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National Association of Federally-Insured Credit Unions

September 18, 2020

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Higher-Priced Mortgage Loan Escrow Exemption (Regulation Z) (RIN 3170-AA83)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) notice of proposed rulemaking amending the *Truth in Lending Act's* (TILA) escrow requirements for higher-priced mortgage loans (HPMLs), pursuant to the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 121 million consumers with personal and small business financial service products. NAFCU supported the broad regulatory relief provided by the EGRRPA and appreciates the Bureau's implementation of section 108 creating a new exemption category from the HPML escrow requirement. Although the exemption category is narrow, it will assist credit unions that originate HPMLs and fit the criteria. NAFCU generally supports the proposal and asks the Bureau to finalize the extension of the prerequisite exception to pre-existing escrow accounts as proposed. In addition, NAFCU asks the Bureau support future legislative initiates to increase the exemption thresholds.

General Comments

TILA requires creditors to establish escrow accounts for certain HMPLs unless an exception applies. Section 108 of the EGRRCPA amended TILA by creating a new exemption to this requirement for creditors who: (1) have assets of less than $10 billion; (2) originate 1,000 or fewer loans secured by a first lien on a principal dwelling during the preceding calendar year; and (3) meet additional criteria already existing in Regulation Z, including the requirement that the creditor extend credit in a rural or underserved area. NAFCU appreciates the Bureau's recent interpretive rule establishing that *Home Mortgage Disclosure Act* data will be utilized to determine an "underserved area" for purposes of Regulation Z. The interpretive rule improves clarity and will assist credit unions in determining overall eligibility for this escrow exemption. Currently, credit unions serve many rural and underserved markets and a broader escrow exemption would allow credit unions to serve more members in these markets.

Over 99 percent of federally-insured credits unions have less than $10 billion in assets, and could potentially avail themselves of this new exemption category if the loan threshold and Regulation Z criteria are met. Credit unions do not typically originate HPMLs; however, this additional exemption category may mitigate any chilling effect or disincentive to serving the occasional member with a HPML when appropriate to meet that member's needs. Credit unions are responsible lenders and regardless of eligibility for this exemption category will continue to evaluate the risks posed by HPMLs and may continue to establish escrow accounts voluntarily.

The Bureau Should Finalize the Extension to the Prerequisite Exception as Proposed

Currently, section 1026.35(b)(2)(iii)(D) limits the escrow exception to creditors that do not already provide escrow accounts on mortgage loans, unless the accounts were established on or after April 1, 2010 and before May 1, 2016, or were established as an accommodation to distressed borrowers. The proposal retains this same limitation but extends the end date from May 1, 2016 to 90 days after the effective date of this final rule. This extension provides more opportunities for credit unions to avail themselves of the exemption and does not penalize those with existing escrow accounts. Credit unions who voluntarily set up escrow accounts but otherwise qualify, should not be prohibited from relying on the exception because they inadvertently removed themselves from eligibility. NAFCU agrees with the end date of 90 days after the effective date of the final rule and appreciates the Bureau's interpretation of their powers deferred by the EGRRCPA to encompass as many eligible credit unions as possible for this new exemption.

Despite the fact that many credit unions do participate in originating HPMLs and the Bureau's data evidencing the impact of the rule is based on a small amount of loans, there are credits unions that remain under the proposed asset threshold of $10 billion but originate more than 1,000 loans annually. NAFCU appreciates the inclusion of the proposed three-month grace period, which may allow some credit unions to still qualify for the exemption if they originate over 1,000 loans in a calendar year, but otherwise remain exempt. The three-month grace period considers atypical fluctuations in mortgage origination for a given calendar year, without resulting in credit unions becoming ineligible for the exemption. Understandably, this maximum threshold was set by the EGRRCPA at 1,000 mortgages secured by a first lien on a primary dwelling, thus any increase to this threshold would require a legislative change to the TILA. NAFCU encourages the Bureau to support future legislative initiatives that increase the maximum thresholds for escrow exemptions so that more credit unions may utilize this exemption.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU agrees that the effective date should begin immediately upon publication of this final rule in the *Federal Register* as credit unions that will be newly exempt from the escrow requirement will benefit from the new exemption being immediately available. NAFCU is supportive of the proposed extension of the limitations regarding previously established escrow accounts to 90 days after the effective date of this rule. In addition, NAFCU urges the Bureau to support future legislative initiatives to increase the maximum thresholds for HPML escrow exemptions so that smaller credit unions with lower volumes of HPMLs may be exempt. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

Kaley Schafer
Senior Regulatory Affairs Counsel