CUNA
Credit Union National Association
cuna.org
BILL CHENEY
President & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-508-6745 | FAX: 202-638-3389

July 24, 2012

The Honorable Sam Graves
Chairman
Small Business Committee
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Graves:

On behalf of the Credit Union National Association (CUNA), I am writing about the Small Business Committee's upcoming hearing on federal agency compliance with the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612 and the Consumer Financial Protection Bureau's (CFPB) recently published proposed rule on the Know Before You Owe Real Estate Settlement Procedures Act (RESPA)/Truth In Lending Act (TILA) Combination rulemaking, required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). 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 the opportunity to provide comments on both topics in advance of this hearing.

Section 1100G of the Dodd Frank Act

As the Committee is aware, Section 1100G of the Dodd-Frank Act added the Consumer Financial Protection Bureau (CFPB) to the short list of agencies required to conduct Small Business Advocacy Review (SBAR) Panels under 5 U.S.C. §§ 609. Other agencies required to conduct these panels are the Environmental Protection Agency and the Small Business Administration. I will focus my comments on the CFPB SBAR Panel process and experience to date.

CUNA appreciates the fact that CFPB is charged with, and is complying with, assembling these panels. It is important for regulators to consider the real-world and real-dollar impact that regulations have on regulatory burden and compliance costs for small businesses. However, we do have some concerns with the operation of these panels as experienced thus far.

First, CUNA would appreciate if the CPFB would convene panels for rules that were transferred to them from other agencies, for instance, the Federal Reserve's Ability-to-Repay/Qualified Mortgage Rule. To date, the CFPB has not done this for all transferred rules.

AMERICA'S CREDIT UNIONS®
PO Box 431 | Madison, WI 53701-0431 | 5710 Mineral Point Road | Madison, WI 53705-4454 | PHONE: 608-231-4000

Secondly, CUNA believes that those invited to participate in a panel should be afforded adequate time to prepare in advance of, or to submit their written remarks following the completion of a panel discussion. Providing some type of consistent timeframes for inviting Small Entity Representatives (SERs) to participate and to submit comments following a panel would be welcome. Often, SERs need more than a week to either prepare and make arrangements to attend, or to provide written comments following the panel discussions. As an example of what the SERs must prepare for, please see the CFPB's "Small Business Review Panel and Cost of Credit Consultation for RESPA/TILA Integration Rulemaking: Discussion Issues for Small-Entity Representatives" available on their website at http://files.consumerfinance.gov/f/2012/02/20120221_cfpb_tila-respa-integration-rulemaking-discussion-issues-for-small-entity-representatives.pdf.

Third, CUNA feels there could be more transparency regarding SERs and the resulting reports required of the panels. It has been difficult to ascertain who has been invited to participate in these panels. Information regarding the selected SERs is not posted on the agency's Web site prior to the panel discussions and hasn't been made available upon request. Moreover, in order for a trade association with a vested interest in the topic being discussed to attend, trade association staff must be an invited guest of an SER, and the SER is required to notify the CFPB of this individual's attendance in advance of the panel discussions. CUNA would recommend allowing trade representatives with a vested interest to be able to attend these panel discussions as an observer with the option to submit written comments following the conclusion of the panel discussions.

We are also concerned that, while the panel report is required to be "issued" once a panel has been concluded (within 60 days of a panel convening); the CFPB's practice thus far has been to only publish such reports alongside a proposed rule. In the case of the TILA/RESPA proposed rule, the SBAR panel was convened in February, and the SBAR report was issued on April 23, yet the report was not published and made available to the public until the proposed rule was issued on July 9, almost three months after such report was made available to the CFPB.

To be clear, CUNA appreciates the input the CFPB is willing to receive from credit unions around the country. However, we believe these suggestions would improve the process for both the CFPB and our industry.

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.

