NCSHA

October 18, 2016

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

Re: Proposed Rule: Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (Regulation Z) — Docket No. CFPB-2016-0038 — RIN 3170-AA61

Dear Ms. Jackson:

On behalf of the state Housing Finance Agencies (HFAs) it represents, the National Council of State Housing Agencies (NCSHA) welcomes the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) July 29 proposed rule titled Amendments to Federal Mortgage Disclosure Requirements Under the Truth in Lending Act (CFPB-2016-0038).

NCSHA thanks CFPB for its willingness to consider adjustments to the TILA-RESPA Integrated Disclosure Rule (TRID rule) that will allow more consumers to take advantage of HFA secondary financing programs that support down payment assistance and other critical housing needs. To this end, we strongly support the provision of the proposed rule that would expand the universe of HFA loans that qualify for the TRID rule's limited exemption by exempting government recording fees and other taxes from the 1 percent fee cap.

However, we do not believe that this provision goes far enough to ensure that CFPB's disclosure requirements do not unintentionally hamper HFA programs. Consequently, NCSHA urges CFPB, in its final rule, to broaden the TRID rule's limited exemption to include all secondary loans originated through HFA programs.

NCSHA further suggests that CFPB allow those HFAs that qualify for the partial exemption to meet their disclosure obligations by providing consumers with the integrated disclosure forms (Closing Disclosure and Loan Estimate) established by the TRID rule. This will allow HFA secondary loan programs to operate more efficiently and effectively while ensuring that consumers are sufficiently informed about the terms of their mortgages.

In addition, we recommend that any policy changes and guidance regarding HFA secondary loan programs included in the final rule become effective immediately after the final rule is published.

HFAs: A Successful Record of Affordable Mortgage Lending

HFAs are state-chartered housing agencies that operate in every state, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. Though they vary widely in their characteristics, including their relationship to state government, HFAs share a common mission of providing affordable housing lending to those who need it.

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 home buyer 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; homeownership counseling; and proactive servicing. CFPB previously recognized HFAs' strong track record of responsibly supporting affordable homeownership when it exempted HFA programs loans from its Ability-to-Repay/Qualified Mortgage rule and classified all HFAs as "small servicers" in its final mortgage servicing rule so as to allow HFAs to continue fulfilling their public purpose.

As part of their homeownership programs, HFAs often provide borrowers with down payment and closing cost assistance in the form of secondary financing. These products are critical to HFAs' ability to provide help to those who need it because the cost of a down payment is often one of the most significant obstacles preventing lower income consumers from purchasing a home. From 2012-2014, HFAs provided down payment assistance in conjunction with around 60 percent of their program loans. HFAs also use secondary financing to support other critical housing needs, including home improvements and foreclosure prevention assistance.

Maintain Exemption for Government Fees and Taxes

NCSHA supports CFPB's proposal to exempt all government-imposed taxes and fees from the 1 percent fee cap that is used to help determine whether a secondary loan from a government program falls under the TRID rule's partial exemption. As CFPB notes in the proposed rule, these mandatory fees, over which the HFAs and their lending partners have no control, often single-handedly disqualify HFA loans from the partial exemption.

As a result, many HFAs that provide down payment assistance through zero-interest, forgivable loans, which do not fall under the jurisdiction of the Truth-in-Lending Act (TILA), must ensure that borrowers receive the HUD-1 and Good Faith Estimate forms mandated under the Real Estate Settlement Procedures Act (RESPA). According to a survey of our HFA members, at least 11 state HFAs finance down payment assistance loans that require borrowers to receive RESPA forms. Combined, these HFAs provided down payment assistance to over 19,000 borrowers in 2015.

Providing these borrowers RESPA forms has proven problematic because many HFAs' lending partners have found it difficult to generate the HUD-1 and Good Faith Estimate forms now that they have updated their operating systems to comply with the TRID rule. Consequently, several HFAs have had lenders substantially curtail, or suspend entirely, their participation in HFA down payment assistance programs. This makes it more difficult for borrowers to access these programs. This is especially troubling considering that, because the loans are forgivable and the borrower pays no interest, they are especially advantageous for lower-income and other underserved borrowers. For example, one HFA offers such loans specifically to very low-income borrowers with disabilities.

