NCSHA

September 7, 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-2012-0029

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 implementing changes to Regulation Z and Regulation X. NCSHA shares CFPB's goals of discouraging inappropriate lending practices and providing robust protections for borrowers who take out high-cost mortgages. However, we believe federal regulations must also ensure that responsible loans are not classified as high-cost. Consequently, we urge you to exempt HFA-financed loans from the application of the high-cost mortgage rule.

We also recommend that CFPB increase the annual percentage rate (APR) triggers used to determine whether a mortgage qualifies as a high-cost loan. Finally, we support CFPB's decision to exempt HFAs from the provision prohibiting creditors and their affiliates from providing pre-loan counseling to borrowers.

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 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, the Low Income Housing Tax Credit, Section 8, homeless assistance programs, and state housing trust funds.

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 timetested 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.

Exempt HFA-Financed Loans from the Rule's Application

HFA products have demonstrated superior performance compared to affordable home loans issued through other channels. A limited review of HFA loan data conducted by Fannie Mae last year demonstrated that HFA-financed loans performed better than other Fannie Mae affordable housing loans. We believe a more extensive review of Fannie Mae and Freddie Mac loans would confirm these findings. In addition, a limited study we conducted last year of the relative performance of HFA-financed and non-HFA-financed loans insured by the Federal Housing Administration (FHA) found that, in most states, HFA-financed loans had lower long-term delinquency and foreclosure rates than non-HFA loans.

Given the superior relative performance of HFA loans, HFAs' status as state agencies and instrumentalities of government, and their unique public missions and lending practices, we urge CFPB to exempt HFA-financed products from the high-cost mortgage rule. It is unlikely that many of the loan products offered by HFAs will fall under the proposed definition of a high-cost mortgage in any case. However, many HFAs offer small-loan products that, for example, finance the purchase of manufactured homes in rural areas or support critical repairs and renovations.

Because the principal on these loans is so low, even reasonable fees to offset origination and administrative costs might make many of them qualify as high-cost. The extra costs 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. We do not believe that Congress intended for these kinds of loans, which are tailored to help underserved consumers, to fall under the high-cost regime. Exempting HFA-financed loans from the high-cost rule will allow HFAs to continue offering consumers unique and affordable loan products that best meet their needs.

Provide Flexibility to Protect Responsible Lending

Under Sections 103(bb)(2)(A) and (B) of the Truth in Lending Act (TILA), CFPB has the authority to adjust the Annual Percentage Rate (APR) triggers that are used to determine whether a home loan qualifies as a high-cost mortgage. The proposed rule would implement the APR standards laid out in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under these standards, a mortgage would qualify as high cost if its APR at consummation exceeds the average prime offer rate (APOR) for a comparable transaction by 6.5 percent for most first mortgages, or 8.5 percent for first mortgages secured by personal property or with a total value below $50,000. The APR trigger for secondary loans would also be 8.5 percent.

The APR limits set in the proposed rule could be troublesome, particularly when combined with the expanded definition of "finance charge" that CFPB is currently considering under its 2012 TILA-RESPA proposal. If lenders are required to include more charges when calculating a loan's APR, it would result in many responsible loans issued by HFAs and other lenders being qualified as high-cost mortgages. This is particularly true for small loans, where adding an additional charge to the calculation can have a substantial effect on a loan's APR. For example, the recent rate increase that the U.S. Department of Agriculture charges lenders to participate in the Rural Home Loan Guarantee Program has caused some small loans to qualify as high-cost loans. 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, especially rural communities.

CFPB acknowledges in the proposed rule that it may need to make modifications to ensure that otherwise quality home loans are not classified as high-cost mortgages and asks for input on whether it should adjust the APR caps. We encourage CFPB to increase the APR triggers to a level that will preserve responsible lending options for low-income consumers and underserved areas.

As an alternative to increasing APR triggers, CFPB also seeks comment on a proposal to substitute the APR as the benchmark for determining whether a mortgage qualifies as a high-cost loan with the transaction coverage rate (TCR). Unlike the APR (as it would stand under the expanded definition of finance charge), the TCR would not include any third party charges. We agree with CFPB that adopting the TCR metric will ensure that fewer mortgages fall under the high-cost mortgage rule. However, adopting different standards for the purposes of disclosure and determining whether a loan qualifies as a high-cost mortgage is likely to confuse borrowers and increase the regulatory burden on lenders. Consequently, increasing the APR triggers may be the stronger option.

Preserve Counseling Affiliation Exemption for HFAs

NCSHA strongly supports CFPB's decision 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. Unlike private lenders, HFAs are instrumentalities of government whose first mission is to serve the people of their state. HFAs have a proven track record of putting the needs of borrowers first. As such, we strongly agree with CFPB's determination that allowing HFAs to provide counseling on loans that might be classified as high-cost poses no risks to consumers.

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

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives