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April 29, 2011

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. R–1406/RIN No. 7100-AD 65—Proposed Rule to Implement the Mortgage Escrow Account Requirements of Truth in Lending Act Section 129D

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the Federal Reserve Board (Board) in response to the proposed regulation to implement the mortgage escrow account requirements of Truth in Lending Act (TILA) section 129D as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, these changes would change the requirements for when financial institutions must establish mortgage escrow accounts for higher-priced mortgage loans and also change mortgage escrow account disclosure requirements. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,600 state and federal credit unions, which serve 93 million members.

Summary of CUNA's Views

CUNA recognizes that many aspects of the proposal—such as the definition of "higher-priced mortgage" and many of the proposed disclosure requirements—are expressly required by the Dodd-Frank Act and leave the Board with limited discretion in implementing these statutory provisions. The Board does, however, have considerable discretion under TILA section 129D(c), 15 U.S.C. § 1639d(c), with respect to the proposed exemption for certain creditors that predominantly make higher-priced mortgages in underserved and rural areas. We urge the Board to use its authority to adopt more expansive definitions of "underserved" and "rural" that include areas that have been determined to be "underserved" or "rural" by other federal agencies.

Also, CUNA seeks clarification regarding the operation of the proposed rule's "evasion" clause, as well as clarification regarding the proposed staff commentary on escrow accounts for condominium and for cooperative housing

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(coop) mortgages. We support the Board's proposed forced-placed insurance disclosure in light of the Dodd-Frank Act's statutory provision expressly requiring this disclosure. In addition, we urge the Board to allow creditors up to 75 days to establish escrow accounts under certain circumstances, and to set a compliance date no earlier than six to twelve months after the final version of the rule is published in the *Federal Register* to help ensure credit unions and other lenders will have sufficient time to implement these changes, particularly in light of other regulatory requirements they are facing. CUNA also urges the board to clarify that the escrow account disclosures are not required for transactions secured by unimproved real property when a dwelling will not be constructed by the consumer purchasing the land.

Exemption for "Underserved" and "Rural" Areas

CUNA generally supports the Board's proposal to exempt creditors operating predominately in underserved and rural areas from the higher-priced mortgage mandatory escrow requirements so long as such creditors generally make 100 or fewer mortgages a year and hold those mortgages in portfolio.

We believe, however, that the proposed definitions of "underserved" (i.e. counties where only one creditor makes five or more mortgages a year) and "rural" (i.e. only counties that are not within or adjacent to a metropolitan statistical area or a micropolitan statistical area) are far too restrictive and should be expanded to include areas determined to be "underserved" or "rural" by other federal agencies.

CUNA urges the Board to expand the exemption's definition of "underserved" to include areas considered to be "underserved" by the National Credit Union Administration Board (NCUA Board) pursuant to 12 U.S.C. § 1759(c)(2) as well as areas served by institutions that the U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) has determined qualify for the Community Development Financial Institutions Program and similar CDFI Fund programs serving underserved communities. The Board should also expand the definition of "rural" to also include areas meeting the NCUA Board's definition of "rural district" as defined by 12 U.S.C. § 1759 and relevant agency interpretations.

Inclusion of NCUA Board and other federal agency definitions of underserved and rural areas would be consistent with Congress's intent for this exemption to allow small credit unions and other small financial institutions operating in underserved and rural areas to continue to provide needed mortgage credit to their communities without incurring additional regulatory burden. In our view, limiting the definitions of "underserved" and "rural" to only the most underserved and the most rural counties will have the effect of limiting access to mortgage credit in other objectively underserved and rural areas in a manner inconsistent with the exemption's congressional intent. Some counties are objectively underserved even when two or more financial institutions each originate 5 or more mortgages a year, and many rural areas are in counties adjacent to or included within a micropolitan statistical area or a metropolitan statistical area.

Many smaller credit unions operating in underserved and rural areas that hold their mortgages in portfolio and do not offer escrow accounts do not have the staff resources necessary to service mortgage escrow accounts. These credit unions that make mortgages held in portfolio—unlike some creditors that sell mortgages into the secondary market—have the incentive to make sure that the member is able to afford the entire cost of the mortgage loan because the credit union is exposed directly to any loss on the mortgage for the duration of the loan.

Also, the Board should increase the proposed exemption's 100 mortgages a year limitation on eligibility to at least 200 mortgages a year or more. Some small credit unions operating in rural and underserved areas that would otherwise fall within this exemption make as many as 200 mortgages held in portfolio per year. These credit unions may make no more than 100 mortgages a year in the future if the rule is finalized with the 100 mortgages per year limitation as proposed. We believe that such a restriction of mortgage credit in rural and underserved areas would not be consistent with how Congress intended this exemption to operate.

Clarification of "Evasion" Prohibition

The Board should clarify that the prohibition on "evasion" proposed as 12 C.F.R. § 226.45(d) ("Evasion; open-end credit.") does not limit the ability of a creditor to offer open-end mortgage products such as Home Equity Lines of Credit. We are concerned that this section's unclear language—"[i]n connection with credit secured by a consumer's principal dwelling that does not meet the definition of open-end credit . . . a creditor may not structure a home-secured loan as an open-end plan to evade the requirements of this section"—may be read by some to prohibit creditors from offering many open-end mortgage products to consumers. Additional information should be added to 12 C.F.R. § 226.45(d) or the corresponding staff commentary to clarify that the rule's "evasion" clause does not limit creditors' ability to offer open-end mortgage products to consumers.