Exempting government fees and taxes from the 1 percent fee cap will allow more of these consumer-friendly loans to qualify for the partial exemption and will help make such loans more widely available to consumers. Further, we agree with CFPB that there is little chance that such an exemption will expose consumers to abuse. As mentioned above, such fees are not set by HFAs or any other party to the transaction, but by elected state and local officials.

Expand Partial Exemption to Include All HFA Program Loans

While NCSHA supports CFPB's proposal to expand the criteria for the partial exemption, the criteria to meet the exemption is still too narrow and limits HFAs' flexibility. We recommend a simpler and more effective solution: expand the partial exemption to include all secondary loans originated through HFA programs. We thank CFPB for raising the possibility of such an approach in the proposed rule.

First, exempting all HFA secondary loan programs will ensure that no HFA down payment assistance program will be saddled with having to provide the RESPA disclosures. While excluding government fees from the fee cap will allow some HFAs to claim the exemption, others will still be mandated to provide the RESPA forms because of other reasonable fees that come with their secondary loans. While such fees are not extravagant, they can in some instances exceed the 1 percent fee cap, particularly given the small loan amount of most down payment assistance loans (in 2014, the average HFA down payment assistance loan was $5,232).

In addition, while some HFA down payment assistance loans would still not qualify for the partial exemption under the proposed rule because of the fee cap, there are other meritorious HFA secondary loan programs that would not qualify because they do not meet other criteria. These include programs designed to help struggling borrowers avoid foreclosure, help pay for critical home repairs, and finance energy efficiency upgrades for low- and moderate-income borrowers. Allowing all such program loans to qualify for the partial exemption will free HFAs from having to focus time and resources on complying with RESPA disclosure requirements and allow them to dedicate more resources to serving their constituents.

When inquiring about the possibility of expanding the limited exemption to all HFA secondary loans, CFPB also seeks comments about how it should define a "Housing Finance Agency" for the purposes of such an exemption. In the interest of consistency, we would suggest that CFPB adopt the same definition that it uses in its final Mortgage Servicing Rule (12 CFR 1026.41(e)(4)(ii)(B))t). In that rule, the CFPB references the definition of "housing finance agency" used by the Department of Housing and Urban Development in its regulations governing its Housing Finance Agency Risk-Sharing Program for Multifamily Project Loans (24 CFR 266.5), which reads:

> *Housing finance agency or HFA means any public body, agency, or instrumentality created by a specific act of a State legislature or local municipality empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation. The term State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Virgin Islands.*

NCSHA supports this definition.

If CFPB chooses to expand the partial exemption to include all HFA program secondary loans, it is critical that CFPB apply the exemption, as it did with the Ability-to-Repay/Qualified Mortgage rule, to all HFA program loans, not just those originated directly by HFAs. As CFPB is aware, HFAs do not directly originate a large majority of their single-family program loans, and are prohibited from doing so in some states. Instead, the loans are originated by participating lenders and brokers who follow program parameters set by the HFAs. An exemption that appears to cover only those program loans directly originated by the HFA will have a very limited impact on HFA programs.

Allow HFAs to Utilize TRID Forms to Meet Their Disclosure Requirements

NCSHA supports expanding the partial exemption to include all HFA secondary loans so that no such programs are hampered by having to provide borrowers with the RESPA disclosures. However, it is important to note that many HFAs whose down payment assistance programs fall under the jurisdiction of TRID, and do not qualify for the exemption, are currently providing both the Loan Estimate and Continuing Disclosure with their secondary loans, with little trouble. These HFAs have indicated to us that they would like to continue being able to use the TRID forms with their programs because they provide ample information to consumers and are compatible with their lending partners' operating systems.

