CUNA
Credit Union National Association
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

October 9, 2012

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G St., N.W.
Washington, D.C. 20552

Re: Docket No. CFPB-2012-0034; Comments on 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal

Dear Ms. Jackson:

The Credit Union National Association ("CUNA") appreciates the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal. By way of background, CUNA is the nation's largest credit union trade organization, representing approximately 90 percent of our nation's 7,000 state and federal credit unions, which serve over 94.5 million members.

CUNA Does Not Support Requirements That Are Not Required by Statute

A number of provisions in the proposal are not required by Congress, are overly broad and would impose significant requirements on credit unions. As discussed below, CUNA cannot support these requirements and urges the CFPB to exempt credit unions from their coverage.

In our companion comment letter on the related proposal regarding Truth in Lending amendments, we point out that since the inception of the CFPB, key federal policymakers have assured credit unions that their business model of putting consumers first would not be jeopardized and abuses in the financial marketplace would be regulated to the extent community banks and credit unions already are. Credit unions worked hard throughout the financial crisis as they continue to do today to meet their members' needs for loans and attractive savings products.

They should not now be punished, needlessly, through additional regulations that should be reserved for those who intentionally took advantage of consumers in the mortgage servicing process.

We urge the CFPB not to take steps that will hurt credit unions because ultimately it will be the consumers who belong to and own credit unions that will bear the costs

and suffer the consequences when credit unions cut back on services or have to raise their fees to cover substantial compliance costs.

Moreover, there is no evidence to support the CFPB's apparent proposal that credit unions should be subjected to requirements through new regulations that Congress did not itself specifically impose by law. The CFPB has broad powers but where the agency departs from statutory directives to impose additional restrictions and requirements, it should confine those requirements to those entities that demonstrated a need for enhanced regulation by abusing consumers, not those that serve them well, such as credit unions.

We urge the CFPB to exempt credit unions from all of the proposed Regulation X requirements that are not specifically imposed on them by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Proposals to Amend Regulation X

Under the Dodd-Frank Act, and proposals to amend Regulation X, servicers would be required deliver many new disclosures, including new and additional force-placed insurance notices. Servicers would also be required to respond in a timely way to borrowers who assert that their servicer made an error, as well as to respond timely to borrower requests for information.

Outside of these statutorily-mandated requirements, the Bureau is proposing additional provisions that would apply to all servicers.

First, servicers would have to establish and maintain reasonable information management policies and procedures, which would have to be reasonably designed to achieve certain objectives and address certain obligations, including accessing and providing accurate information, evaluating borrowers for loss mitigation options, and other requirements.

There is no evidence of any systematic failure by credit unions to provide accurate information, evaluate borrowers for loss mitigation options, etc., in the absence of this regulation.

Second, servicers would have to intervene early with delinquent borrowers to provide them with information about, and encourage them to explore, available alternatives to foreclosure.

There is no evidence of any systematic failure by credit unions to intervene sufficiently early with delinquent borrowers in the absence of this regulation.

Third, servicers would have to provide delinquent borrowers with a point of contact that provides continuity in the borrowers' dealings with the servicer, and staff must have access to complete records about that borrower, including records of prior communications with the borrower, and be able to assist the borrower in pursuing loss mitigation options.

There is no evidence of any systematic failure by credit unions to provide appropriate and effective points of contact with borrowers in the absence of this regulation.

Fourth, servicers offering loss mitigation options in the ordinary course of business would be required to follow certain procedures to ensure that borrowers' completed loss mitigation applications are evaluated in a timely manner, that borrowers are notified of the results, and that borrowers have a right to appeal the denial of a loan modification option. Servicers would also be required to provide borrowers who submit incomplete loss mitigation applications with timely notice about the additional documents or other information needed to make a loss mitigation application complete.

There is no evidence of any systematic failure by credit unions to handle these matters appropriately in the absence of this regulation.

