit unions experience delays in the final settlement. These existing complications coupled with the CFPB's proposal to deliver a final Closing Disclosure to the borrower at least three business days prior to consummation will likely result in many loan closings being delayed.

CUNA recommends that the proposed delivery timing requirement be reduced from three business days to "at least 48 hours." This reduction will allow creditors and settlement agents the ability to provide accurate information to consumers, while requiring fewer days to complete the consumer's loan request. Such timing reduction would still provide consumers with adequate time to review the Closing Disclosure thoroughly and address any concerns

Responsibility for Providing the Settlement Disclosure

Under the proposal, the CFPB is proposing two separate alternatives under proposed § 1026.19(f)(1) for assigning responsibility for providing the integrated Closing Disclosure to the consumer. Under Alternative #1, the lender would be solely responsible for delivering the Closing Disclosure to the consumer. Under Alternative #2, the lender would be permitted to work with a settlement agent, if elected, and the lender and settlement agent could share responsibility for providing these disclosures.

CUNA prefers Alternative #2, and also supports allowing creditors to choose when and/or if to involve a settlement agent for purposes of mortgage lending transactions.

In many cases, credit unions rely upon settlement agents for the proper completion of the existing HUD-1 and HUD-1A settlement statements. While the loan information can best be provided by the lender, the lender should retain the choice as to whether RESPA-related transactional information and/or other information should or should not be completed by the settlement agent. In some cases, credit unions will choose to close a loan within the credit union, thereby helping consumers avoid escrow agent and attorney fees. In other cases, credit unions may wish to have the settlement agent complete certain information which may include the RESPA-related transactional information for a particular loan.

CUNA strongly urges the CFPB to consider providing additional information and clarity as to the operational impact and logistics which will likely be involved with having joint responsibility for providing the consumer with an integrated Closing Disclosure. In many instances, lenders and settlement agents rely heavily upon one another to provide the necessary expertise and handling with various aspects of the mortgage transaction consummation. Lenders are generally in a better position to understand and complete disclosures relating to the loan transaction, while settlement agents are often more familiar with the purchase transaction and associated disclosure requirements. If there is to be shared responsibility for providing the consumer with the Closing Disclosure, CUNA strongly urges the Bureau to provide guidance and incentives sufficient for lenders and settlement agents to work together by effectively and timely communicating with each other, which will also provide enough flexibility for lenders and settlement agents alike to ensure that the transaction moves through the process as efficiently as possible, and does not create unnecessary delays in closings for consumers.

Additionally, CUNA does not support the proposed alternative comment 19(f)(1)(v)-3 which explains that if a settlement agent provides disclosures required under § 1026.19(f) in the creditor's place, the creditor remains responsible under this section for ensuring that the disclosure requirements have been met. In instances where a settlement agent elects to step into the shoes of the creditor, the settlement agent should be responsible for providing the Closing Disclosure. For example, CUNA is aware that many credit unions experience difficulties with settlement agents closing loans but failing to follow the credit union's closing instructions. In cases where the settlement agent does not follow the lender's instructions and completes the loan consummation, then the lender can do very little with respect to that particular loan. CUNA recommends that the settlement agent be required to obtain written approval from the creditor prior to closing indicating that the Closing Disclosure has been approved, and the stipulations that must be completed in order for the loan consummation to occur. This requirement will also reduce the change of borrowers being harmed due to the actions of settlement agents.

Retention of Compliance Records

The CFPB is considering proposing new data retention requirements for the Loan Estimate and the Settlement Disclosure. Specifically, lenders would be required to maintain standardized, machine-readable, electronic versions of the Loan Estimates and Settlement Disclosures they deliver to a consumer and the reasons for any changes to the information provided in those disclosures. A proposed retention period is to be determined. The CFPB is also considering proposing to exempt small entities from new electronic data retention requirements.

While credit unions generally retain copies of disclosures for compliance purposes, a majority of those that do so electronically maintain these records

as electronic images, which can be reproduced and redistributed as necessary to consumers, and for review by lending credit unions. However, to mandate that the Loan Estimate and Settlement Disclosures be maintained as “standardized, machine-readable” electronic versions could be very burdensome to a vast majority of credit unions.

The cost of implementing and maintaining the database systems required to produce such disclosures, notwithstanding the potential data entry costs associated with this endeavor, could likely force a less-than-large lender to not grant and portfolio non-conforming loans. The potential costs of managing such standardized forms within machine-readable systems could quite possibly cause some smaller credit unions to exit the mortgage lending market altogether, putting a valuable service out of reach for millions of Americans, and thereby further tightening the credit availability for many hard-working American families. Because the CFPB’s proposal encompasses closed-end loans, this particular requirement could also have a significant chilling effect on the amount of home equity closed-end loans that credit unions are willing and able to grant going forward.

CUNA strongly opposes this proposal and would urge the CFPB to not move forward with this proposed requirement due to the burdens, both from a cost as well as a labor perspective, which could be imposed on credit unions to have to reconfigure their existing systems and software to accommodate such a requirement. Alternatively, we urge the CFPB to craft a meaningful exception to this compliance records proposal to allow small entities such as credit unions under \$10 billion in assets to continue serving their members without having yet another overly burdensome compliance requirement with which to contend.

Transition Guidance

For mortgage loan transactions that are initiated under current Regulation Z and Regulation X rules, but that have not yet been consummated as of the date by which any new final rules become effective, we request that the CFPB provide explicit instructions and guidance as to how these particular loan transactions are to be handled. Due to the numerous proposed disclosure and other changes under the proposal, credit unions and other lending institutions would benefit from having explicit instructions as to how to handle such transactions, and this benefit will ultimately be extended to the affected consumers.

Reducing Unnecessary Compliance Burdens

CUNA urges the CFPB to do all it can to reduce the unnecessary compliance burdens for credit unions. We especially encourage the CFPB to ensure that any final rule does not require lenders to reissue the Loan Estimate unless and until the costs subject to the 10% tolerance increase based on valid changes in circumstance by more than 10% in total. Additionally, CUNA supports the Bureau’s proposal to provide more guidance to facilitate the use of average

cost pricing in order to ease compliance burdens for lenders. CUNA also supports reconciling the differences between RESPA and TILA terminology to further reduce compliance burdens for lenders, and generally supports the proposed definition of “business day,” where a single definition of business day may be utilized by lenders. Finally, CUNA strongly urges the CFPB to incorporate all of the previously issued Frequently Asked Questions, RESPA Roundup newsletters, and other guidance documents associated with the 2008 RESPA rule into the regulation or official staff commentary to Regulation Z, as necessary and appropriate, and to make any such information clearer and easier to use.

Conclusion

To the extent requirements under these proposals are closely based on statutory requirements and will ultimately streamline home mortgage disclosures, credit unions can recognize their utility.

However, credit unions are also very concerned that they will face significantly higher costs in providing mortgage loans as a result of these proposals, particularly regarding the provisions addressed in this letter.

We urge the agency to adopt CUNA’s recommendations, which will help mitigate the impact of the proposals on credit unions while fully protecting consumers’ access to key information about home mortgage products, consistent with relevant provisions of the Dodd-Frank Act.

Thank you for the opportunity to comment on the CFPB’s proposed rule on Integrated Mortgage Disclosures under the 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
Senior Assistant General Counsel