Similarly, those HFAs that are currently required to provide the RESPA forms have stated that their preference would be to use the TRID forms to meet their compliance obligations. Otherwise, HFAs will be expected to provide borrowers with a Truth-in-Lending statement or a similar disclosure that they develop themselves.

With this in mind, we ask that CFPB amend its regulations to allow HFAs to use the TRID forms in conjunction with all of their secondary loans, regardless of whether such loans qualify for the partial exemption. This will substantially ease the compliance burden on HFAs, because many of their lending partners' operating systems are currently set up to send borrowers the TRID disclosures.

There is no reason to believe that such a policy change will harm consumers. The TRID disclosures can be easily used to adequately inform consumers about the terms of HFA secondary loans. For example, the Loan Estimate and Closing Disclosure can both adequately convey the terms of a zero-percent interest non-amortizing down payment assistance loan. In most instances, both forms would simply list the gross amount of the loan and list the associated charges.

Allowing HFAs to use the TRID forms with their secondary loans could also better serve consumers by ensuring that they receive the same type of form for both their first and second mortgages. Those HFAs who are currently required to provide the RESPA forms report that some consumers become confused by receiving different forms for different loans in the same transaction.

It has been argued that CFBP does not have the authority to require or allow transactions that are not subject to both TILA and RESPA to use the TRID forms to meet their disclosure requirements. The crux of this argument is that Congress directed CFPB to combine the TILA and RESPA disclosures so that borrowers whose mortgage transactions are covered under each law would only receive one set of disclosures instead of two. Consequently, the intent of TRID is simply to combine and simplify the disclosure process for most mortgage borrowers, rather than replace the TILA and RESPA disclosures.

NCSHA respectfully disagrees with this interpretation. We note that, in its final rule establishing the TRID forms, CFPB required that the TRID forms be provided to borrowers in conjunction with several types of mortgages, including construction loans and loans for properties exceeding 25 acres, that are exempt from either TILA or RESPA but subject to the other. In the final TRID rule, CFPB notes that it has the authority to require that TRID forms be used for all closed-end consumer transactions secured by real property, a description that would also apply to most HFA secondary loans. Given this, we see no reason why CFPB does not have the ability to allow HFAs to use the TRID forms to meet their compliance obligations.

Consider Blanket Exemption from Regulation Z and Regulation X as a Last Resort

The proposed rule asks whether CFPB should consider exempting HFA secondary loans from all of the disclosure requirements prescribed in Regulation Z (pertaining to TILA and TRID), and, if it chooses to do so, how such loans should be covered by the disclosure requirements in Regulation X (pertaining to RESPA). NCSHA believes that, if the partial exemption is broadened to include all secondary loans originated through HFA programs, and if CFPB allows HFAs to meet their disclosure obligations by using the TRID forms, then exempting HFA loans from the entire disclosure regime is unnecessary. NCSHA and the HFAs share CFPB's commitment to consumer protection, and we believe that the TRID disclosures help to effectively present critical loan information to borrowers.

However, if CFPB determines that it cannot allow the HFAs to meet their disclosure obligations using the TRID forms, then NCSHA believes that a blanket exemption from the disclosure requirements in both Regulation Z and Regulation X would be appropriate. Such an exemption would ensure that HFAs can continue to structure their secondary financing programs in a way that best serves their constituents without being limited by the disclosure rules. Such an exemption would not increase risk to consumers, as HFAs would continue to require full disclosure to consumers as part of their public-purpose mission.

Implement Policy Changes Immediately

CFPB proposes that any changes included in the final version of the proposed rule take effect 120 days after the rule is published in the *Federal Register*. We ask that any policy changes made to expand the partial exemption for HFA secondary loan programs become effective immediately after the rule is published. Most HFAs' lender partners are already set up to produce the TRID disclosures, so there is no need for an implementation period. We are also concerned that some consumers may not have a chance to benefit from HFA programs during such a waiting period, because lenders may prefer to wait until the new policies are in place.

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

Sincerely,

Barbara Thompson

Barbara Thompson
Executive Director