In short, while each of these four additional areas relating to servicing and contained within the proposal reflect laudable objectives, and address failures by other kinds of institutions to handle these matters appropriately, credit unions are *already* providing such levels of quality "high-touch" member service to their members. As the Bureau correctly notes in the proposed rule, a one-size-fits-all approach may not be optimal with regard to either the mandated or additional requirements.

Even though credit unions are providing support to those whose loans they service, it will be extremely burdensome and costly to comply with the specific new requirements the CFPB is proposing. Credit union members will not only see few, if any, benefits from the requirements but may actually be disadvantaged by the burdens their credit unions will face in complying with the proposed provisions.

Exemptions and Reduction of Unnecessary Compliance Burdens

As discussed more fully in our companion Regulation Z mortgage servicing comment letter, there are nearly 1,000 credit unions operating in the U.S. with one or fewer full-time equivalent employees. Nearly one-half of the nation's 7,000 credit unions operate with just five or fewer full-time equivalent employees. CUNA estimates that approximately 5,190 of these institutions service mortgage loans for their members. Of this number, CUNA estimates that approximately 4,270 of these credit unions are under $175 million in assets. These credit unions work extremely hard to attempt to comply with continually changing existing and new regulations. In fact, smaller credit unions consistently say that their number one concern is regulatory burden. Difficulties in maintaining high levels of member service in the face of increasing regulatory burden are undoubtedly a key reason that roughly 300 small credit unions merge into larger credit unions each year.

As member-owned financial cooperatives, every dollar a credit union spends complying with regulatory requirements is a dollar that cannot be spent for the benefit of credit union members. Due to this cooperative structure, the entire cost of compliance is ultimately borne by credit union members.

Assigning a dollar figure to the cost of compliance with ever-changing regulations is impossible. When a regulation is changed, there are certain upfront costs that must be incurred: staff time and credit union resources must be applied in determining what is necessary in order to comply with the change; forms and disclosures must be changed; data processing systems must be reprogrammed; and staff must be retrained. It also takes time to discuss these changes with credit union members, and at times members get frustrated because of the changes that are impacting the way in which they have come to expect their financial service transactions to be handled.

With this in mind, CUNA urges the CFPB to do all it can to reduce unnecessary compliance burdens for credit unions. We feel that the proposal does not go far enough to avoid imposing regulatory burdens on, or to exempt, credit unions which, the CFPB has acknowledged, did not cause the financial crisis. Many credit unions service many tens of thousands of mortgage loans, and do so to retain the close-knit and trusted member relationship which is of key importance to both credit unions and their members, as discussed more fully above. Additionally, since the financial crisis began, credit unions have welcomed many former bank customers and provided high-quality mortgage loans to these consumers, where many of these same consumers could not obtain mortgage financing from other financial service providers.

The proposed exemption relating to the periodic statement contained in the Bureau's proposed rule on Regulation Z, and the proposed exemption relating to fixed-rate mortgage loans where coupon books are provided, contained within the same proposal, are the ONLY proposed exemptions that the Bureau has articulated within the proposed mortgage servicing rules. CUNA is concerned that without more meaningful exemptions for credit unions from the requirements of the mortgage servicing proposals, the costs required of credit unions to comply with such requirements will significantly outweigh any potential benefits that may be afforded the consumer.

The Bureau should utilize to its fullest extent, the power given it by Congress to exempt credit unions from other provisions of the proposal where appropriate and permissible, and where such requirements may cause undue compliance burdens on credit unions, and as further detailed in this comment letter.

