NATIONAL HOUSING RESOURCE CENTER

846 N. Broad St., Philadelphia, PA 19130 215 765-0048 bdorpalen@hsgcenter.org

Comments from Nonprofit Housing Counseling Agencies on High-Cost Mortgage and Homeownership Counseling Amendments to TILA and Homeownership Counseling Amendments to RESPA, 77 Fed. Reg. 49,090 (August 15, 2012), Docket No. CFPB-2012-0029

Submitted to the Consumer Financial Protection Bureau, September 7, 2012

List of Homeownership Counselors

We commend the Bureau for deciding to offer the list of housing counselors to all federal related mortgage loans and recommend that the list be provided for all mortgages originated for the purchase or refinance of the primary residence.

The proposed regulations propose that lenders provide a list of housing counselors to mortgage applicants. The most effective list to provide to a prospective borrower is a list of housing counseling agencies, rather than a list of individual housing counselors.

There are no HUD certified housing counselors currently. HUD has interpreted Dodd-Frank to say that HUD is required to set up a certification program for housing counselors. This program will need to be developed, counselors will need to be trained for the certification process, and certification tests will need to be administered. It will likely take several years to roll out the certification process and develop a cadre of HUD certified counselors. So, currently there is no list of individual, HUD certified counselors to be provided. In contrast, there are 2,700 HUD approved housing counseling agencies which are in place today, have been approved by HUD, and are currently working with mortgage lenders.

Supplying a list of individual counselors will present a number of problems for housing counseling agencies. Consumers will call asking for a specific counselor by name and this counselor may not be available at the moment, might be deluged with an unmanageable number of inquiries, or might have changed job roles and may no longer be the correct person for the inquiry. Unfortunately, there is also enough job turn over in the nonprofit housing counseling industry that keeping such a list up to date will be an administrative burden for the lender, the Bureau, and the counseling agency. Some counseling agencies have an intake model where the borrower will interact with an administrative staff person, before seeing the counselor, and a list of individual counselors would circumvent this process. Some of the largest HUD approved housing counseling agencies are in fact call centers with 100 to 400 employees and to single out a few individual counselors from the center would be impractical.

We strongly recommend to the Bureau that the most effective path for the consumer, the lender, and the counseling agency is to meet the requirement of the list of housing counselors by listing HUD approved agencies and not listing individual HUD certified counselors. We also believe that if the Bureau required lenders to provide applicants only with a list of housing counseling agencies (and no individual counselors), the Bureau would be in compliance with Dodd Frank. When applicants contact housing counseling agencies, they will be referred to a counselor.

We commend the Bureau for including not only purchase mortgages, but also refinances and home-equity lines of credit in the requirement for providing contact information for nonprofit housing counseling. Many of the worst abuses in predatory lending were refinance loans and consumers often do not understand the terms and conditions of home-equity lines of credit. Housing counselors can play a valuable role in educating the prospective borrower, reviewing financial affordability, educating on financial management skills, and alerting them to alternative loan products when appropriate.

As to the number of counseling agencies or counselors, we would recommend that the Bureau require at least five housing counseling agencies with the option to provide more. Providing five housing counselors is impractical, as we stated earlier. Many areas have more than five agencies and a longer list with more consumer choice is preferable. The list should be limited to HUD approved housing counseling agencies.

In order to ensure all consumers have access to HUD approved counseling, lists of HUD approved counseling agencies which offer locally based and telephone counseling. The Bureau should also keep alternative technologies such as internet based counseling as possible options which can be listed in the future.

The Bureau must ensure that areas with limited locally based counseling capacity have adequate coverage. Telephone based counseling can meet this gap. The consumer should always have a choice from at least five agencies and a list of five counselors from less than five different agencies should be unacceptable.

A website portal where a lender can generate a list of HUD approved housing counseling agencies would be very useful. Retrieving a fresh list for each application will assure lenders and consumers that they are receiving the most up-to-date list. In the past, lenders have relied on fixed lists which have out-of-date addresses, agency names, and phone numbers. The Bureau should work with HUD and the housing counseling agencies to develop an efficient method for keeping lists up-to-date.

In areas where there are not five agencies with offices in the vicinity, agencies providing telephone counseling should be included in the list. Listing five counselors from one agency limits consumer choice and should not be considered a substitute for listing five agencies.

