NCSHA
National Council of
State Housing Agencies

November 6, 2012

Richard Cordray, Director
c/o Monica Jackson, Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2012-0028

Dear Director Cordray:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) July 9 proposed rule integrating the disclosures required under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). We commend CFPB for working to develop simplified mortgage disclosures that will help borrowers better understand the terms of their home loans. However, several aspects of this rule could place an extraordinary burden on smaller lenders, including state HFAs, while providing minimal benefit to consumers.

Therefore, we urge CFPB to reevaluate and either eliminate or modify the following provisions of the proposed rule: a) its proposal to expand the definition of "finance charge" to include more front-end costs associated with mortgage loans, such as appraisal and title fees; b) the requirement that lenders maintain records of all the Loan Estimate and Closing Disclosures delivered to consumers in a standard "electronic, machine-readable" format; and, c) the amended definitions of the terms "application" and "business day."

These provisions, which are not required under the Dodd-Frank Financial Reform Act, will substantially tax HFAs' and other lenders' resources. We ask that CFPB withdraw them. In addition, we ask that CFPB ensure that HFAs and all affected parties be given ample time to adopt the changes called for under this rule. For reasons described below, we strongly believe that any extended implementation time period provided to small lenders should also apply to state HFAs.

HFAs Have a Long History of Responsible Affordable Lending

Though they vary widely in their characteristics, including their relationship to state government, HFAs share a common mission of supporting affordable housing lending help to those who need it. HFAs also administer a wide range of affordable housing and community development programs, including HOME, down payment assistance, homebuyer education, loan servicing, tax-exempt Housing Bonds, the Low Income Housing Tax Credit, Section 8, homeless assistance programs, and state housing trust funds.

HFAs' primary mission is not to maximize profits, but to help low-income and underserved consumers purchase homes with loans that work for them. HFAs take care to structure the terms of their loans to fit borrowers' needs and interests. HFAs do not and did not engage in subprime or abusive lending. In addition, any revenue HFAs generate from their lending and other activities is reinvested by them in furtherance of their affordable housing goals.

HFAs have proven over many decades that affordable housing lending done right is good lending. HFAs do it right in the case of first-time homebuyer lending through a time-tested combination of low-cost financing; traditional fixed-rate, long-term products; flexible, but prudent, underwriting with careful credit evaluation; diligent loan documentation and income verification; down payment and closing cost assistance; homeownership counseling; and proactive servicing.

Rescind Expanded Definition of "Finance Charge"

CFPB proposes to redefine the term "finance charge," as used to determine a loan's annual percentage rate (APR), to include more up-front charges that are imposed at the closing of a closed-end transaction secured by real property. CFPB contends that this expanded definition, which was not mandated by Congress, will provide consumers with better information about the total costs of their loans and allow them to better compare mortgages by price. However, CFPB's own extensive consumer testing, which was integral to the development of the combined disclosures and is cited heavily in the proposed rule, demonstrates that consumers have little understanding of the APR and make little use of it when comparing loans. This suggests that the expanded definition of finance charge would have a negligible impact on consumers' ability to understand the costs of a loan.

Meanwhile, as CFPB acknowledges, the new definition of finance charge, by increasing a loan's APR, is likely to result in a large number of responsible loans qualifying as high-cost mortgages under the Home Owners Equity Protection Act (HOEPA). This is particularly true for many rural and other smaller loans, where adding an additional charge can have a significant impact on their APR. For example, many HFAs offer small loan products to support critical repairs and renovations.

Because these loans' principal amounts are so low, even reasonable fees to offset origination and administrative costs might make many of them high-cost. The extra costs and other issues associated with being classified high-cost will make it problematic for HFAs to offer these products and could potentially deny such assistance to homebuyers that need it. Lenders may be unable on a sustained basis and unwilling in particular cases to reduce their fees to avoid triggering the high-cost loan APR limit. This will limit borrowers' options and inhibit important lending to underserved borrowers and areas.

To ensure that otherwise quality loans are not classified as high-cost mortgages, CFPB's July 9 proposed rule expanding the definition of high-cost mortgage under HOEPA (CFPB-2012-0029) proposes that an alternative metric, the transaction coverage rate (TCR), be used to determine whether a loan is high-cost. As NCSHA argued in our comments on that rule, while we agree that adopting the TCR metric will ensure that fewer mortgages fall under the high-cost mortgage rule, adopting different standards for the purposes of disclosure and compliance is likely to confuse borrowers and increase the regulatory burden on lenders. Therefore, we believe the stronger course of action is to rescind the proposed new definition of finance charge and retain the current one.

Finally, because the expanded definition of finance charge will apply only to loans secured by real property, HFAs and other lenders will be required to maintain two different programs for calculating the APR: one for loans secured by real property and one for loans secured by manufactured homes. This will increase the financial burden on HFAs and increase the possibility of unintentional errors. This will be particularly critical for those HFAs in rural states, where manufactured homes are a key source of affordable housing.

Withdraw Burdensome Record-Keeping Requirements

CFPB's proposal would require all lenders to maintain a copy of all Loan Estimate forms sent to consumers for three years and all Closing Disclosure forms sent to consumers for five years. The rule would require these forms to be retained in a "machine readable" format, which CFPB makes clear does not include simply electronic images of documents, but rather a format where the individual data on the forms can be read and transmitted by a computer program.

