November 6, 2012

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

Dear Ms. Jackson,

The Conference of State Bank Supervisors ("CSBS"), the American Association of Residential Mortgage Regulators ("AARMR"), the American Council of State Savings Supervisors ("ACSSS") and the National Association of Consumer Credit Administrators (NACCA), collectively "state regulators," appreciate the opportunity to comment on the Bureau of Consumer Financial Protection's ("CFPB" or "Bureau") proposed Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X or RESPA) and the Truth in Lending Act (Regulation Z or TILA), Docket No. CFPB-2012-0028, RIN 3170-AA19. State regulators have decades of experience enforcing Regulation X, Regulation Z and similar state statutes. In June 2007, CSBS released a "Model Mortgage Disclosure" to aid discussion on the integration of disclosure requirements and the creation of practical and consumer friendly forms. Additionally, in February 2011, the CSBS-AARMR Multi-State Mortgage Committee drafted a white paper compiling observations and analysis of discrepancies between RESPA and TILA based on consumer feedback acquired through state regulatory agencies, examiner suggestions based on experience, and industry thoughts in anticipation of this project.

The incongruent disclosure requirements, language, and definitions in RESPA and TILA have long been recognized by regulators, lenders, and consumers as problematic aspects of the mortgage origination process. Developing a solution to streamline the requirements contained in the standards has been the focus of various proposals, studies, congressional hearings, and other public engagement. The CFPB proposed rule is the most comprehensive effort to revise the requirements to date. The mortgage industry itself has been highly engaged and one of the most vocal proponents of streamlining the disclosure process. State regulators, for their part, have long felt the impact of the discrepancies while enforcing these statutes. From this perspective, and considering the long-held view of both the industry and consumers surrounding the need for reform, state regulators are pleased to see a drastic simplification and integration that represents a substantial and needed change.

INTRODUCTION

Generally, state regulators commend the Bureau's efforts in responding to many of the adverse and onerous effects created by the existing mortgage disclosure process. State regulators support most of the changes the Bureau has proposed. The Bureau has consolidated definitions, requirements, and exemptions of RESPA and TILA in a way that should generally result in greater industry certainty and consumer clarity. The proposed rule reduces redundancy and inconsistency and presents more clear and intuitive forms. The consolidation of definitions and exemptions has great potential to make the process of attaining a mortgage less convoluted for the consumer, industry and regulators. Additionally, state regulators continue to support a more inclusive finance charge calculation. However, we firmly oppose and are concerned by the alternative proposed by the Bureau – the "Transaction Coverage Rate" – to mitigate the impact of a generally higher Annual Percentage Rate, with respect to the coverage of relevant statutorily required thresholds. Further, state regulators believe that the enhanced consumer protections in the rule are generally a positive development; however, a rule with such sweeping implications for the entire housing industry must be implemented cautiously. As discussed more specifically below, we believe there are opportunities for the Bureau to incorporate more quantitative analysis in order to promulgate fully informed and practical regulations. State regulators endorse an appropriate balance between qualitative and quantitative factors in the rule writing process.

After careful evaluation of the forms and the text of the proposed rule, state regulators have identified particular sections of the forms that are contrary to the Bureau's stated goals. We believe certain areas of the forms could be presented in a more consistent and intuitive fashion. Some sections of the form appear to be of negligible, if any, use to the consumer. Our feedback on specific aspects of the proposed rule is detailed in the sections below.

INCREASED QUANTITATIVE EVALUATION

The "Know Before You Owe" process was innovative and undoubtedly helpful in developing the draft forms. The feedback gathered from interested parties likely resulted in far simpler forms. The Bureau states that it may engage in additional quantitative testing, a process we would encourage. State regulators believe further quantitative testing of consumer comprehension will be a helpful exercise and would give the Bureau a more precise idea as to how many consumers properly understand mortgage terms, costs and differences across products. The "Know Before You Owe" process has been largely qualitative, and while these measures are certainly helpful, they should be supplemented by more quantitative data and controlled testing of comprehension. Though the consolidation of disclosure requirements will likely improve consumer understanding, without statistically sound quantitative evaluation, understanding the effect of the new forms will remain imprecise.