Giving consumers a list of HUD approved housing counseling agencies at loan application is useful but very late in the process. Consumers are much better served by receiving housing counseling before they look at a house and before they talk with a lender. Once a consumer makes a loan application, they are working under a tight time schedule, they have been "sold" a loan product, and they have established a relationship with the loan officer who is incentivized to close the loan. This does not make for the best environment for the consumer to take into account the information provided by the housing counselor. We encourage the Bureau to 1) make the housing counseling agency listing available to the public, 2) require lenders to make the listing prominently available through their mortgage websites, their office branches, their mortgage advertising, and their loan officers, and 3) launch a public campaign to publicize the listing portal, and involve HUD and other federal agencies, housing counseling organizations, and housing counseling trade groups in the design of the campaign.

As to the number of counselors and agencies on the list, a minimum of five is a good number for agencies and, as we have pointed out earlier, listing individual counselors is not a practical practice.

The contact information for a counseling agency should include agency name, address, telephone number along with an email address and website, with specific notation if the website has an intake portal. The selection should sort by language capacity and accessibility for people with disabilities. The Bureau should also sort counseling agencies by counseling capacities, so that agencies with capacity in pre-purchase, refinance, home equity lending, credit counseling, rental, homeless, reverse mortgage, landlord/tenant, and delinquency and default counseling can be identified. Agencies with skilled staff in one area, such as pre-purchase, may not be skilled in another, such as refinance.

Supplying the list of counseling agencies within three days of application is a missed opportunity. The list should be supplied at application. Any delay in the receipt of the list will decrease the likelihood that the consumer will respond. Receiving the list by mail three days after application along with other papers will decrease the significance of the list to the consumer and may mean that the consumer does not notice the paper at all if it is combined with other papers. If the loan application is taken in person, the loan originator can hand the consumer the list. If the loan application is taken on line, the list can be put up on the screen and emailed to the consumer. If the application is taken on the telephone, the list can be sent by email or offered orally and followed up with a mailing, if the caller does not have an email address.

The Bureau should specify the format and presentation of this list of housing counseling agencies. The list should be in 14 point type or larger. The heading should be in bold and should have wording provided by the Bureau which clearly states the availability of independent information by housing counselors working for HUD approved housing counseling agencies. The listing should be available in multiple languages.

HOEPA Counseling Requirements

We agree with the Bureau that the housing counseling on the advisability of a HOEPA loan can take place before all the disclosures are received, as long as the consumer and the counselor have the Good Faith Estimate or the disclosures required under § 1026.40 for open-end credit. We agree with the comment by the Bureau stating "permitting counseling to occur as early as possible allows consumers more time to consider whether to proceed with a high-cost mortgage and to shop for different mortgage terms." Counseling on a HOEPA loan must be based on the specific loan terms of the loan. Earlier in the loan process is always better for the consumer, as long as the loan terms are known. However, the counselor should be able to review all the disclosures of the HOEPA loan before providing a final certification, even if that requires a second meeting with the consumer within the three days of closing when the final disclosures are available.

We agree that the counseling for a high-cost mortgage should not be provided by a counselor who is employed by or affiliated with a for profit creditor extending the high-cost mortgage. The counselors will be employed by a HUD approved housing counseling agency when they are providing the HOEPA housing counseling. However, counselors could have second jobs. This prohibition should prevent counselors from having secondary employment with a creditor extending high cost mortgages.

Waiver for Nonprofits

We support a waiver for nonprofit lenders who also provide housing counseling from the prohibition on counselors being employed by high cost lenders. This waiver should only apply to nonprofits which have 501 (c-3) IRS status and who are acting as lenders. The 501 (c-3) status requires a higher level of accountability and can prevent abuse by actors who are not nonprofit mission driven. Several nonprofit Community Development Corporations and Community Development Financial Institutions provide small loans which qualify as high cost loans. These loans were developed to fund marketplace gaps and serve a need for underserved markets not provided by for profit lenders. These loans are typically gap loans, emergency repair loans, or rescue loans in foreclosure situations. We can provide examples from a variety of nonprofits if the Bureau finds this helpful. Credit unions are nonprofit institution which might provide some loans which fall under HOEPA and which of which are HUD Approved housing counseling agencies. We urge the Bureau to explore if credit unions should be covered by a waiver.