The enumerated items discussed above under the heading "Proposals to Amend Regulation X," which are outside of Congress' mandate as contained within the Dodd-Frank Act, are of significant and deep concern to CUNA and its member credit unions. In many instances, each of these four areas will require additional notices and disclosures to be developed and programmed for credit unions. Staff time and resources will be required to develop policies and procedures relating to these requirements, and employees will have to be trained and re-trained on an ongoing basis to comply with many of these proposed requirements. While CUNA recognizes that the Dodd-Frank Act requires the Bureau to finalize the mortgage servicing and other mortgage-related rules prior to January 21, 2013, the statute does not require the Bureau to insert these additional requirements and create the associated burdens

on credit unions and other institutions. In light of the fact that the Bureau is currently proposing massive changes to the mortgage rules which will impact credit unions going forward, we urge the Bureau to keep in mind that credit unions did not contribute to the mortgage servicing horror stories that many consumers have faced in recent years.

Force-Placed Insurance

Under the proposal, servicers would not be permitted to charge a borrower for force-placed insurance coverage unless the servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance and has provided required notices. One notice to the borrower would be required at least 45 days before charging for forced-place insurance coverage, and a second notice would be required no earlier than 30 days after the first notice. Additionally, if a borrower provides proof of hazard insurance coverage, then the servicer would be required to cancel any force-placed insurance policy and refund any premiums paid for periods in which the borrower's policy was in place. The rule also provides that if a servicer makes payments for hazard insurance from a borrower's escrow account, a servicer would be required to continue those payments rather than force-placing a separate policy, even if there is insufficient money in the escrow account. The rule would also provide that charges related to force-placed insurance (other than those subject to State regulation as the business of insurance or authorized by federal law for flood insurance) must relate to a service that was actually performed, and such charges would have to bear a reasonable relationship to the servicer's cost of providing the service.

One problem with these provisions is that a servicer can quickly and efficiently obtain force-placed hazard insurance. The difficulty and timing of reinstating a policy with a borrower's existing provider, however, may subject the borrower to a lapse in insurance coverage and exposure to significant loss.

CUNA has significant concerns with many of these proposed requirements. With respect to the proposed requirement for a creditor to pay the hazard insurance even in instances of insufficient funds in a borrower's escrow account, the burden shifts responsibility to the lender to maintain the homeowner's insurance. Presently, this legal burden rests with the homeowner and the creditor intervenes to force-place coverage only if it learns that the insurance has lapsed. Under the proposed rule, if the creditor fails to learn of the lapse it is unclear whether the homeowner could bring a lawsuit against the creditor for any losses that occur during the lapse – including such losses as liability, living expenses, or loss of personal property. We do not think that should be the outcome and urge the CFPB to clarify that is not the case.

Additionally, the proposal does not contain the same requirements for those mortgage loans where escrow accounts are not present. Instead, the present model of using force-placed insurance would be utilized. This may create a disincentive for the creditor to provide the option of an escrow account for the consumer, where regulation does not call for mandatory escrow account establishment.

From a consumer's perspective, the proposed requirements relating to treatment of an escrow account also raise questions regarding the payment of property taxes, as the escrow account contains funds for both hazard insurance and property taxes. If the escrow account is depleted to pay for hazard insurance premiums, what is the result when a borrower's property taxes become due and payable? In CUNA's estimation, the legal ramifications of not paying ad valorem taxes can be much more problematic for both consumers and creditors than non-payment of insurance premiums.

Drawing down an escrow account for payment would require additional administrative work by both the creditor and the insurer. For example, the creditor would need a billing system to cut checks to multiple insurers that provide homeowner's insurance rather than working with a single insurer providing force-placed insurance. In some instances, there will be false positives, and the creditor will have to adjust/true-up the account with these insurers (i.e., the creditor and the homeowner both send a payment for the same bill to the insurer).

In instances where the borrower obtains hazard insurance and the creditor is required to refund premiums charged on a creditor force-placed policy where coverage for both policies overlaps, CUNA also urges the Bureau to provide additional clarification that any insurance verification provided by a borrower must be presented in a timely manner. Credit unions should not be required to shoulder the burden of refunding multiple months' insurance premiums due to either the borrower or his or her insurer being delinquent in providing any verification of coverage notice.