GREATER CONTEXT FOR CONSUMERS AND DEVELOPMENT OF WEB BASED TOOLS

If not presented in greater context, a few areas of the forms could harm consumers and/or lead them to false conclusions about their loan terms or costs. Specifically, there are areas on the forms which present loan metrics in a fashion which may result in "information overload" or consumer confusion. Some of these inconsistencies or confusing sections and metrics may be able to be sufficiently appended by accompanying online comparison tools or supplementary materials for consumers unable to access the internet. The Bureau states it will likely develop such tools to assist consumers in comprehending and comparing loans. For example, state regulators suggest the CFPB should consider putting “Total Interest Percentage,” “Average Cost of Funds,” and even “Annual Percentage Rate” in greater context for the consumer through web-based tools or amendments to the disclosures. Expanded context for these definitions should enhance the measurements’ utility as comparison metrics. State regulators have found these metrics can cause consumer confusion. Since some of these metrics may be new to the consumer, it is vital to the success of these forms to ensure consumers are not confused and do not experience “information overload” from multiple unfamiliar loan metrics. State regulators realize some of these metrics are mandated by the Dodd-Frank Act, and we are not suggesting they be removed from forms, only thoroughly explained.

Web-based tools seem like a good vehicle for increasing consumer participation and understanding. Leveraging interactivity and visual presentations of data will supplement the new forms. The Bureau has an opportunity to modernize the mortgage disclosure process and to leverage information technology to substantially improve the consumer’s experience and comprehension. State regulators would recommend that multiple methods of loan comparison be presented to the consumer side-by-side so consumers can identify the different outcomes arrived at from different methods. If a loan seems the cheapest when compared by “Total Interest Percentage” but not by “Annual Percentage Rate” then the consumer should be able to, with assistance of web-based tools, understand why this is the case.

Changes to Annual Percentage Rate

Pursuant to TILA section 105(a) and DFA section 1032(a), the Bureau proposes to amend the “some fees in, some fees out” approach to the calculation of the finance charge included in the Annual Percentage Rate. Consistent with prior policy, state regulators are supportive of the Bureau’s proposal for a more inclusive finance charge calculation. Examination and enforcement experience have led state regulators to believe that the “some fees in, some fees out” approach was detrimental to all stakeholders involved. In some cases, lenders were able to use the inadequate calculation method to deceive consumers, hide the true cost of credit and gain a competitive advantage by doing so. Renaming fees and other deceptive practices will be eliminated if the more inclusive finance charge is implemented. Additionally, lenders will be incentivized to accurately estimate borrower payments to third party affiliates (who provide services borrowers cannot shop for) and to ensure those payments do not increase.

The proposed changes to APR will make the APR a more effective metric for comparing and understanding the cost of credit. However, state regulators have experienced much confusion with APR over the years from examiners, industry and consumers. Despite positive changes to APR, we believe more should be done to put this metric in context to consumers. Also, one universal APR calculation is essential. Consumers should be able to easily replicate this calculation. Details such as whether 360 days or 365 days were used to calculate the final number need to be clearly communicated by the lender to the consumer, whether it is directly on the forms or in accompanying web-based tools.

The Bureau acknowledges that the proposed inclusive finance charge will likely push more loans across existing statutorily required thresholds, such as those in the Home-Owners Equity Protection Act (HOEPA) and new enhanced appraisal requirements mandated by the Dodd-Frank Act for certain loans. Since this may result in a greater amount of loans becoming subject to enhanced consumer protections than congress may have intended, the Bureau has proposed an alternative in which it uses a "Transaction Coverage Rate" ("TCR") to determine whether or not a loan is covered under relevant statutory thresholds.

State regulators believe it would be more efficient and transparent for the CFPB to adjust APR thresholds for higher-priced mortgage determinations instead of using a different "transaction coverage rate." State regulators agree there is an issue with a broader finance charge's effect on higher-priced loan regulations, but an additional calculation performed for regulatory purposes only complicates the process—an issue the inclusive finance charge aims to fix.[1] A TCR also runs contrary to other positive aspects of the rule which incentivize the lender to keep costs for the consumer down. Having one rate only used by the regulators and industry to determine thresholds is an opaque process which has direct implications on the consumer. A consumer would not be able to, or would have great difficulty in, verifying whether or not a lender properly categorized their loan. Statutorily required thresholds should be amended to reflect the relative increase in APR. The TCR alternative is contrary to the intent of Regulation Z and reduces the value of APR as a comparison tool for consumers. Additionally, the TCR would add complexity and burden for the industry, as it is an additional compliance step that is easily prone to error, confusion, and even legal risk. Thus, the adoption of this alternative would undermine the Bureau's overall effort and is destructive to the aim of achieving transparency.

State regulators believe the CFPB should assess the quantitative impact of its proposed rule. A national survey of lenders would be a good step in assessing the effect of the "all-in" finance charge. It is within the Bureau's ability and prerogative to accurately assess how many loans would cross statutorily required thresholds under the proposed rule which did not previously. Advances in mortgage technology and increased electronic data reporting by the mortgage industry will work in the Bureau's favor when making such an assessment.