However, we are very concerned about key aspects of the 1,099 page RESPA/TILA proposed regulation that was released on July 9, 2012, and this is a perfect example of the enormous burden that credit unions and other smaller financial institutions face. The proposal is massive and reviewing of the document will prove to be problematic for some stakeholders who do not have the luxury of large staffs and teams of lawyers they can devote to working through the proposal, while also trying to comply with other CFPB issues that are pending. Due to the various mandates Congress required the CFPB to implement, we are concerned that just being able to respond to all the important issues raised in the proposal will be burdensome, particularly in light of other proposals that are pending or developing from the CFPB to meet statutory requirements.

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, absent further action by the bureau, 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. While the current system for determining what is a finance charge and what is not is certainly confusing, we hope to work with the CFPB to address this issue without triggering so many other unintended consequences.

Effective Dates
The Bureau is proposing to delay the compliance deadline of 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.

Congress did not specify a specific compliance deadline for this regulation and the Bureau is presently considering a compliance deadline for the RESPA/TILA proposal. We hope Congress will encourage the CFPB to give credit unions as much time as possible to comply with a final rule.

Model Forms vs. Standard Forms
TILA authorizes the CFPB to publish model forms for the TILA disclosures. In contrast, RESPA authorizes the CFPB to require the use of standard forms. Model forms benefit lenders by providing them with safe harbors for complying with disclosure obligations, while preserving flexibility for lenders to vary from the model so long as they adhere to the regulation. Standard forms allow less flexibility for lenders, but provide consistency for both consumers and lenders. We have urged the CFPB to issue a rule that would require the use of standard forms under RESPA for the Loan Estimate and Settlement Disclosure for mortgage loan transactions that are subject to RESPA, but would allow lenders to use model forms for the TILA disclosures. We believe that such an approach would yield less opportunity for unscrupulous lenders to present "bait and switch" scenarios to consumers, and that this approach would contribute overall to better consumer protection. Again, recognizing that the RESPA/TILA form combination is required by the Dodd-Frank Act, we continue to urge the CFPB to provide consumers with efficient and complete disclosures. Not only is the prospect of too many disclosures daunting to and unwelcomed by most consumers, the cost to generate, deliver and explain the disclosures to consumers has become extremely burdensome to lenders.

Potential Costs of Compliance
Assigning a dollar figure to the cost of compliance for these regulatory changes is extremely difficult. When a regulation is changed, there are certain upfront costs that must be incurred: staff time and credit union resources must be applied in determining what is necessary in order to comply with the change; forms and disclosures must be changed; data processing systems must be reprogrammed; and staff must be retrained. It also takes time to discuss these changes with credit union members, and at times, members get frustrated because of the change. The ongoing costs of doing business in a manner that complies with the new regulation, compared to how it was conducted previously, is more challenging to measure.

Consider Repeal of Specific Disclosure Requirements
With respect to disclosures specifically mandated by the Dodd-Frank Act, we recognize that Section 1419 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"). The extent to which this disclosure would actually help consumers has not been documented and we encourage Congress to repeal this requirement or make it more meaningful to consumers by clearly distinguishing it from the annual percentage rate. We are concerned that there is tremendous potential for consumer confusion with this disclosure, particularly if it is not distinguished from the APR.

In this same light, Section 1419 also 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. 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. Secondly, for those credit unions that intend to portfolio their mortgage originations, CUNA believes that a more appropriate measure of the cost of funds in this context would be the credit union's cost of funds as estimated over the life of the loan, rather than solely at the point of origination.

Settlement Disclosure Delivery Timing
CUNA is also concerned with a proposal being considered by the CFPB which would require delivery of an integrated Settlement Disclosure three business days before closing in all circumstances. We have urged the CFPB to not proceed with such a requirement. It is difficult, at best, for credit union lenders to coordinate with title companies and others 24 hours in advance of a real estate closing. To increase the period to three days prior to closing would be very problematic for credit unions, and likely very frustrating for consumers who usually want to close on their home loan as soon as possible. CUNA encourages the subcommittee to help ensure additional regulatory burden regarding this requirement is not placed on credit unions in any future rulemaking.

Best regards,

Bill Cheney
President & CEO