CUNA also believes that confusion may result to the consumer with respect to the advance notices for force-placed insurance under the proposal. Because servicers will be required to wait 45 days in order to charge the member for the force-placed premiums, credit union members may believe they should only be charged from the date that they received the advance notice under the proposal, and not from the date of insurance lapse. The unintended consequences of additional administrative time and costs for credit unions to explain and coordinate with member-borrowers on this issue will likely only add to the burdens of these additional notice and procedural requirements under the proposal.

Error Resolution & Information Requests

CUNA has significant concerns with aspects of the proposed requirements in this area. Under the proposal, a person acting on behalf of the borrower would be able to assert a notice of error and/or an information request. For many credit unions, determining whether or not a person has the legal authority to act on behalf of a borrower can be a burdensome task. Attached to this task is the potential liability to the borrower for inadvertent release of confidential or private information, not to mention violating state and federal privacy laws and regulations, in some cases. Additionally, allowing an agent or other acting on behalf of a borrower to initiate either requests for information or notices of error could possibly subject members needlessly to identity theft and/or fraudulent actors with respect to their financial transactions and accounts. In many instances, credit unions rely on outside legal

counsel to review various forms of powers of attorney, guardianships, and other legal documents which may or may not provide proper legal authority for individuals to act on behalf of borrowers with respect to mortgage loan or other financial transactions. With these reviews, come additional costs in both dollars, labor and time not just for credit unions, but for their members, as well. Credit unions, in most instances, already make best efforts to be attentive to member inquiries for information, and promptly undertake appropriate procedures to investigate and correct alleged errors when received from their member-borrowers. CUNA believes that opening these channels to agents or other individuals that may act on behalf of borrowers will likely cause confusion, additional costs and frustrations for many credit unions and their members, alike.

Additionally, under the proposal, the requirements to acknowledge, respond, provide information, investigate, correct, and otherwise comply with the error resolution and information request provisions will require credit unions to undertake a substantial amount of time, money and resources to develop detailed and formalized internal policies and procedures to appropriately undertake the overwhelming task of tracking and documenting the handling of each notice of error or information request which is received by the credit union. These requirements will cause a great amount of confusion within credit unions with respect to issues such as "what constitutes a notice of error?," "what is a proper 'request for information'?," despite the proposed definitions of such items within the proposed rule. These questions will likely be of concern to many levels of personnel within those credit unions that have sufficient personnel to focus on compliance, as such notices of error and information requests may be received by tellers, member call center representatives, mailroom employees, mortgage loan officers, branch personnel, and management alike.

The proposed 5-day acknowledgment timeframe is unreasonable and needs to be adjusted to at least a period of 15 days. As discussed above, many credit unions have multiple channels whereby notices of error and requests for information may be submitted by borrowers, despite an institution establishing a standard telephone number and address for receipt of such communications from borrowers. To require acknowledgments for such a short period of time when there are many moving parts within credit unions is infeasible, in our estimation. For smaller institutions, this requirement may be even more unattainable, as smaller credit unions have a limited number of employees available to handle the multitude of tasks in servicing members' financial needs. The sheer number of proposed notices, acknowledgments, and provisions of information along with the potential volumes of notices of error or requests for information that credit unions may have to process will likely increase the risk of non-compliance for credit unions, without providing sufficient benefits to members.

CUNA does not support the proposed requirement to notify the borrower of a credit union's decision that a particular notice falls under one of these enumerated exceptions. Rather, we would urge the CFPB to allow institutions to send a standard communication to the borrower indicating that the credit union has received the notice of error and is not required by regulation to respond to the notice. Alternatively, the CFPB should eliminate this notice requirement, altogether.

In proposed § 1024.35(b)(5), the Bureau proposes to include, as an enumerated error, the imposition of a fee or charge that the servicer lacks a "reasonable basis" to impose upon the borrower. CUNA believes the term "reasonable basis" is subject to interpretation, and that vague terms should be avoided where possible. To avoid possible confusion for both credit unions and their members, CUNA would recommend revising this term to "legal basis."