Advisability of a High Cost Loan

In the Dodd-Frank legislation, Congress stipulated that the counselor provide counseling on the advisability of a high cost loan. The Bureau has an unusual interpretation of the term advisability of a high cost loan. The Bureau states "a statement that a consumer has received counseling on the advisability of the high-cost mortgage does not require the counselor to have made a judgment or determination as to the appropriateness of the loan for the consumer. The proposal provides that such a statement means the counseling has addressed the affordability of the high-cost mortgage for the consumer, not that the counselor is required to have determined whether a specific loan is appropriate for a consumer or whether a consumer is able to repay the loan." If you take your car to the mechanic, you do not want the mechanic to tell you about the status of your car, you also want to know if you should repair it. If you go a doctor, you not only want the doctor to confirm you are sick; you also want the doctor to advise you on the best treatment. A consumer is consulting a counselor to obtain the best advice on their course of action. To not address if the loan is appropriate for the consumer or the consumer's ability to pay is to not address the advisability of the loan. This is the value of consulting with a housing counselor. Given the expensive nature of high cost loans and the possibility that there are lower cost alternatives, it is doing a disservice to consumers to require them to consult with a housing counselor but not require that the counselor to provide an evaluation of the appropriateness of the loan. This failure risks giving the consumer the mistaken impression that a high cost loan is an appropriate loan for them, because they consulted with a housing counselor.

Congress inserted specific language on the advisability of the loan because high cost loans can be costly and very high risk for the consumer. There may be lower cost alternatives to the high cost loans for consumers and a counselor should be required to advise consumers about alternatives and what their best course of action is.

The Bureau uses the example of the HECM loan and HUD requirements that "the issuance of a HECM counseling certificate "attests ONLY to the fact that the client attended and participated in the required counseling and that the statutorily required counseling for a HECM." The HECM requirements are the only loan product where the housing counselor is prohibited from providing advice on the appropriateness of a loan. This represents a shortcoming with HECM loans and should not be replicated in other situations. HECM loans are an area where brokers have mislead consumers and where counselors have not been able to provide consumers with the complete advice needed.

The fact that Congress inserted specific language in the legislation to require the advisability of the loan is an indicator that Congress did not want to replicate the problems with HECM loans. If the Bureau decides not to build into the certification process a requirement that counselors communicate if the loan is appropriate for the consumer or about the consumer's ability to pay, this will rob the consumer of the best information for making an appropriate loan decision. It is also worth noting that by HUD requirement, the decision to accept or reject the loan is made by the consumer. Counseling agencies are required to inform and disclose to consumer that counselors are providing and advice and the decision to accept or reject a loan offer is up to the consumer.

Counseling Fees

We commend the Bureau for recognizing that housing counseling agencies need income to pay for the provision of housing counseling services for high cost loans and for permitting lender contributions for the delivery of these services. We also commend the Bureau for proposing the prohibition of payment on the basis of the consummation of the loan. We agree that this has the potential for conflict of interest for the agency or the perception of conflict of interest. Agencies accept funding based on closed loans because it is in many circumstances the only way to pay for the services, but counseling agencies would prefer to be paid for the all the work they do, not only the cases which result in a closed loan.

List of HOEPA Counselors

We have the same concerns about the list for HOEPA counseling as we had about the list for loan applications. The list should be made up of five or more agencies, not individual counselors. Listing agencies will mean that consumers will be contacting the central intake point of the agency so they can be referred to the appropriate counselor or intake worker. Listing individuals will direct consumers to a small group of counselors, regardless of their availability, current status, or employment at the agency. Listing by counselors will also require continuous updating, which will be an administrative burden for the Bureau, the servicers, and the housing counseling agencies. Finally, there are currently no HUD certified counselors in place. HUD is in the process of developing policies for the certification of counselors. These will need to be approved, the policies put in place, counselors and agencies will need to be prepared, counselors will need to tested and certified. The process for getting a sizeable group of certified counselors will take several years.

Recommended Default

We strongly support the Bureau position prohibiting mortgage brokers from recommending to consumers that they skip mortgage payments. This abusive practice has worsened borrower's credit situations, which trapped borrowers into taking more expensive and abusive loans.