CONSOLIDATION OF TIMING REQUIREMENTS AND DEFINITIONS FOR THE "LOAN ESTIMATE"

Generally, state regulators support the more protective timing and re-disclosure requirements associated with the "Loan Estimate" form. We believe the Bureau was correct in most cases to expand or at least retain the level of consumer protection associated with early disclosures. State regulators are pleased that lenders will be more accountable for the estimates they provide, thresholds for error will be narrower, and that consumers will have enough time to process, evaluate and comprehend the disclosures they are provided. The end of costly "closing surprises" is a positive development that should be welcomed by all stakeholders in the mortgage market. However, the industry has raised concerns about disruptions and inconvenience to consumers who may be required to delay closing at the last minute. We

[1] CSBS, ACSSS, and AARMR addressed this in the Federal Reserve Board's 2010 Regulation Z proposal. *See* http://admin.csbs.org/regulatory/policy/Documents/CSBSAARMRACSSSFinalRegZCommentLetter.pdf.

believe it is critical for the CFPB to understand the frequency of this occurring. The tolerance for unexpected changes to costs and the need for reasonable consumer protections must be properly calibrated.

State regulators support the prohibition of delivering the “Loan Estimate” on the same day as the “Closing Disclosure.” We believe that the enhanced and consistent quality standards for disclosure will incentivize lenders to avoid surprising consumers and “low-balling” estimates to lure in buyers to loans which may not be in their best interest.

Closing Disclosure Timing Requirements

The Bureau’s proposal requires the “Closing Disclosure” to be delivered three business days prior to consummation and exempts changes below $100 from mandating a reissue. State regulators generally support a requirement in this area and believe granting consumers more time to process their final terms before closing can be an important consumer protection. The three day requirement also creates consistency where there was a discrepancy between RESPA and TILA. The Bureau acknowledges that this rule will substantially change industry practice. This rulemaking is perhaps the most sweeping and significant reforms to the mortgage origination process in recent history and thus careful and coordinated implementation is essential to avoiding potentially significant market disruption. State regulators encourage the Bureau to consider how existing timing requirements and other mortgage related rulemakings interact with this rule. Smart implementation can bring down costs for the industry, regulators and consumers.

Proposed Thresholds For Re-disclosure

State regulators are generally supportive of expanding the 0% tolerance for fee increases to fees paid by an affiliate or the creditor and to fees paid for third party services for which consumers cannot shop. State regulators also support the standard for a “good faith” estimate to be within 10% of what was provided on the “Loan Estimate”. The stricter thresholds proposed by CFPB will ensure consumers are not subject to abusive practices that were prevalent in the past. This will also incentivize lenders to provide consumers with accurate Loan Estimates and Closing Disclosures. This rule should lead to a healthier residential mortgage market. Better informed consumers provided with accurate disclosures make better choices and are less likely to default. Lenders will have a less cumbersome and more certain process reducing the risk of error and uncertainty associated with the disclosure process. State regulators believe a balanced and careful approach to the implementation of these timing and re-disclosure requirements is essential. Thresholds should not cause significant market disruptions and should be amended if they do. Thus, state regulators would again urge the Bureau to prudently implement all requirements and make sure that the proposed rule will manifest itself into a practical process that leads to a better transaction for the consumer and does not restrict access to credit or unnecessarily delay a loan closing.

Netting

State regulators believe the netting of lender credits against origination fees is contrary to the nature of Regulation Z. State regulators believe this practice can confuse the consumer and may ultimately serve to hide the existence of dual compensation that would otherwise be considered in violation of the Loan Originator Compensation Rule. For example, a lender credit disclosed on line 802 of the HUD closing statement could be used to offset some of the mortgage broker fees with the remainder paid by the consumer, resulting in compensation to the broker by both the consumer and lender. However, with no clear identification of where and how the lender credit is to be applied to closing costs, it is difficult to prove which costs were offset by the credit.

Although this is not specifically prohibited in Regulation Z, state regulators would like to see it specifically allowed or prohibited with clear direction and enumeration of how the lender credit is applied. In general, netting should be avoided wherever possible on the forms as this is counter to clear and itemized disclosure.

FORM SPECIFIC COMMENTS

Loan Estimate

Overall, the Loan Estimate form is a notable improvement from the status quo. State regulators believe that the Bureau has combined the Board of Governor's "Early TIL" and the Department of Housing and Urban Development's "Good Faith Estimate" in a generally intuitive and practical fashion. The new form is aesthetically more appealing and eliminates large text blocks full of technical terms, verbose definitions and jargon.