CUNA urges the CFPB to delete the proposed provision that when an institution receives a notice of error relating to any payment that may be owed on a borrower's account, servicers would be prohibited from furnishing adverse information to any consumer reporting agency for a period of 60 days after receipt of a notice of error. For many credit unions, the credit reporting process is an automated one, and for the reasons cited above relating to the tracking and procedural requirements that could be operationally difficult for many credit unions, this particular provision could prove highly problematic. This being said, it is important to note that credit unions strive to correctly report transactional data to credit reporting agencies on behalf of their members, and if an alleged error contained in a notice of error is found to be correct, then credit unions already take the necessary procedural steps to send updated and corrected information to credit reporting agencies on a timely basis.

Alternatively, if the Bureau decides to retain this provision, CUNA urges the Bureau to consider reducing this timeframe from 60 to 45 days, as 45 days (or less, depending on the type of error being alleged) would be the maximum amount of time allowed for an investigation of such notice of error (assuming proper notice was delivered to the borrower of the 15-day time extension, provided for under the proposal), and this 45-day period is more appropriately in line with the remainder of the error resolution provisions contained in the proposal.

Proposed § 1024.36(g)(1) states that a servicer may not charge a fee as a condition of responding to an information request other than fees permitted under proposed § 1024.36(g)(2). This latter section would permit servicers to charge fees **only** for providing a payoff statement or a beneficiary notice under applicable state law, if such fees are allowed by law. Information requests received from borrowers often include items credit unions and other financial institutions routinely charge fees for providing, such as copies of cancelled checks and periodic statements. If a charge or fee is legally permissible, then proposed § 1024.36(g)(2) should take this into account.

The proposed requirement that servicers assemble and provide certain documents to borrowers within 15 days of the credit union's receipt of the borrower's request is problematic. When coupled with all of the additional disclosure and procedural requirements set forth within the proposal, there is a real danger that credit unions will find themselves more in the business of generating notices and responding to frivolous requests for information from a multitude of parties, than in the business of focusing their efforts on truly serving the needs of members regarding their mortgage loans. We urge the Bureau to either lengthen the proposed 15-day response period, or eliminate this requirement altogether.

The proposed requirement that servicers provide print-outs reflecting information entered into a servicer's collection system, where servicers rely upon such entries will also be difficult to meet. Many such systems are not designed for user-friendly data fields and screens, and often have codes or abbreviations listed on such screens which will make no sense whatsoever to the average consumer, without much explanation and supporting detail from the personnel within a credit union responsible for inputting and/or deciphering such data. CUNA believes that requiring such information be provided to members will be of little to no utility in allowing members to comprehend these system entries, and would urge the Bureau to eliminate this requirement from the proposal.

Reasonable Information Management Policies and Procedures

Under the proposal, servicers would be required to establish reasonable policies and procedures for maintaining and managing information and documents relating to a borrower's mortgage loan accounts. A servicer would meet these requirements if the servicer's policies and procedures are designed to meet certain objectives and are reasonably designed to ensure compliance with standard requirements.

The proposal contains a safe harbor if a servicer does not engage in a pattern or practice of failing to achieve any of the objectives listed within the proposal, and does not engage in a pattern or practice of failing to comply with any of the standard requirements contained within the proposal.

While CUNA appreciates the inclusion of such a safe harbor, it is too subjective, and may cause credit unions to fall outside of the proposed safe harbor. We urge the Bureau to expand the allowances of the proposed safe harbor to ensure that single failures and "one-off" occurrences of a credit union with respect to any of the enumerated standards and/or objectives do not cause a credit union to lose protection from a safe harbor provision under a final rule.

Under proposed § 1024.38(c)(2), servicers would be required to provide a borrower upon request a mortgage servicing file, containing a wide variety of documents relating to the borrower's mortgage loan account.