Modification and Deferral Fees

We agree with the Bureau proposal to prohibit fees on high cost loans to "modify, renew, extend, or amend a high cost loan." We do not see any reason to make an exception for a refinance, including a refinance to a lower cost non-high cost loan.

Payoff Statements

We agree with the Bureau position prohibiting creditors or servicers from charging fees for pay off statements and requiring that creditors or servicers provide pay off statements promptly. Creditors and servicers delaying pay off statements was a tactic to discourage homeowners from refinancing out of predatory loans and charging fees for what is a simple computer calculation is an unnecessary expense. Requiring the payoff statement to be provided within five business days is overly long for what is a simple, computerized function. We recommend three business days. The payoff statement should be provided electronically and the Bureau should identify that as the standard all servicers should provide. If the standard communication by the lender to the loan applicant is an email or other electronic submission, then charging for exceptional services such as faxes or courier services is acceptable, as long as the pricing is market rate.

Negative Amortization Loans

We urge the Bureau to prohibit negative amortization loans secured by the primary residence of the consumer. A negative amortization loan is a high risk loan, which might be appropriate for investment properties but not for a primary residence. Negative amortization loans make monthly payments below the cost of the principal and interest, so that the principal can increase over the term of the loan. Often these were promoted by mortgage brokers in areas where property values were expected to rise, though we have experienced a collapse in property values in these areas and these loans have left homeowners more deeply underwater. But even in good times, there is a high risk of payment shock when the loan is recast and the homeowner may be trapped in an unaffordable loan and an overly leveraged home which cannot be resold or refinanced. Unethical brokers also promoted negative amortization loans in communities with flat or slowly rising property values, which compounded problems for homeowners. It is significant that Congress specified that the Qualified Mortgage definition exclude negative amortization loans. The only place these loans can be made is in the less regulated non-Qualified Mortgage market. This is the market where consumers will need the most protections and prohibiting negative amortization loans on the primary residence will provide that protection. There is nothing a housing counselor, no matter how skilled, can do to reduce the risk of a negative amortization loan.

If the Bureau chooses not to prohibit negative amortization loans, the Bureau should strengthen the proposed rules. Housing Counseling on negative amortization loans should not be limited to first time homebuyers. Many of the worst incidents of predatory lending happened with homeowners who were refinancing their mortgages and these homeowners were not first time homebuyers. The applicants for all negative amortization loans secured by the primary residence should be required to receive housing counseling.

The Bureau should set minimum standards for what should take place in the counseling session before certification can be issued. The minimum counseling standards on a negative amortization loan should be a review of the loan terms, a review of the household finances and credit, a comparison between the terms of the negative amortization loan and other available products which the applicant might qualify for, and a recommendation on the advisability of the loan for the applicant on the basis of affordability and appropriateness.

Congress recommended that borrowers receive housing counseling for negative amortization loans because they are high risk loans. The Bureau has a duty to assure that the applicant receive adequate information and advice to make the appropriate assessment.

Community Housing Council of Fresno, CA

Empowering & Strengthening Ohio's People (ESOP)

Esperanza

HomeFree-USA

Homeownership Preservation Foundation

Housing Action Illinois

Housing and Community Development Network of NJ

Housing & Education Alliance, Tampa Florida

Housing Development Fund, Stamford, CT,

Housing Partnership Network

Housing Resource Center of Monterey County, CA

Inland Fair Housing and Mediation Board, Rancho Cucamonga, CA

Korean Resource Center

Long Island Housing Services, Inc.

Maryland Housing Counselors Network, Inc.

Miami Valley Fair Housing Center, Inc., Miami, OH

Mission of Peace National Corporation

National Coalition for Asian Pacific American Community Development

National Community Reinvestment Coalition

National Council of La Raza

National Foundation for Credit Counseling

National Housing Resource Center

National Urban League

Neighborhood Nonprofit Housing Corporation, Logan UT

NID- Housing Counseling Agency

Northern Circle Indian Housing Authority
Northwest Ohio Development Agency
Rural Community Assistance Corporation
Spanish Coalition for Housing, Chicago, IL
Toledo Fair Housing Center