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November 6, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20006

Re: Proposed Definition of "Finance Charge" Included in the CFPB's Proposal to Combine TILA and RESPA Home Mortgage Disclosures, Docket No. CFPB-2012-0028

Dear Ms. Jackson:

This letter represents the views of the Credit Union National Association (CUNA) on the Consumer Financial Protection Bureau's (CFPB) proposal to expand the definition of "finance charge" under Regulation Z, Truth-in-Lending Act (TILA). By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90% of the nation's 7,000 state and federal credit unions, which serve about 95 million members. The proposed definition of "finance charge" was addressed in the agency's proposal to combine home mortgage disclosure forms under TILA and the Real Estate Settlement Procedures Act (RESPA). CUNA is filing a separate letter on other provisions of that proposal, as a well as a letter on the proposal to implement provisions of the Home Ownership Equity Protection Act (HOEPA) that are also due November 6th.

The proposal on the definition of "finance charge" is of major significance to credit unions that have mortgage loan programs because they are concerned that their Regulation Z compliance and training costs will be significantly increased, that they will be subject to additional regulatory requirements that are based on the definition of "finance charge," and that consumers will be no better able to understand their credit costs than they are today.

CUNA Opposes the Expanded Definition of "Finance Charge"

I. Summary of CUNA's Concerns

Currently, under Regulation Z, a number of types of costs associated with the extension of credit are excluded from the definition of "finance charge" and the "annual percentage rate," which is calculated using the finance charge. Under the proposal, the CFPB would include a cost in the "finance charge" if it is "payable directly or indirectly by the consumer" and is "imposed directly or indirectly by the creditor as an incident to the condition of the extension of credit." Under this approach, many costs that are now excluded would be incorporated into the finance charge and APR for closed-end mortgage loans secured by real property or a dwelling. The agency is invoking its authority under TILA subsections 105(a) and (f), and Dodd-Frank Act subsections 1032(a), and 1405(b) to include these charges.

CUNA agrees that the current approach to finance charge and APR disclosures under Regulation Z is imperfect and very likely limits the ability of consumers to understand the full costs associated with any loan, open- or closed-end, that they shop for or obtain. However, as described in greater detail below, CUNA does not support expanding the definition of the "finance charge" under Section 1026.4 of Regulation Z as the agency is proposing, for a variety of reasons, including the timing of the proposal.

We urge the agency to eliminate the proposed expansion of the definition from the final rule. In general, our concerns with the CFPB's proposed approach to the definition of "finance charge" are:

- The CFPB has not provided sufficient evidence that consumers will benefit from the expanded definition of "finance charge."
- We question whether the agency's broader definition of "finance charge" approach will be useful to consumers.
- The comment process is insufficient to address the changes to the definition of "finance charge," given the scope and impact of the CFPB's approach.
- The CFPB has said that expansion of the definition would result in more mortgage loans being subject to a range of additional limitations.
- The timing of the proposal could not be worse.

We believe simplified disclosures regarding the costs of credit should be developed for consumers and we want to work with the CFPB in that endeavor. Meanwhile, if the CFPB proceeds with the expanded definition, we urge ample time for credit unions to comply with the final regulation.

II. Discussion of CUNA's Concerns Regarding the Proposed Expansion of "Finance Charge"

A. The CFPB has not provided sufficient evidence that consumers will benefit from the expanded definition of "finance charge."

The Supplementary Information to the proposal discusses the agency's changes to the definition of "finance charge" and potential costs and benefits to consumers and creditors alike. However, it is unclear what sources the agency relied up to conclude that consumers may benefit as the agency did not include those references, other than its own analysis.

The agency undertook extensive consumer outreach in developing other aspects of its proposal to combine TILA and RESPA forms that are provided in connection with a home mortgage loan. Credit unions, credit union leagues and CUNA participated in a number of these meetings and appreciated being included in those discussions.

However, as indicated by the report of the Kleimann Communication Group, which provided consumer testing of the “Know Before You Owe” combined TILA-RESPA forms, very little has been revealed about consumers’ views on the “finance charge.”

The Supplementary Information does include a summary of costs and benefits of the expanded definition. Nonetheless, before even considering the comments that will be filed on the “finance charge” definition, the CFPB concludes:

> The proposed changes to the finance charge will ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits and risks associated with the product or service.

The CFPB further concludes that the proposal “will also reduce compliance costs.”

We are concerned that because the Federal Reserve Board issued a similar proposal regarding the definition of “finance charge” in 2009 the agency may feel the issue is well on its way to being decided and not much more analysis or review by the CFPB is necessary. Our concerns along those lines are heightened by the CFPB’s dismissal in the Supplementary Information of the concerns of small institutions that were raised in response to the Small Business Review Panel Outline.