CUNA believes that this proposed requirement will be unduly burdensome for a large number of credit unions. Credit unions typically maintain closed-end mortgage loans on processing systems separate from their closed-end home equity systems. Additionally, it is possible that different functional areas within a credit union may have responsibility for the collection function which may be separate from the mortgage servicing function. In order to combine the required documents to maintain and keep information current in such a file, additional resources from credit unions and their personnel will be needed.

Many questions arise with respect to this proposed requirement, such as, how many times per month may a consumer request the mortgage servicing file? What are the timeframes by which a servicer must comply with such requests? May such requests

be presented to a servicer by an agent of the borrower, or must the borrower request the mortgage servicing file? What is the likelihood that this proposed mechanism may become the next "Qualified Written Request," used by bankruptcy and other attorneys attempting to slow the foreclosure process on behalf of their clients? Are servicers required to divulge attorney-client protected information which may be contained in such collection notes and system entries?

Given the multitude of questions and uncertainties and potential unintended consequences tied to this particular requirement under the proposal, CUNA urges the Bureau to eliminate this requirement from the proposed rule.

Early Intervention Requirements

Under the proposal, servicers would be required to provide delinquent borrowers with two notices.

Credit unions already provide late payment notices to borrowers, and work with borrowers to bring their mortgage loan accounts current on a timely basis following a borrower's delinquency. The proposal would require servicers to attempt to contact a borrower on at least three separate dates for purposes of exercising a good faith effort to notify a borrower orally under the proposal. Because this would mean additional staff resources and additional documentation efforts on the part of credit union mortgage servicing personnel, we urge the Bureau to allow servicers, or at least credit union servicers, to attempt to contact the borrower a number of times that is reasonable under the circumstances, which supports a presumption that this requires two separate dates, rather than three.

Continuity of Contact

As stated above, credit unions have been working with borrowers to afford timely and accurate responses to their financial inquiries and needs well prior to the beginning of the financial crisis. While CUNA appreciates language contained within the Bureau's proposal that a team of individuals can be assigned to perform the functions under the proposed requirements, rather than an individual, it is likely that credit unions will have to further enhance and add to their existing staffing levels to ensure that appropriate tracking mechanisms are put in place, policies and procedures are developed and trained on, and required notices and reporting are put in place to comply with the proposed requirements. Additionally, because credit unions often have call centers that field a number of member telephone calls, there likely will have to be a segregation of specially-trained staff to handle these delinquent borrower calls by the assigned personnel, and many credit unions may have to incur costs associated with the establishment of separate telephone lines, voicemail systems and other technology-related expenditures to appropriately comply with the rule's requirements.

With respect to the continuity of contact requirements, we note the proposal would allow persons authorized to act on a borrower's behalf, such as housing counselors or attorneys, to contact servicers. In line with our previous comments on allowing

agents for borrowers to assert notices of error and initiate requests for information, CUNA opposes opening such channels to agents for the borrower due to the operational challenges the requirement presents.

Loss Mitigation Procedures

CUNA has many concerns regarding these proposed requirements.

First, the requirement contained within proposed § 1024.41(c), that servicers must evaluate the borrower for *all* loss mitigation options available from the servicer for which the borrower may qualify, is problematic. Review of a single loss mitigation application for a borrower can be a very time-consuming endeavor, and to apply this requirement to each loss mitigation option offered by an institution will result in a significant amount of labor and credit union resources to fully evaluate the borrower's individual circumstances and apply these to all available loss mitigation options. We urge the Bureau to consider lessening this requirement for institutions such as credit unions that already provide opportunities for appropriate workout alternatives for borrowers.

In proposed §1024.41(e)(2), the Bureau proposes that a borrower that does not satisfy the servicer's requirements for accepting a loss mitigation option but submits the first payment that would have been owed under the offer within the deadline for the response shall be deemed to have accepted the loss mitigation offer. The Bureau does not offer any interpretations within the proposed Official Staff Commentary as to how a servicer would execute a loss mitigation option if the borrower simply remits a modified payment and fails to execute the required loan modification documents. Many of these documentation requirements are set forth by investors and owners of mortgage loans, and must be complied with in order that servicers do not run afoul of various representations and warranties contained within investor and owners' selling agreements. Should the Bureau retain this requirement, we urge the CFPB to include either additional commentary or other guidance that will address these issues.