Purchasing and developing the computer system needed to retain such records would be an enormous investment for HFAs. While HFAs vary in their budgets and technological capacities, as government or quasi-government agencies with a public mission, they generally do not enjoy the same capital resources as larger private lenders. CFPB recognizes that this proposal will impose substantial new costs on smaller lenders, which face many of the same challenges as HFAs.

Further, requiring that records be kept in such a format would appear to provide little real benefit to consumers, all of whom will continue to receive the disclosure via hard copy or electronic mail. As such, we disagree with CFPB's contention that the benefits of this mandate outweigh the costs, and ask that you rescind the requirement that such records be maintained in machine readable format. At the very least, we urge you to exempt state HFAs from this mandate, given their limited resources, public accountability, and demonstrated commitment to customer service.

Maintain Current Definitions of "Application" and "Business Day"

CFPB proposes to modify the definition of "application," as it applies under RESPA, to eliminate the "catch-all" requirement that includes "any other information deemed necessary by the loan originator." Under the new proposed rule, a borrower will be deemed to have applied for a mortgage as long as they submit all the specific information called for in the original definition, regardless if they provide all the information the lender feels is needed to provide a reliable estimate.

CFPB argues that this new definition will ensure that consumers receive their initial Loan Estimate forms early enough in the home purchase process so that they can fully compare offers. While we share CFPB's commitment to ensuring that consumers receive timely information, this proposal will actually reduce the reliability of the estimates that HFAs and other lenders can provide consumers. There is often information not specifically required under the RESPA definition of application that HFAs and other lenders find crucial to putting together an accurate estimate, such as the type of loan the borrower is seeking. Disclosures provided without this information are likely to be contingent on assumptions the lender will be forced to make, increasing the likelihood for errors.

CFPB acknowledges that the receipt of additional information could cause lenders to adjust their estimate of a loan's costs and suggests that lenders can use the additional information to send consumers a revised estimate. Multiple estimates would detract from the rule's purpose by increasing consumers' confusion.

In addition, CFPB also proposes amending the definition of "business day," as used to determine the date when lenders have to provide consumers with the mortgage disclosures, from a day "in which the offices of the creditor…are open to the public," as it is current defined under most provisions of Regulations X and Z, to instead include all days except Sundays and federal holidays. While we understand that this proposed definition would be simpler, it would impose a particularly troublesome burden on HFAs for several reasons.

First, most HFAs are closed on Saturdays. Consequently, HFAs would effectively have only two business days to prepare disclosure forms for applications received at the end of the week, increasing compliance costs and the likelihood of unintentional errors. Further, as government agencies, some HFAs are occasionally forced to close for one or more furlough days to help state governments contain costs, or to close on state holidays. In these circumstances, it will be difficult for HFAs to meet the new disclosure deadlines. Finally, it is also important to note that this new definition could prove particularly problematic for all lenders if the postal service eliminates Saturday mail service in the near-future, which is currently being considered.

Consequently, we believe that changing the definition of business day will significantly increase the compliance burden on HFAs and other lenders, while providing consumers a somewhat minimal benefit of receiving their disclosure form a day or two earlier in some situations. We recommend CFPB withdraw its proposal to redefine business day and maintain the current definition.

Provide HFAs Ample Time to Implement the new Rule

As the proposed rule recognizes, all lenders will have to make extensive investments to comply with the new disclosure standards, particularly when considered in totality with the adjustments they will need to make to comply with other CFPB proposals. The rule also points out that, unlike other Dodd-Frank rules regarding mortgage lending, CFPB has substantial flexibility to set an effective date for this proposal. Given all this, we believe CFPB should take advantage of its discretion and provide all lenders no less than 12-18 months to fully comply with this rule.

CFPB also acknowledges that smaller lenders may face particular difficulties making the changes needed to adjust to this new rule, and seeks comment on whether they should be granted additional time to comply. Given the substantial time and resources that all lenders will need to commit to comply with the new rule, we believe that small lenders should be allowed extra time to comply. Further, we believe that state HFAs should also be extended extra time.

While HFAs may originate more loans than smaller private lenders, they also face many of the same challenges. As mentioned above, HFAs are mission-driven, publicly accountable organizations that dedicate their revenues toward their mission to provide affordable housing to less fortunate consumers. In addition, HFAs must also often use resources for administering other affordable housing programs, such as HOME or Section 8, that do not typically generate any revenue. Consequently, despite strong records of performance, HFAs do not have extra capital to spend on compliance costs.

In addition, HFAs also have a strong track record of putting the needs of their borrowers first. CFPB recognized this when it proposed to exempt state HFAs from the limitation that counseling required before a borrower is issued a high-cost mortgage cannot be delivered by a counselor who is employed by or affiliated with the lender issuing the loan. In addition, HFAs are exempt from the Secure and Fair Enforcement Mortgage Licensing Act (SAFE Act) registration and licensing requirements. As such, we believe that extending the effective date for HFAs will not hurt consumers, and that it is entirely appropriate for CFPB to grant state HFAs additional time to adopt the integrated disclosures.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

Garth B Rieman

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives