



Credit Union National Association

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February 14, 2012

Consumer Financial Protection Bureau  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Re: Mortgage Advertising and Mortgage Assistance Relief Services;  
Docket No. CFPB–2011–0027

To Whom It May Concern:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (Bureau's) interim final rule on Mortgage Advertising and Mortgage Assistance Relief Services. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90 percent of our nation's 7,300 state and federal credit unions, which serve about 95 million members.

The Bureau has issued an interim final rule that replaces the Federal Trade Commission's (FTC's) regulations concerning unfair and deceptive acts and practices (UDAP) regarding mortgage advertising and mortgage assistance relief services. The interim final rule substantially duplicates the FTC's *Mortgage Acts and Practices—Advertising Rule* as the Bureau's new Regulation N, and the FTC's *Mortgage Assistance Relief Services Rule* as the Bureau's new Regulation O, making only certain non-substantive, technical changes.

Regulations N and O apply to "persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act."<sup>1</sup> The interim final rule therefore applies to state-chartered credit unions, but not to federal credit unions at this time. The interim final rule became effective on December 30, 2011.

### Regulatory Burden

Although we support the goals of Regulations N and O, which are primarily to protect the consumer, we ask the Bureau to consider how the requirements of these regulations can be minimized for state-chartered credit unions since it appears these entities are covered under general rulemaking authority to

<sup>1</sup> 12 C.F.R. §§ 1014.1, 1015.1 (2011).



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address unfair and deceptive acts and practices rather than specific provisions related to credit unions. Credit unions and other heavily regulated financial institutions are subject to significant legislative and regulatory burdens, which have been compounded in recent years.

In efforts to comply with these significant, new burdens, credit unions have incurred staggering costs as a result of new software and system changes, the updating of policies and procedures, as well as the additional staff training that has and will be required in order to comply with these new and future regulatory burdens, which has been exacerbated as credit unions have been struggling to recover from the current economic crisis. On the contrary, credit unions are not-for-profit financial institutions, governed by boards of directors elected by credit union members to represent the members' interests.

Although the requirements of these regulations themselves may not be overly burdensome, they add to the cumulative regulatory burdens that affect state-chartered credit unions. The requirements in these regulations add to, and in many ways duplicate, the mortgage lending requirements that already apply to credit unions. These requirements include the mortgage lending provisions of Regulation Z, the Truth in Lending Act; the Secure and Fair Enforcement for Mortgage Licensing Act; as well as the National Credit Union Administration's rules that prohibit federally insured credit unions from using advertising or promotional materials containing accurate, misleading, or deceptive claims with regard to financial products or services.

We ask the Bureau to limit the application of Regulations N and O to those entities that are not currently subject to similar requirements as those in Regulations N and O<sup>2</sup>, if the Bureau determines it has the authority to do so.

#### Recordkeeping Requirement

Section 1015.9 of Regulation N (previously § 321.5 of the FTC's Mortgage Acts and Practices—Advertising Rule) requires creditors to keep the following items for 24 months after dissemination of the applicable commercial communication:

- Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product that the person made or disseminated during the relevant time period;

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<sup>2</sup> Regulations N and O implement § 626 of the 2009 Omnibus Appropriations Act, Public L. 111–8, as amended by § 511 of the CARD Act of 2009, Public Law 111–24, and as amended by § 1097 of the Dodd-Frank Act of 2010, Public Law 111–203.

- Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and
- Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product or service available to consumers.

We believe this recordkeeping requirement is overly broad, and even applies to information on related products that are not the subject of the commercial communication. We ask the Bureau to consider amending § 1015.9 to limit the scope of the recordkeeping requirement, which we believe is within the Bureau's existing authority. In adopting the recordkeeping requirement in the Mortgage Acts and Practices—Advertising Rule, the FTC acknowledged that, although the statutes for which the Rule was being promulgated do “not contain a specific provision on recordkeeping, the recordkeeping requirements here are reasonably related to the prevention of deception.”<sup>3</sup> We believe the FTC's acknowledgement clearly indicates that the specific recordkeeping requirements included in the FTC's rule—and now the Bureau's rule—are not statutorily mandated.

Thank you for the opportunity to express our views on the Bureau's interim final rule on Mortgage Advertising and Mortgage Assistance. If you have any questions about our comments, please do not hesitate to give Senior Vice President and Deputy General Counsel Mary Mitchell Dunn or me a call at (202) 508-6743.

Sincerely,



Luke Martone  
Assistant General Counsel

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<sup>3</sup> FTC Mortgage Acts and Practices—Advertising Rule, 76 Fed. Reg. 43,826, 43,839 (July 22, 2011) (codified at 16 C.F.R. pt. 321).