Clarification of Condo/Coop Exemption Staff Commentary

The proposed regulation and its staff commentary contain possibly contradictory statements regarding escrow accounts for condominiums (condos) and coops that the Board should clarify in the final version of the regulation. Proposed 12 C.F.R. § 226.35(b)(3)(ii) states that it exempts higher-priced mortgages secured by shares in a coop organization, and exempts mortgages on condos from the mortgage insurance escrow requirements if the condo association maintains a master insurance policy. Proposed section 226.35(b)(3)(i), however, requires creditors to establish escrow accounts for higher-priced mortgages except as exempted by section 226.35(b)(3)(ii).

The proposed staff commentary states that section "226.35(b)(3) also applies to higher-priced mortgage loans secured by a first lien on a condominium or cooperative unit if it is in fact used as a principal residence."

We request clarification that the staff commentary is not intended to nullify the exemption for coops and condos in proposed section 226.35(b)(3)(ii) when the condo or coop is used as a principal residence. Congress intended for TILA section 129D(e) to provide a limited exemption for condos and coops that are used as principal residences and we urge the Board to make clear in the final rule that the exemption does apply to such dwellings.

Forced-Placed Insurance Disclosure

TILA section 129D(j)(2)(C) requires creditors to provide consumers who do not establish a mortgage escrow account with a disclosure regarding the possible consequences of not paying insurance premiums, taxes, and other home-related costs, including the possibility of "forced placement of insurance by the creditor or servicer . . . ." Proposed section 226.19(f)(2)(ii)(F) would implement this requirement by requiring a disclosure stating in part that the creditor may buy forced-placed insurance and pass this cost onto the consumer if the consumer fails to maintain insurance on the house themselves, and that the cost of forced-placed insurance would likely be more expensive than standard insurance policies.

CUNA supports the proposed forced-placed insurance disclosure because Congress specifically directed the Board to provide this disclosure in TILA section 129D. The proposed section 226.19(f)(2)(ii)(F) forced-placed insurance disclosure is therefore much more reasonable than the Board's Regulation Z proposal issued in 2010 (Docket No. R-1390) which CUNA opposed because it would have required credit insurance disclosures without a statutory authorization comparable to TILA section 129D(j)(2)(C) and would have been confusing to consumers. We suggest, however, that the Board consult and coordinate with state insurance regulators regarding the forced-placed insurance disclosure to help make sure that the Board's disclosure does not conflict with state insurance disclosures in a way that would be confusing to consumers.

Time Period to Establish Escrow Account

The Board's has proposed a 45-day period for creditors to establish required escrow accounts pursuant to 12 C.F.R. § 226.19(f)(2)(i), which is similar to Regulation X's timing requirement for providing borrowers with mortgage escrow account statements. The proposed 45 day period would be achievable by most credit unions but should be extended under certain circumstances. We urge the

Board to consider extending this time period to 75 days in order to allow borrowers the option to make the loan's first two monthly payments initially.

Definition of Business Day

The Board proposes to define "business day" for purposes of the timing of the new disclosures for escrow accounts as: all calendar days except Sundays and specified Federal legal holidays. CUNA supports this proposed revision since it should simplify compliance by applying the same definition of business day to the escrow account disclosures as is currently used for the seven-business day waiting period for early disclosures and the three-day waiting period for corrected disclosures in section 226.19(a)(2).

Real Property or a Dwelling

Section 226.19(f)(2) implements TILA section 129D(h) regarding disclosures when an escrow account is established in connection with a mortgage loan secured by a consumer's principal dwelling, but also covers other dwellings and real property without a dwelling. Section 226.19(f)(2) also implements TILA section 129D(j) regarding disclosures when an escrow account is not established in connection with a mortgage loan secured by real property, but also covers dwellings that would be considered personal property under state law. The Board proposes the section 226.19(f) coverage of real property and dwellings pursuant to its authority under TILA Section 105(a). However, current section 226.19(a) requires early disclosures only for mortgage transactions that are secured by a consumer's dwelling. The early disclosures are not required for transactions secured by real property and the text of TILA section 129D(h) only addresses unimproved real estate in the context of unimproved land that will have improvements constructed on it in the near future. CUNA urges the board to clarify that the escrow account disclosures are not required for transactions secured by unimproved real property when a dwelling will not be constructed by the consumer purchasing the land.

Delayed Compliance Date

We urge the Board to set a compliance date that recognizes creditors' need for additional time to implement these requirements. Although TILA section 129D is technically effective July 21, 2011, credit unions and other lenders will need at least six to twelve months after the final rule is published to bring their systems into compliance with the final rule's requirements. Credit unions and other creditors have additional requirements they are trying to meet that also will affect their compliance efforts with this rule.

This additional time will be especially important for credit unions and others that rely on third parties, such as software vendors. These third parties will need time to incorporate the necessary updates, complete the necessary testing, and then include this change into their regularly scheduled releases. We believe this extended implementation time period will be especially important at this time since lenders and their vendors have recently made other changes, such as the disclosures changes required under the Mortgage Disclosure Improvement Act that were effective as of January 30, 2011.

Thank you for the opportunity to comment on the Board's proposed regulation to implement the mortgage escrow account requirements of TILA section 129D as added by the Dodd-Frank Act. If you have questions about our comments, please feel free to contact CUNA SVP and Deputy General Counsel Mary Dunn, CUNA Assistant General Counsel and Senior Compliance Counsel Mike McLain at (608) 231-4185, or me at (202) 508-6705.

Sincerely,

Michael S. Edwards
CUNA Senior Assistant General Counsel