Proposed § 1024.41(d) would require servicers to provide a notice of denial of a loss mitigation application, and provide specific reasons why a loss mitigation application was denied. Servicers are already required to provide borrowers with adverse action notices under Regulation B. The Bureau should clarify whether this proposed notification requirement is in addition to a creditor's existing requirements under Regulation B, and/or whether the adverse action notice required under Regulation B would suffice for purposes of this proposed requirement. If both notices are required, the resulting practices will be duplicative and confusing to borrowers who will wonder why they are receiving two separate notices containing specific reasons for denial.

Proposed § 1024.41(h)(1) would require a servicer that denies a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer to permit the borrower to appeal the servicer's determination. CUNA urges the Bureau to work closely with the Federal Housing Finance Agency and Fannie Mae and Freddie Mac with respect to this particular requirement, as investors

in many cases do not permit the borrower to appeal a denial on a loss mitigation application. These differences should be reconciled so as to avoid confusion on the part of both servicers and borrowers in a final rule.

In Supplement I to Part 1024, Official Bureau Interpretations, the CFPB explains that a borrower's appeal may be evaluated by servicer personnel that are responsible for oversight of the personnel making the initial decision on a loss mitigation application, as long as the supervisory personnel were not "directly involved" in the initial evaluation. CUNA believes that the term "directly involved" is vague, general and subject to additional interpretation, and should be further clarified. Additionally, for small servicers such as credit unions with few employees, these proposed appeal process requirements may impossible to comply with. Often, the individual reviewing the initial loss mitigation application may well be the only individual with specialized knowledge sufficient to determine whether an appeal relating to such application should be granted.

In proposed § 1024.41(j), the Bureau proposes to impose on servicers the duty to identify other servicers that have liens encumbering the property that is the subject of a loss mitigation application and provide the other servicer(s) with a copy of the loss mitigation application within 5 days of receiving that application. Servicers who receive a copy of a loss mitigation application from another servicer would be required to act as if the application were received directly from the borrower.

CUNA is concerned about a potential unintended consequence relating to this proposed requirement. This practice could lead to a reduction or suspension of the credit limit on a borrower's home equity line of credit (HELOC) with another lender, since the other lender may reasonably believe that the consumer has experienced a material change in his or her financial condition and/or doubt that the consumer will be able to continue the required payments on this separate loan obligation. This could have a negative impact on a borrower at a time when the borrower is in particular need of access to this available source of credit, and could result in borrowers being dis-incentivized from applying for a loss mitigation option with a servicer of another lien.

Of additional concern relating to this proposed requirement is the timeframe by which a servicer would be required to deliver a copy of a loss mitigation application to another servicer. A five-day period of time is simply not a reasonable period of time within which to perform due diligence measures to identify such servicers and provide copies of applications to them. Additionally, consumer credit reports do not identify the property securing a reported mortgage loan, and mortgage loans are not always reported within such reports (i.e., family loans). Servicers often utilize title vendors to perform a search of land records. This process can be costly, and take days for the servicer to receive the report from a title vendor. Although a land records search may identify another lienholder, in many instances, these searches do not divulge the address of the servicer. These searches may often yield "false positives" in that search reports routinely return clouds on title such as liens for loans which have been paid, but where lien releases were never properly recorded.

This process of working through additional liens to identify those liens that have been paid and those that are legitimate, added to the process of locating and identifying appropriate contact information for servicers of these legitimate liens, can be a long one. It often requires additional input on the part of the consumer, which may result in the consumer having to provide duplicate information to multiple servicers. Not only is it impracticable to require servicers to adhere to the proposed timeframe of five days, but the time-consuming process of identifying and delivering the proposed information to these servicers would unnecessarily detract from the servicer's review of the loss mitigation application, or require additional staff to handle these responsibilities.

