



Credit Union National Association

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July 11, 2012

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Financial Institutions and Consumer Credit
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Capito:

On behalf of the Credit Union National Association (CUNA), I am writing regarding the upcoming hearing entitled, "The Impact of Dodd-Frank's Home Mortgage Reforms: Consumer and Market Perspectives". CUNA is the largest credit union advocacy organization in the United States, representing nearly 90% of America's 7,200 state and federally chartered credit unions and their 95 million members. We appreciate your continued work on this important issue, and for the opportunity to submit this letter for the record.

The Committee is examining whether the mortgage reforms in the Dodd-Frank Act addresses weaknesses in current mortgage origination and securitization practices or whether these reforms have overreached and thus made it more difficult to revive the housing market. The hearing will also examine whether the Dodd-Frank Act's mortgage reforms will increase the cost of mortgage credit and reduce access to mortgage credit for otherwise credit-worthy borrowers. To help the Committee examine these concerns, I will focus my comments on three topics relative to the Dodd-Frank Act mortgage reforms: the Consumer Financial Protection Bureau's (CFPB) Know Before You Owe Real Estate Settlement Procedures Act (RESPA)/Truth In Lending Act (TILA) Combination rulemaking; CFPB rulemaking exemption authority; and the definition of Qualified Mortgages (QM).

RESPA/TILA

CUNA supports providing consumer disclosures that are meaningful and clear for borrowers to understand the important terms of a financial transaction. When the Dodd-Frank Act was being considered by Congress, CUNA strongly supported combining certain RESPA/TILA forms to improve efficiencies in disclosures and minimize disclosure burdens on credit unions as well as on consumers, who are overloaded with financial information that is not practical or useful. During the development of the proposed integrated forms, the CFPB reached out to CUNA on numerous occasions to solicit information on credit unions' views and concerns.



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However, we have several concerns with the proposal issued July 9, 2012 to implement the combination of the RESPA/TILA forms that the CFPB has issued for comments. At 1,099 pages in length, the proposal is massive and review of the document will be problematic for some stakeholders, particularly in light of other CFPB issues that are pending or in the pipeline. **We are reviewing the proposal, as well as the one on high cost mortgage loans also issued July 9, and would appreciate the opportunity to provide the Subcommittee with additional comments when we complete our reviews. Initially, we are concerned with the Bureau's cost estimates included with the proposed rule on combining RESPA/TILA forms that have led the agency to conclude: "Based on the overall impact of the proposal...the Bureau does not believe that the proposal would lead to an increase in the cost of mortgage lending."**

Finance Charge

One aspect of the new RESPA/TILA proposal would be to expand the definition of the finance charge as defined under Regulation Z. As the Bureau has acknowledged, a more-inclusive finance charge as proposed would have the following effects:

- Cause more closed-end loans to trigger HOEPA protections for high-cost loans;
- Cause more loans to trigger requirements to maintain escrow accounts for first-lien higher-priced mortgage loans;
- Cause more loans to trigger requirements to obtain one or more interior appraisals for "higher-risk" mortgage loans;
- Reduce the number of loans that would otherwise be "qualified mortgages" under the ability-to-repay requirements, given that qualified mortgages cannot have points and fees in excess of 3% of the loan amount.

Comments are due to the CFPB on the finance charge definition by September 7, 2012, and CUNA will be focusing on the substance and impact of the proposed expansion of the finance charge definition.

Effective Dates

The Bureau is proposing to delay beyond their statutory compliance deadline certain requirements relating to new disclosures required under the Dodd-Frank Act and is seeking comments on this approach. While Congress is responsible for creating these requirements, it has given the CFPB authority to mitigate compliance burdens and we appreciate the CFPB's willingness to consider how best to use that authority as it relates to these disclosures.

The Bureau is considering the appropriate compliance deadline for the RESPA/TILA proposal, ignoring the fact that Congress did not set a specific date for compliance to begin. We urge Congress to support as much as time possible for credit

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unions to comply with a final rule, while we also support broad use of the agency's authority to exempt credit unions from new regulations to the greatest extent possible.

CFPB Exemption Authority

We are very concerned that the Bureau seems to be picking and choosing when to use statutory flexibility Congress has provided to it to extend relief to credit unions and others from certain compliance responsibilities. We believe the agency has more authority than it has been exercising, such as in the area of remittances, to provide regulatory relief and we will continue to pursue this concern with the agency.

Credit unions were not the cause of the financial and mortgage crisis that prompted Congress to enact legislative remedies to prevent such a calamity from happening again. However, the rules to fix the mortgage market and protect consumers do not solely impact the bad actors – they affect those that acted responsibly as well, such as credit unions. The repeated changes in rulemaking and final rules have a real dollar impact on consumers, especially at credit unions. A dollar spent on regulatory compliance is a dollar diverted from lending. So, in fact, some mortgage reforms in the Dodd-Frank Act do negatively impact access to mortgage credit for consumers.

