October 10, 2017

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

Re: Proposed Amendments regarding the Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z); Docket No. CFPB–2017–0018

Dear Ms. Jackson:

On behalf of America’s credit unions, I am writing regarding the Consumer Financial Protection Bureau’s (CFPB or Bureau) proposed amendments to the federal mortgage disclosure requirements under the Truth in Lending Act, implemented by Regulation Z. The Credit Union National Association (CUNA) represents America’s credit unions and their 110 million members.

We appreciate the CFPB’s outreach to stakeholders in issuing this proposal on the Truth in Lending Act and Real Estate Settlement Procedures Act Integrated Disclosure (TRID) rule, originally adopted in 2013. In light of the significant implementation challenges associated with the TRID rule, we welcome the proposed amendments intended to clarify an outstanding issue.

We acknowledge this rulemaking does not reopen major policy decisions with the TRID rule but instead addresses a single issue, so we are limiting our comments to that issue. However, we request the CFPB continue to engage in rulemaking and otherwise provide both formal and informal guidance to the industry on a more frequent basis for those issues that continue to present compliance challenges with the TRID rule. While we appreciate that the CFPB has engaged in outreach efforts such as the publication of the small entity compliance guide and various webinars, the CFPB should do more. For example, as we have requested in the past, searchable written transcripts of the webinars would be greatly appreciated by credit unions, as would regularly updated, publicly available FAQs that address common questions. The CFPB should follow the lead of other agencies in providing these methods of communicating their interpretation of various compliance issues. For example, the Financial Crimes Enforcement Network (FinCEN) provides Frequently Asked Questions (FAQs) for the filing of Suspicious Activity Reports and Currency Transaction Reports.
**Background**

The TRID rule requires creditors to provide consumers with good faith estimates of the loan terms and closing costs required to be disclosed on a Loan Estimate. Under the rule, an estimated closing cost is disclosed in good faith if the charge paid by the consumer: (1) does not exceed the amount originally disclosed, or (2) does not exceed the amount disclosed by more than 10%, for certain types of fees.

A provision of the rule permits creditors, in certain limited circumstances, to use revised estimates, instead of the estimate originally disclosed to the consumer, to compare to the charges actually paid by the consumer for purposes of determining whether an estimated closing cost was disclosed in good faith; this is referred to as “resetting tolerances.”

Any revised estimates used to determine good faith must be provided to the consumer within three business days of the creditor receiving information sufficient to establish that the reason for revision applies. If the conditions for revising the estimates used to determine good faith are met, creditors generally may provide these revised estimates on revised Loan Estimates or, in certain circumstances, on Closing Disclosures. The creditor cannot provide revised estimates on a Loan Estimate on or after the date the Closing Disclosure is provided to the consumer and the consumer must receive any revised Loan Estimate no later than four business days prior to consummation. However, if there are less than four business days between the time the revised version of the disclosure is required to be provided and consummation, the creditor may provide the revised estimate on a Closing Disclosure. This is referred to as the “four-business day limit.”

As described above, under the TRID rule, a Loan Estimate, which is used to reset tolerances, must be received by the borrower in final form within four days of closing. In situations where a creditor learned of a fee increase within the four-day window, the creditor is unable to use the Closing Disclosure to reset tolerances. This conflict creates a “black hole” in the rule.

The CFPB is proposing to amend the TRID requirements in Regulation Z to eliminate the black hole and associated confusion in resetting tolerances.

**Proposed Amendments to Regulation Z**

According to the Bureau, there is significant confusion in the market about the timing requirements related to issuing revised disclosures for purposes of resetting tolerances and, in particular, the use of Closing Disclosures for this purpose.

To address this confusion, the proposal would amend Regulation Z as it relates to when a creditor may use a Closing Disclosure, instead of a Loan Estimate, to determine if an estimated closing cost was disclosed in good faith and within the permissible tolerance. The proposed amendments would permit creditors to do so regardless of when the Closing Disclosure is provided relative to consummation.
More specifically, the proposal would amend the TRID rule by removing the four-business day limit for providing Closing Disclosures for purposes of resetting tolerances and determining if an estimated closing cost was disclosed in good faith. Consistent with the current commentary, the proposal would allow creditors to reset tolerances by providing a Closing Disclosure (including any corrected disclosures) within three business days of receiving information sufficient to establish that a reason for revision applies. Unlike the current commentary, however, the proposal would not restrict the creditor’s ability to reset tolerances with a Closing Disclosure (either with the initial Closing Disclosure or any corrected Closing Disclosures) to the period of less than four business days between the time the revised version of the disclosure is required to be provided and consummation.

We support removal of the four-business day limit for providing Closing Disclosures for purposes of resetting tolerances and determining if an estimated closing cost was disclosed in good faith. We believe the way the regulation is currently written can lead to circumstances where creditors are unable to provide either a revised Loan Estimate (because the Closing Disclosure has been provided) or a corrected Closing Disclosure (because there are four or more days prior to consummation) in order to reset tolerances. Further, we agree with the Bureau that current timing rules regarding resetting tolerances with Closing Disclosures have led to uncertainty in the market and created implementation challenges that could have unintended consequences for both consumers and creditors.

**Potential Unintended Consequences with the Proposed Changes**

Again, we are supportive of the proposed amendment to eliminate the four-business day limit as described above. However, we ask the Bureau to fully explore the potential of any unintended consequences that may result from its removal.

While we do not believe it to be a common practice of credit unions, we appreciate the potential issue raised by commenters in response to the 2016 TRID proposal where removal of the four-business day limit could result in some creditors providing Closing Disclosures very early in the lending process. According to these commenters, some creditors currently provide the Closing Disclosure to consumers so early in the process that the terms and costs are nearly certain to be revised. We ask the Bureau to examine whether eliminating the current four-business day limit for resetting tolerances with a Closing Disclosure could remove a disincentive that currently exists to provide Closing Disclosures before final terms and costs are reliably available, which we believe could result in confusion among consumers.

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1 Current comment 19(e)(4)(ii) provides that creditors may reflect revised estimates on a Closing Disclosure to reset tolerances if there are less than four business days between the time the revised version of the disclosure is required to be provided and consummation. However, there is no similar provision that explicitly provides that creditors may use a Closing Disclosure to reflect the revised disclosures if there are four or more days between the time the revised version of the disclosure is required to be provided and consummation.
Conclusion

On behalf of America’s credit unions and their 110 million members, thank you for reading our comments regarding the proposed amendments to the federal mortgage disclosure requirements in Regulation Z. If you have questions about our comments, please do not hesitate to contact me at (202) 508-6743.

Sincerely,

Luke Martone
Senior Director of Advocacy & Counsel