We urge the Bureau to eliminate this requirement from the proposal in its entirety, at least for credit unions.

Implementation Period & Effective Date of Rule

The requirements outlined in the Bureau's proposal are, at best, overwhelming for a vast majority of credit unions. As previously discussed in this letter and in our Regulation Z mortgage servicing comment letter, systems will need to be reprogrammed, staff will need to be trained and retrained, existing forms will need to be amended, and over twenty new disclosures under both Regulation Z and Regulation X proposals will also need to be developed, programmed, and implemented. Staff will also need to be trained according to the policies and procedures surrounding each of these disclosures, which will also have to be developed.

Aside from the operational challenges presented by the proposed rules, credit unions will need to consult and negotiate with technology vendors, renegotiate service provider contracts in many instances, and work to schedule these same providers to install and configure many credit unions' data processing systems and software to accommodate and comply with these requirements.

The Dodd-Frank Act requires rules to be in place by January 21, 2013. If the rules are not in place, the mortgage servicing provisions under the Dodd-Frank Act become self-executing. However, if the rules are in place, the Dodd-Frank Act allows the Bureau to delay the implementation of such rules for up to twelve months.[1]

Within the proposed TILA-RESPA rulemaking, CUNA notes that the Bureau is proposing to utilize its authority under TILA § 105(a), RESPA § 19(a) and the Dodd-Frank Act, § 1405(b) to delay the effective date of certain Dodd-Frank Act-mandated disclosures under proposed § 1026.1(c) to coincide with the finalization of the TILA and RESPA disclosures, as "…the Bureau believes that both consumers and industry will benefit by incorporating many of the disclosure requirements in title XIV into [this] proposal…," and "Consumers will benefit from a consolidated disclosure that conveys loan terms and costs to consumers in a coordinated way."[2]

[1] 77 Fed. Reg. 57326
[2] 77 Fed. Reg. 51133

Due to the detailed complexities of preparing credit union systems and staff for these required changes outlined above, CUNA would urge the Bureau to use a similar rationale, if permissible and appropriate, to utilize its statutory exemption authority given it by Congress to delay the effective implementation of these final rules by at least 18-24 months, to allow credit unions an adequate amount of time to prepare for and comply with these requirements. In considering this request for extension, CUNA would urge the Bureau to give no extra time for implementation to abusers in the mortgage servicing marketplace, and to allow credit unions a healthy time extension to comply with requirements contained within the final rule.

Conclusion

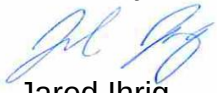
In sum, the proposed requirements on information management policies and procedures, early intervention requirements, continuity of contact requirements and loss mitigation procedures are all outside of the specifically-mandated Congressional requirements in the Dodd-Frank Act. Imposing these additional regulatory burdens on credit unions, which are clearly not required by law, is inconsistent with Congress' intent to protect smaller, consumer-friendly institutions; contrary to the public interest, because mortgage servicing costs for not-for-profit, consumer-oriented cooperative institutions will significantly increase, driving business to larger, for-profit institutions that can take advantage of economies of scale; and contrary to the assurances given by policymakers since the Bureau's formative period that the CFPB would avoid placing unnecessary regulatory burdens on credit unions.

Credit unions have done nothing to deserve further regulatory burdens that offer no benefit to their members but, rather, will divert credit unions from their core mission. That mission js to serve their members.

We call on the agency to recognize that credit unions do not need new requirements that are not required by statute in order to do right by their members. We urge the agency to exempt credit unions from requirements of this proposal to the greatest extent possible and at a minimum, refrain from imposing requirements that Congress did not mandate.

Thank you for the opportunity to comment on the CFPB's 2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6732.

Sincerely,



Jared Ihrig
Senior Assistant General Counsel