Despite the general improvements, state regulators have identified several areas of concern after careful analysis. First, on the Loan Estimate, a borrower's ability to shop for home-owners insurance should be more clearly indicated on the form. Second, state regulators believe that the "Total Interest Percentage" can be a confusing or even misleading metric if not presented within the context of its relationship to other metrics and/or if it is not thoroughly explained. Exactly what this metric comprises should be further detailed. The narrative explanation should be supplemented with web-based tools or a simple equation demonstrating how the metric was derived.

Additionally, the Assumption language is inconsistent on both forms. In the interest of consistency, the language should be the same on both forms. Borrowers should be able to easily cross-check all the lender/settlement agent calculations. Thus, where calculations are not clearly articulated in an intuitive fashion, CFPB should make efforts to provide simple explanatory calculations wherever possible. The Bureau has done a good job working towards this outcome, and if enhanced quantitative testing is performed, consumer understanding can be quantified and the forms can be reassessed if necessary.

State regulators believe putting "credits" and "adjustments" in different categories is potentially confusing to the consumer and duplicative. State regulators believe that these two categories should simply be called "credits" as this is more transparent and will prevent potential consumer confusion resulting from mixing the two categories up. Additionally, lender credits should always be itemized as much as possible. Adjustments that would ultimately be debits should be put in a separate itemized category for any debits. Some of the issues we have identified with the form could potentially be rectified with accompanying web-based educational and comparison tools, if they are clearly explained to the consumer.

Closing Disclosure

State regulators believe the first page of the Closing Disclosure would better inform consumers if there were a comparison between "Interest Rate" and APR. The negative statement on page 5 under APR, "This is not your interest rate," should be presented as a positive statement of what APR is (simple equations) next to "Interest Rate." Clarifying APR in the beginning of the disclosure will help the consumer better use it is a comparison tool and better understand the exact nature of the calculation. This also is consistent with the provision of Regulation Z that requires APR to be no less prominent than any other metric. The consumer should also be informed as to whether Homeowner Association Liens are mandated by state or local law.

On the second page of the Closing Disclosure in the "Total Monthly Payments" area, the "Paid By Others" column should be itemized and indicate what party paid the fee. This would provide greater consistency and transparency. State regulators again urge that "Adjustments" and "Credits" not be distinguished as this has potential to confuse the consumer. The forms should also in some way respond to the emerging business model of Appraisal Management Companies, which RESPA did not anticipate. This rulemaking is an opportunity to modernize requirements written at a time when the mortgage market was very different.

Page 4 of the Closing Disclosure is an outlier in terms of consistency and visual presentation. It does not present information in the consistent and intuitive fashion found earlier in the form. It has blocks of technical language that could be broken up into bullet points or refined to be more effectively communicated. Numbers are presented in an intuitive and digestible fashion on pages 2 and 3. Page 4 should present information in a clear and straightforward way like the preceding pages. The relationship between various numbers, metrics and definitions should be clear and intuitive. Consumers should be able to easily replicate calculations. Again, simple equations may be an easy way to present this information without taking up very much space on the forms. The inconsistent presentation on page 4 has potential to cause "information overload" and to confuse the consumer. All the loan calculations being presented at once can be confusing, and the definitions provided do not seem to provide consumers with an in depth understanding of how they are used, how they are related, and how they are comprised. Some of this overload and confusing presentation may be improved if web-based tools address the technical information on page 4. Consumers need to be able to see clearly how aggregate numbers are derived.

The loan metrics on page 5, "Total Interest Percentage" and "Approximate Cost of Funds", need to be put in greater context. While these metrics are both mandated by the Dodd-Frank Act, the Bureau could increase their utility to consumers by more clearly explaining what they are and how they should be used for purposes of comparison. This could again be done in the form of an equation or in accompanying web-based comparison tools.

State regulators are concerned that the loan metrics on page 5 can confuse consumers. They can be misleading comparison tools if they are not properly explained both in terms of what these calculations represent and how they relate to other metrics on the form. Specifically, "Total Interest Percentage" could lead a consumer to believe a loan was cheaper than it was if they did not adequately understand that closing costs are not included. A disclaimer or statement indicating that these should not be used as the sole method of comparison may be helpful.

CONCLUSION

State regulators commend the efforts of the CFPB in developing mortgage disclosures that are substantially less duplicative, confusing and burdensome than the status quo. We generally support enhanced consumer protections and believe the proposed disclosure process and forms will result in a consumer that is better informed of their loan terms and costs and a process that is far less burdensome to the residential mortgage industry.

Thank you for the opportunity to engage on this important matter.

Sincerely,

John Ryan

CSBS, President and CEO

Michael Mach

ACSSS, Chairman

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