As discussed below, we urge the agency to treat as unresolved the issue of whether the “finance charge” should be expanded and to give the concerns of institutions such as credit unions, as well as consumers, full consideration.

B. We question whether the agency’s approach to a broader definition of “finance charge” will be useful to consumers.

The CFPB is proposing to make the “finance charge” more inclusive and to move away from the current regulatory hodge-podge as it relates to which fees are included and which ones should be excluded. However, we believe there is great potential for the proposed approach to be even more confusing than the current system.

The expanded definition would only apply to closed-end transactions secured by real property or a dwelling; for other loans the current definition of “finance charge” would continue to apply. Thus, “finance charge” for closed-end mortgage loans would be different from “finance charge” for other loans. This may be difficult for consumers who question how different APRs are calculated, and it will likely create problems for creditors as well.

While some are characterizing the expanded definition as an “all-in” approach, that description is not accurate. Late, delinquency or default fees; seller’s points; amounts for escrow (if not otherwise included); and premiums for property and liability insurance under some conditions would be excluded from the “finance charge.” Because the basic approach to defining the “finance charge” is still “some in, some out,” it is questionable whether and to what extent consumers will benefit from the proposed expanded definition since there still could be uncertainly about what the “finance charge” covers. Also, TILA itself excludes certain charges, including some charges for insurance that under some circumstances can be included. In that context, it is questionable whether improving the “finance charge” is even achievable, given the exclusions in the statute.

C. The comment process is insufficient to address the changes to the definition of “finance charge,” given the scope and impact of the CFPB’s approach.

We acknowledge that the Regulation Z finance charge calculation and disclosures need attention. However, we do not think that the CFPB should have included an expanded definition of “finance charge” in the TILA-RESPA proposal. In order to ensure that the ramifications of changes to the “finance charge” are fully considered, a better process should have been employed to address these issues rather than including them as part of the comprehensive TILA-RESPA integrated forms proposal.

The issue of how the “finance charge” is defined is simply too central to mortgage lending and disclosures to be included with other rulemakings such as the complicated mortgage-related proposals that the agency is pursuing to meet its obligations under the Dodd-Frank Act.

The TILA-RESPA proposal provides a cost-benefit analysis of expanding the definition of “finance charge” if the agency does not change the triggers for HOEPA and other relevant regulatory requirements. However, a detailed analysis of modifying the triggers is not provided with the TILA-RESPA proposal but with the HOEPA proposal. We think the more thorough analysis regarding changing the triggers should have been provided with both proposals to facilitate the ability of commenters on the proposed TILA-RESPA changes to assess the impact of expanding the “finance charge” definition.

More important, however, is the CFPB’s acknowledgement that it does not:

> [C]urrently have sufficient data to model the impact of the more expansive definition of finance charge on HOEPA and other affected regulatory regimes or the impact of potential modifications that the Bureau could make to the triggers to more closely approximate existing coverage levels.

We are concerned that because the agency is pushing to implement the proposed definition of “finance charge under the TILA-RESPA rule, which does not have a required compliance date, on the same schedule as other mortgage-related rules, there will not be sufficient time to collect data regarding the impact of the expanded definition or to review it thoroughly prior to adopting the final rule.

Also, despite the agency's request in the Supplementary Information for data on the impact of the proposed expansion of the definition, it is very difficult for a number of institutions to provide an impact analysis, especially when in the face of current economic conditions they are understandably focused on serving their members. Including the proposed definition in the midst of a multi-faceted, voluminous proposal virtually guarantees that the issues related to the "finance charge" definition will not get the attention from a number of stakeholders or the agency that they deserve.

While we are aware of the Kleimann Report and the 2009 research conducted by ICF Macro on behalf the Federal Reserve Board, it does not appear that any recent consumer study has focused sufficiently on the definition of "finance charge."

Before proceeding with major changes to the definition of "finance charge," the agency should conduct its own, robust study of the specific issues relating to this term and APR disclosures; the study should consider a range of factors and perspectives, including those of consumers, their advocates, and financial institutions, and the CFPB should conduct a Small Business Regulatory Enforcement Fairness Act panel that elicits specific input from small financial institutions.

D. The CFPB has said that expansion of the definition would result in more mortgage loans being subject to a range of additional limitations.

In the Supplementary Information, the agency discusses the ramifications of the proposal for home mortgage loans based on the agency's initial analysis.
The CFPB indicates that if the definition of "finance charge" is expanded as the agency is proposing, then more closed end mortgage loans will be subject to the requirements of HOEPA for high cost loans, more mortgage loans will be subject to additional requirements for escrow accounts and appraisals, and most significant, more mortgage loans would be excluded from eligibility as "qualified mortgages" under the Ability- to-Repay regulation.

