November 6, 2012

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Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
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Submitted electronically to http://www.regulations.gov

Re: TILARESPA Disclosures and TILA Finance Charge: 77 Fed. Reg. 51116 (Aug. 23, 2012), Docket No. CFPB-2012-0028; HOEPA Coverage: 77 Fed. Reg. 49,090 (August 15, 2012), Docket No. CFPB-2012-0029

Dear Consumer Financial Protection Bureau:

The undersigned consumer, legal services, civil rights and community organizations hereby submit the following comments on your proposed regulations regarding the combined TILA RESPA disclosure, the revised TILA finance charge, and, under a separate docket, HOEPA coverage as affected by the proposed changes to the finance charge, annual percentage rate (APR) and Transaction Coverage Rate.

In brief, we support the proposal to require all fees and charges to be included in the APR that consumers are quoted when they shop for a mortgage, and the proposed disclosure forms are generally an improvement. However, we have three significant concerns:

- The decision to bury the APR on page three will make it **less likely that consumers will understand or be able to compare the full cost of different mortgages, and more likely that unscrupulous lenders will quote misleadingly low interest rates with high hidden fees**.
- Consumers should **never be given written estimates on which they cannot rely**.
- **All high-cost loans should receive special protection**s even if the loan is high cost due to fees and charges that are newly included in the APR.

<u>A Price Tag With All Fees Included is Essential to Shopping for a Mortgage and Will Ensure that Competition Brings Fees Down Rather than Drives them Up</u>

The APR was developed for the purpose of giving consumers a standardized way to compare loans with different structures. By definition, it is different from the interest rate. The original rules for the APR required that most fees and charges also be included when the APR is calculated so that lenders could not quote a deceptively low interest rate and hide many of the costs in fees.

Over the years, however, many loopholes have developed that have undermined the accuracy and usefulness of the APR quoted for mortgages. We therefore support the Bureau's proposal to close those loopholes and to include most fees and charges in the APR. For example, title fees would be included whether or not the company is an affiliate of the lender making the loan. Title fees have long been subject to price gouging due to abuses in the marketplace. Inclusion of such fees in the APR will help consumers to find the least expensive loan package and encourage lenders to police the title insurance market, rather than ignore it or accept kickbacks for abuses. An all-inclusive APR will protect consumers by making the APR reliable and useful and help them to compare the full cost of credit for different loans. The proposed rules also have the benefits of making it easier for creditors to calculate the APR, eliminating regulatory uncertainty and compliance costs.

Unfortunately, these benefits from a more accurate APR are largely undermined by the Bureau's proposal to bury the APR on page three of the model disclosure form, rather than putting it on the front page. Complicated disclosures have very limited usefulness. Most consumers will only look meaningfully at the first page, and even then there is a lot of information to process. *The APR serves almost no purpose if it is not prominently displayed on page one.*

Fees will also be reflected in the cash required to close, but that figure does not help consumers compare loans that have higher closing costs but a lower interest rate, or vice versa, or a loan that adds fees to the loan amount and one that does not. The APR is the only method of comparing the rates on two loans with different structures. Without the APR, consumers will be left to juggle the effect of multiple variables on the total cost of the loan.

Minimizing the APR will have the effect of driving mortgage brokers and lenders to increase closing costs and other fees. It is hard enough for consumers to understand the different aspects of closing costs and which ones can be negotiated and which ones cannot. If consumers are focused only on the interest rate and not on the APR when they shop for loans, then lenders and brokers will minimize the interest rate and pad other costs. Conversely, if consumers learn to shop based on the APR, then competition will drive down fees.

The CFPB justified its decision to minimize the APR based on its consumer testing, but the CFPB made only token attempt to improve the disclosure and set too high a bar for its consumer testing, requiring that consumers understand the difference between the APR and the interest rate. Though such understanding is ideal, the question is whether a form with a prominent APR will help consumers to choose the less expensive loan. We believe that it will and that appropriate testing will confirm this.

<u>Lenders and Brokers Should Never Be Allowed to Provide Written Estimates that They are Not Required to Honor</u>

The CFPB's proposal would allow lenders and brokers to provide consumers with written *but non-binding* estimates or worksheets of loan terms before application. That is an invitation to disaster and deception. Consumers would inevitably believe the offer to be personalized for them and would confuse it with the binding good faith estimate. The CFPB would be sending a message that it condones a practice that has been used for deception. Any lender or broker using the Loan Estimate or Closing Disclosure forms (or anything substantially similar) should be bound by the rules ensuring the accuracy of those disclosures.

Consumers Need Protections From All High Cost Loans, Even if the Loan is High Cost Due to Fees and not the Interest Rate

The improved all-inclusive nature of the proposed APR will potentially result in more loans being deemed high cost loans subject to special protections, including ability-to-pay requirements and a ban on prepayment penalties and balloon payments, and accountability for the purchaser of the loan and not just the originator. That is a good result. If a loan is high-cost based on a more full view of the costs, then it deserves those protections.

The CFPB should not undermine the protections for high cost loans by developing a confusing new measuring stick, the proposed Transaction Coverage Rate (TCR). The TCR would exclude some high-cost loans from appropriate protections.

The CFPB's concerns about restricting access to credit are misfounded. A loan must be very high cost to require special protections, and extremely few loans would be considered high cost even under the new APR rules. The ones that are can and should simply reduce their closing costs or interest rate to escape that designation. This proposal, like the proposal to hide the APR, will also undermine the ability of competition to bring fees down. There is no evidence that any significant mortgage markets will be impacted by the revisions to the APR.

Developing a separate TCR will also make it harder for lenders to comply with the rules and will increase compliance costs. With a single APR, lenders will know if their loans are high cost or not and which rules they need to obey.

In reality, the proposed revisions to the high-cost loan rules will not protect access to credit but instead will deprive consumers of the protections offered for high cost loans and protect creditors who make expensive loans. The CFPB should abandon the TCR and collect data, and make adjustments later if necessary.

In addition to the changes to the APR measuring stick for high cost loans, the proposal also creates complicated rules for when a loan will be deemed high cost due to points and fees. The complications are unnecessary because, under the Dodd-Frank Act, genuine third party fees are already excluded from the calculation of whether the loan is high cost. Other charges that are now added to points and fees will not reclassify many loans as high cost, and those that are added will be subject to high cost protections only because they are hovering very closely to the high-cost trigger.

The trigger for high-cost loan protections should also be based on the maximum possible rate that the consumer will pay if interest rates increase, rather than the fully-indexed rate under current market conditions. The fully-indexed rate offers little protection for borrowers because it hides the magnitude of potential rate increases. Borrowers with variable-rate loans already bear the full risk of rate increases. Therefore it is only fair for the creditor to offer appropriate protections for loans that can shoot up to high-cost rates.

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Thank you for the opportunity to submit these comments and for your efforts to improve the information that consumers receive when shopping for a mortgage.

Sincerely,

Alliance for a Just Society
Center for Digital Democracy
Center for Economic Justice
Community Organizations in Action
Consumer Action
Consumers Union, nonprofit publisher of Consumer Reports
Empire Justice Center
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Fair Housing Alliance
Neighborhood Economic Development Advocacy Project (NEDAP)
Philadelphia Unemployment Project