NCSHA
National Council of
State Housing Agencies

October 9, 2012

Mr. Richard Cordray, Director
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: CFPB-2012-0033

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) August 10 proposed rule amending Regulation Z. NCSHA supports CFPB's efforts to increase consumers' access to comprehensive and timely information about their home loans. However, we believe that the Bureau should also avoid imposing requirements that will overly burden small servicers with fewer resources. This includes not only small private servicers, but also instrumentalities of government (IOGs), including HFAs. Consequently, we suggest you extend the small servicer exemption for the periodic statement requirement to include HFAs.

In addition, we also recommend that CFPB reconsider its proposal to mandate that contact information for state HFAs be included on both the periodic billing statement and initial adjustable-rate mortgage interest rate adjustment notices. Finally, we ask that you set the effective date for the final rule for a year after it is issued to give HFAs and other servicers ample time to adopt the required periodic mortgage disclosures.

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 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.

Include HFAs in Small Servicer Exemption

CFPB acknowledges in the proposed rule that producing and mailing periodic monthly statements for borrowers will place new technological, operational, and financial demands on servicers. The Bureau recognizes that these requirements will be particularly challenging for small servicers, who may not have the resources necessary to make the requisite changes to their operating systems nor the ability to spread the costs of the upgrades across a large number of loans. CFPB also points out that many small servicers' business models require them to take a proactive approach to customer service. Given this, the rule proposes that those servicers that service 1,000 or fewer mortgages (and service only mortgage loans that they originated or own) be exempt from this mandate.

While many HFAs' servicing portfolios exceed the 1,000 loan threshold, HFAs, because of their unique status has IOGs, face many of the same financial and operational difficulties as small private servicers. Unlike private servicers, HFAs are governmental and quasi-government agencies whose first mission is to serve the people of their state. HFAs predominantly issue low-cost traditional mortgage products that do not generate the same level of revenue as conventional private loans. Further, many HFAs must also devote some of their time and funds to administering other affordable housing programs. The requirement to send borrowers an individualized monthly statement could substantially tax their already limited resources.

In addition, providing superior customer service is vital to fulfilling HFAs' mission. Throughout the years, HFAs have accumulated a proven track record of putting borrowers' needs first and proactively addressing borrowers' servicing needs. CFPB recognized HFAs' special status and commitment to serving consumers earlier 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.

Given the challenges HFAs would be likely to face in implementing the periodic billing statement mandate and their strong record of customer service, we believe that CFPB should adjust the small servicer exemption to include HFAs. It is important to note that, if CFPB were to include HFAs in the exemption, many HFA borrowers would still receive similar monthly statements to those the proposed rule would require. Several of our members have informed us they already send such notices or intend to begin doing so. But other HFAs may find this approach cost-prohibitive. Extending the exemption will give HFAs the flexibility they need to best serve their constituents.

Remove HFA Contact Information from Required Statements

In addition to the periodic statement, CFPB also proposes that servicers be required to send borrowers with adjustable-rate mortgages (ARMs) an initial disclosure form before the first rate adjustment and subsequent notices before each adjustment thereafter. CFPB proposes that both the periodic statement and initial ARM interest rate adjustment notice include contact information for the appropriate state HFA. This information would be grouped together with information on how borrowers can contact either CFPB or the U.S. Department of Housing and Urban Development (HUD) to find HUD-certified home counseling agencies in their area. In the sample forms found at the end of the rule, the Bureau proposes that the form suggest that borrowers use the contact information if they are in need of either counseling or assistance.

HFAs will always be willing to assist struggling homeowners. That being said, listing state HFA contact information is likely to increase consumer confusion by misdirecting borrowers away from entities and individuals more likely to be able to assist them while also increasing the number of borrowers contacting HFAs even though those HFAs will only be able to provide limited assistance to most of those borrowers. For example, some HFAs don't offer counseling programs, but borrowers in those states would be led to believe that they can contact their state HFA to receive housing counseling. In addition, because of limited resources, HFAs may not be well-equipped to handle the increased amount of inquiries they would receive.

Furthermore, because the periodic mortgage statement requirement would apply to nearly all first-lien mortgages, including those owned by investors, the statement would be required to list contact information for the HFA in the state where the home is located, regardless of where the borrower actually resides. While there are some exceptions, HFAs generally provide assistance only for owner-occupied homes.

Provide Ample Time for Servicers to Implement Periodic Statement Mandate

Under the Dodd-Frank Act, CFPB is allowed to provide up to 12 months for a final rule to be implemented. We recommend that CFPB consider using this authority to have the periodic mortgage statement rule take effect a year after the final rule is issued. As mentioned above, CFPB recognizes that the requirement that servicers provide consumers with periodic mortgage statements will require servicers to implement significant operational and technical changes, including adopting new software and retraining staff. If the Bureau does not choose to extend the small business exemption to HFAs, they will need adequate time to make the needed adjustments. Even if HFAs are exempted from this mandate, we recommend the Bureau provide larger private servicers, with whom many HFAs partner to service HFA-financed mortgages, sufficient time to prepare.

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