We agree the agency's assessment is likely, based on discussions with our member credit unions, that make mortgage loans and their evaluations of the proposal. However, we feel much more time is needed to obtain comprehensive data on the full impact of expanding the definition of "finance charge" on credit unions and their members than has been afforded during the comment period.

The agency is proposing a new approach for determining whether HOEPA and other triggers are met that could potentially mitigate the impact of the expanded finance charge. However, as our comment letter on the HOEPA proposal discusses, CUNA does not support the required use of a transaction coverage rate (TCR) instead of the APR to determine whether a home mortgage loan is subject to additional requirements and limitations. The use of a TCR adds unnecessary complications to an already complex mortgage regulation scheme; if the TCR is approved, we believe creditors should have the option of using it or continuing to use the APR for purposes of determining whether a coverage trigger is met.

If the agency does go forward with the expanded "finance charge" definition, another approach to mitigating the impact of the revised definition should be considered. Creditors, only for purposes of determining coverage under HOEPA and other requirements, should be allowed to exclude from the finance charge additional fees and costs retained by third parties, except those retained by mortgage brokers or affiliates of the creditor. For purposes of disclosures to consumers, the expanded definition of "finance charge" would be used to determine the APR.

E. The timing of the proposal could not be worse.

As has been noted, including by the CFPB, the Dodd-Frank Act does not require the agency to address the definition of "finance charge" at any time, including now. At present, mortgage lenders are struggling to review, understand, comment on, and eventually comply with an overwhelming crush of new regulations from the CFPB and other agencies. While we understand that much of the regulatory tidal wave was generated by congressionally imposed deadlines, CFPB should not add to the size of regulatory requirements when it has an opportunity to follow a more reasonable schedule. Given that and the range of problems that the proposed "finance charge" would create, we do not agree that now is the appropriate time for the agency to adopt the expanded approach to the "finance charge."

F. Other Issues

i. Simplified disclosures regarding the costs of credit should be developed.

While we cannot support the CFPB's regulatory approach to the "finance charge," we do agree that changes in the disclosures of the cost of credit for consumers, regardless of the loan type, are necessary to help consumers better understand credit products, compare lending options and make informed, reasonable decisions about their borrowings.

In that connection, CUNA would like to work with the CFPB to pursue statutory changes to TILA that would greatly improve and simplify cost-of-credit disclosures for consumers and creditors alike.

As the experience of credit unions has shown, borrowers would like to know several basic pieces of information about the credit they are applying for or considering. They want to know the amount of their periodic payments; the total amount to be repaid; the total number of payments; the interest rate and possibly total interest payments; and fees and penalties that apply or will apply, such as late fees.

We think this basic information that consumers want and need can be provided without having to resort to complicated calculations and without confusing consumers and creditors in the process. This is what the agency has generally sought to accomplish with the "Know Before You Owe" home mortgage disclosures.

However, the treatment of "finance charge" under TILA and Regulation Z unduly complicates the ability of creditors to focus on key, basic information for consumers. We believe TILA and Regulation Z should be revised to reflect a straightforward approach to providing such credit information to borrowers. We realize this effort will take some time to accomplish, but we would be pleased to work with the CPFB to pursue this important endeavor.

ii. If the CFPB proceeds with the expanded definition, we urge ample time to comply.

We urge the CFPB to eliminate the proposed definition of "finance charge" from the TILA-RESPA combined forms final rule. However, if the agency decides to go forward with this "finance charge" proposal, we urge the CFPB to delay its implementation for at least 18-24 months after the final rule is published, consistent with the implementation timetable CUNA is urging for other mortgage-related requirements.

Conclusion

The agency has identified an issue of real concern: helping consumers better understand the costs they incur when they receive a home mortgage loan. While we support the agency's objective to facilitate the ability of consumers to understand their credit obligations, we cannot support the agency's proposal to expand the definition of "finance charge." The agency has not approached this issue with the full attention that it deserves and has not given stakeholders sufficient time to assess the implications of expanding the definition. Moreover, despite the increased costs that creditors will likely assume, the agency has not presented any convincing data that consumers will be better off under the proposed approach.

We think a better approach would be to simplify cost-of credit disclosures by focusing on what borrowers want and need to know, as addressed above. We would welcome the opportunity to work with the CFPB to purse statutory changes to TILA's treatment of "finance charge" to accomplish that objective. Please feel free to contact me if you have questions about our letter.

Sincerely,

Mary Mitchell Dunn

Mary Mitchell Dunn
Senior Vice President and Deputy General Counsel