CUNA believes that the CFPB has the authority to exempt certain entities under Section 1022(b)(3) of the Dodd-Frank Act from a number of regulations the agency is developing. Under this section, the Bureau, “by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title as necessary or appropriate to carry out the purposes and objectives of this title.” CUNA has urged the CFPB to include an analysis of its exemption authority with every proposal and final rule so that every time the agency considers a new regulation, it will also consider whether institutions such as credit unions that are already heavily regulated should be exempted.

The CFPB already has the authority to exempt credit unions from rulemaking. We encourage Congress to request that the CFPB exercise its authority as broadly as possible to protect credit unions from burdensome overregulation, which ultimately affects consumers.

“Qualified Mortgage” Definition

CUNA generally supports the proposed definition of “qualified mortgage” and offers the following comments regarding specific provisions of the proposal.

“Safe Harbor” Alternative

CUNA strongly supports the proposed “safe harbor” alternative (“Alternative 1”) which would treat “qualified mortgages as a legal safe harbor because the safe harbor approach would provide greater legal protection for credit unions than “Alternative 2” (a “presumption of compliance”) with respect to the borrower’s “defense to foreclosure” under TILA section 130(k), 15 U.S.C. §1640(k), against creditors that do not do sufficient “ability to repay” analyses.

Credit unions have historically engaged in safe and sound mortgage underwriting that includes a robust ability to repay analysis. Credit unions are concerned that, without a safe harbor, they could be faced with significant amounts of frivolous foreclosure defense litigation with respect to future foreclosures. A credit union making a qualified mortgage should be entitled to significant legal protections because it will have gone well beyond its statutory obligations under TILA to do an “ability-to-repay” analysis.

For these reasons, CUNA supports your efforts, Chairman Capito, along with those of Representative Brad Sherman, and others, in urging the CFPB to issue a final rule that structures the QM as a strong legal safe harbor, not a rebuttable presumption.

Prepayment Penalties

CUNA does not support the proposal to include within the definition of “prepayment penalties” waived closing costs that can be recouped in the event of prepayment or certain amortized interest because it would discourage the very member-friendly practice of sometimes waiving some of the costs. In addition, the courts and agencies such as the National Credit Union Administration (NCUA) do not consider these items to be “prepayment penalties”.

CUNA opposes including within the prepayment penalty definition fees, such as closing costs, that are waived unless the consumer prepays the loan because NCUA has determined that such arrangements are not “prepayment penalties.”¹ Federal credit unions

¹ See, for example, “Prepayment Penalties – Loan Incentives,” Letter of Richard S. Schulman, Associate General Counsel, NCUA, to David A. Jones, VP, Hartford Telephone FCU (June 13, 1996) ““When the FCU waives the closing costs, it confers a benefit on the borrower. If the borrower repays his loan within two years and must reimburse the FCU for closing costs, the borrower has simply lost the benefit.”) available at <http://www.ncua.gov/Legal/OpinionLetters/OL1996-0522.pdf>

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are currently not permitted to charge prepayment penalties pursuant to 12 U.S.C. § 1757(5)(A)(viii). Conflicting regulatory definition of “prepayment penalty” will lead to increased confusion by credit unions and consumer, and will increase credit union regulatory burden.

CUNA also opposes the proposed treatment as a “prepayment penalty” of amortized interest occurring after prepayment (such as if a mortgage amortizes monthly on the first of the month and the borrower prepays in full on the 5th of the month, but the creditor continues to charge interest as though the loan were still outstanding until the end of the monthly amortization period). The courts have held that such computation methods are not “prepayment penalties”² and requiring credit unions that use this type of periodic amortization calculation to treat this method as a “prepayment penalty” for disclosure purposes would be confusing to consumers and would impose significant regulatory burdens on credit unions while providing limited benefits to consumers.

Conclusion

We appreciate this Subcommittee’s work to ensure that financial regulations do not negatively impact America’s credit unions from providing credit to our members. Credit unions did not cause the financial crisis, and continue to serve their members well with financial products and services that are in the best interest of the consumer.

On behalf of America’s credit unions and their 95 million members, thank you very much for your consideration of our views.

Best regards,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long, sweeping underline that extends to the right.

Bill Cheney
President & CEO

² In *Goldman v. First Federal Sav. & Loan Ass’n*, 518 F.2d 1247 (7th Cir. 1975), Judge (and later Supreme Court Justice) John Paul Stevens’ majority opinion specifically held that prepaid unearned interest retained by a federal thrift after the borrowers prepaid their loan was not a “prepayment penalty” within the meaning of the Federal Home loan Bank Board regulations. See id. At 1249-54.